

SENATE BILL 2184

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 71,
relative to limiting the use of factors not under the
control of a physician in determining
reimbursement in an alternative payment system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds and declares that:

(1) Under alternative payment systems, a healthcare payor, when determining total patient care costs attributed to a physician for an episode of care, may include costs that are not under the control of that physician;

(2) Under an alternative payment system, a physician may not receive an appropriate share of savings, or may be liable for a reduction in payment, including reduction by recoupment applied against payments for future services, if the physician's patients have a higher total cost of care as compared to a defined benchmark or range of costs;

(3) A physician should not be penalized for higher patient care costs when those costs are not under the control of the physician; and

(4) Imposing on a physician financial responsibility for the performance of other providers who are not under the control of that physician, and who are paid for services according to contracts that were not negotiated by that physician, may constitute the transfer of actuarial insurance risk to a physician who is not licensed or certified under the law of this state to bear such risk with respect to an insured patient.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, is amended by adding a new part 11 to read as follows:

71-5-1101. As used in this part:

(1) "Alternative payment system" means a payment methodology used by a healthcare payor that includes a risk-sharing or gain-sharing component for a physician who participates in a plan, program, or network offered by the healthcare payor;

(2) "Healthcare payor" means the state or any health insurance company, health maintenance organization, or managed care organization contracted with the state to provide, arrange, or pay for medical assistance provided under this chapter;

(3) "Gain-sharing payment" means an increase in a payment or additional payment made by a healthcare payor to a physician, or a group practice of which the physician is a member, as a result of patient care costs that fall below cost thresholds set by the healthcare payor;

(4) "Risk-sharing payment" means a reduction in a payment to a physician, or a group of which a physician is a member, or refund of a payment already made to that physician, or a recoupment applied against payments for future services provided by that physician, as a result of patient care costs that exceed cost thresholds set by the healthcare payor;

(5) "TennCare" means the medical assistance program under this chapter; and

(6) "Under the control of the physician" means, with respect to any medical service, that the service was ordered by or provided directly by the physician, or by the medical group of which that physician is a member.

71-5-1102. A healthcare payor, including a healthcare payor using an alternative payment system, when determining any gain-sharing or risk-sharing for a physician, shall not attribute to the physician any costs for healthcare services that were provided by individuals or entities outside of the control of the physician or the physician's group practice if including the costs reduces a physician's gain-sharing amount or increases a physician's risk-sharing amount.

71-5-1103. The restrictions in § 71-5-1102 shall not apply to a physician, or the physician's group practice, who is providing healthcare services in the TennCare program

pursuant to a freely negotiated risk-sharing contract between a healthcare payor and an accountable care organization, clinically integrated network, or other similar entity organized to provide such healthcare services on a risk-sharing basis.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.