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S.P. 493 In Senate, April 2, 2009

An Act To Implement Shared Decision Making To Improve Quality of Care and Reduce Unnecessary Use of Medical Services

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §3174-LL is enacted to read:

§3174-LL. Coverage for shared decision making

As a service covered under Medicaid, the department shall adopt the shared decision-making program as established by the Maine Quality Forum pursuant to Title 24-A, section 6951, subsection 12. The department shall adequately compensate a provider to ensure a reasonable measure of shared decision making for each eligible patient who elects to participate. The department shall recognize participation in shared decision making as a factor to be rewarded in any system of extra compensation provided to practitioners. As part of the shared decision-making program, the department shall relieve each participating provider of the requirement to obtain prior authorization for prescription drugs as long as the provider can demonstrate a continuing record of substantial compliance with MaineCare's preferred drug list. The department shall report to the Maine Quality Forum and the Maine Health Data Organization upon request such data as may be required to evaluate the effectiveness of the program.

Sec. 2. 24 MRSA §2905, sub-§4 is enacted to read:

4. Shared decision making. If a patient engages in shared decision making in accordance with Title 24-A, section 4303, subsection 12 and section 6951, subsection 12, an acknowledgement signed by the patient or patient's representative is prima facie evidence that informed consent was given to be treated or not treated, as the case may be, for the condition covered by the acknowledgement. The presumption of informed consent created by this subsection may be overcome only by clear and convincing evidence. An acknowledgement of shared decision making must:

A. State that the patient or patient's representative intends to proceed or not to proceed, as the case may be, with the service or course of treatment identified in the acknowledgement;

B. Identify the patient decision aid or aids that have been used to facilitate the exchange of information about the patient's options; and

C. State that the patient or patient's representative understands the available alternatives for care.

Sec. 3. 24-A MRSA §4301-A, sub-§13-A is enacted to read:

13-A. Patient decision aid. "Patient decision aid" means written, audio, visual or online material approved by the Maine Quality Forum to assist patients in selecting preference-sensitive health care services. "Patient decision aid" includes educational material that describes the diagnosed condition, explains treatment options, presents the possible benefits and harms of each choice or discusses the range of likely outcomes. Where appropriate, a patient decision aid may describe the limits of reliable scientific knowledge concerning the patient's condition and options for care. "Patient decision aid" also includes any material or tool that may help to define the patient's personal goals and values relevant to a health care decision.

The purpose of a patient decision aid is to provide clear, reliable, up-to-date methods by which to implement shared decision making efficiently and cost-effectively but with particular attention to the individuality of the patient.

Sec. 4. 24-A MRSA §4301-A, sub-§15-A is enacted to read:

15-A. Preference-sensitive health care service. "Preference-sensitive health care service" means a health care service that meets the criteria for medically necessary health care but whose suitability for a particular patient may depend on the patient's personal preferences as expressed after the patient is well informed of the available options and understands how such choices may be affected by the patient's personal circumstances and values.

Sec. 5. 24-A MRSA §4301-A, sub-§15-B is enacted to read:

15-B. Primary care provider. "Primary care provider" means a licensed medical or osteopathic physician, physician's assistant or certified nurse practitioner who practices family medicine, general practice, internal medicine or pediatrics and who serves as the principal access to health care for patients. "Primary care provider" may also include a specialist in obstetrics or gynecology when the provider serves as the principal access to health care for patients.

Sec. 6. 24-A MRSA §4301-A, sub-§17-A is enacted to read:

17-A. Shared decision making. "Shared decision making" means a process that enables either a patient or a patient's representative on the patient's behalf to select options for preference-sensitive health care services after exchanging with a health care provider the information necessary to understand the uncertainties and side effects of each option in the context of the patient's individual condition, age, health status, attitude and values.

Sec. 7. 24-A MRSA §4303, sub-§3-B, as amended by PL 2007, c. 199, Pt. B, §8, is further amended to read:

3-B. Prohibition on financial incentives. A carrier offering or renewing a managed care plan may not offer or pay any type of material inducement, bonus or other financial incentive to a participating provider to deny, reduce, withhold, limit or delay specific medically necessary health care services covered under the plan to an enrollee. This subsection may not be construed to prohibit contracts that contain incentive plans that involve general payments such as capitation payments or risk-sharing agreements that are made with respect to providers or groups of providers or that are made with respect to groups of enrollees. This subsection may not be construed to prohibit or limit shared decision making as provided in subsection 12.

Sec. 8. 24-A MRSA §4303, sub-§12 is enacted to read:

12. Shared decision making. A carrier shall implement a shared decision making program in accordance with this subsection.

A. A carrier shall implement protocols for shared decision making for preference-sensitive health care services identified and developed by the Maine Quality Forum as required by section 6951. A carrier may contract for shared decision-making services with 3rd parties approved by the Maine Quality Forum or may authorize providers to do so.

B. A carrier shall compensate participating providers for shared decision-making services rendered to each eligible patient or patient's representative who elects to use the shared decision-making process. A carrier shall compensate primary care providers for shared decision making even if the preference-sensitive health care service being considered by a patient is a service provided by a specialist.

C. A carrier shall report to the Maine Quality Forum and the Maine Health Data Organization upon request such data as may be required to evaluate the effectiveness of the program.

Sec. 9. 24-A MRSA §6951, sub-§12 is enacted to read:

12. Shared decision making. The forum shall implement a program for shared decision making for use by health insurance carriers and the MaineCare program. The forum shall develop and maintain a list of preference-sensitive health care services and publish an accepted protocol for shared decision making for each selected health care service. The forum shall also identify approved patient decision aids relating to each health care service and identify approved vendors who offer shared decision-making services. In conjunction with the Maine Health Data Organization, the forum shall collect data as necessary from health insurance carriers and the MaineCare program to evaluate whether shared decision making is effective in reducing health care costs and unnecessary utilization of services. The forum may adopt rules as necessary to implement the program. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. As used in this subsection, the terms "patient decision aid," "preference-sensitive health care service" and "shared decision making" have the same meanings as in section 4301-A.

Sec. 10. Report on shared decision making. On or before January 31, 2012, the Maine Quality Forum, in conjunction with the Maine Health Data Organization, shall submit a report evaluating the shared decision-making program established pursuant to the Maine Revised Statutes, Title 24-A, section 6951, subsection 12 and used by health insurance carriers and the MaineCare program and the effectiveness of the program in reducing health care costs and unnecessary utilization of services. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over health insurance matters.

SUMMARY

This bill requires health insurance carriers and the MaineCare program to implement shared decision making as a strategy for improving the quality of medical care and for controlling the unnecessary utilization of preference-sensitive health care services. Under the bill, the Maine Quality Forum is responsible for determining which medical services are preference-sensitive and for approving protocols and decision-making aids to assist

health care providers in consulting with patients. If a provider follows the shared decision-making protocol, the health care provider may use compliance with the protocol as proof of informed consent when relevant to defending a medical malpractice action. The bill requires the Maine Quality Forum and the Maine Health Data Organization to evaluate the shared decision-making program and report to the Legislature by January 31, 2012.