

## **BILL ANALYSIS**

C.S.H.B. 852  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A "never event" is a preventable adverse event or condition that occurs in a health care facility and is the fault of the facility. A hospital should be prohibited from receiving additional payment from the state Medicaid program if a patient is subjected to any of 13 specified preventable adverse conditions during the patient's hospitalization. Since October 2008, hospitals across the United States have been operating under such a prohibition regarding Medicare payment under federal law. The Texas Hospital Association and the Centers for Medicare and Medicaid Services (CMS) have expressed their support for legislation instituting such a prohibition. According to CMS, Maine, Massachusetts, New York, and Pennsylvania have similar nonpayment laws, and nearly 20 states are considering such laws.

C.S.H.B. 852 requires the executive commissioner of the Health and Human Services Commission (HHSC), in the adoption of rules and standards regarding rates paid for inpatient hospital services on a prospective payment basis, to ensure that a hospital is prohibited from receiving additional Medicaid payment associated with certain preventable adverse conditions involving a Medicaid recipient during the recipient's hospitalization and provides that the payment does not create civil liability for the hospital. The bill requires HHSC to compile information and derive statistical information regarding the occurrence of preventable adverse events and conditions and to make such information available on HHSC's website.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 852 amends the Human Resources Code to require the executive commissioner of the Health and Human Services Commission (HHSC), in the adoption of rules and standards on the determination of rates paid for inpatient hospital services on a prospective payment basis, to assure that a hospital is prohibited from receiving additional Medicaid payment associated with certain preventable adverse conditions involving a Medicaid recipient during the recipient's hospitalization. The bill specifies the surgical errors, medical conditions and manifestations, infections, and injuries that constitute a preventable adverse condition for which a hospital may

not receive payment. The bill authorizes the executive commissioner to adopt rules to define additional preventable adverse conditions for which a hospital is required to be denied additional payment. The bill authorizes the executive commissioner, in adopting such rules, to consider only the same types of health care-associated adverse conditions or events for which the Medicare program will not provide additional payment under a policy adopted by the Centers for Medicare and Medicaid Services.

C.S.H.B. 852 establishes that HHSC's nonpayment of a hospital under its provisions does not create civil liability and is not subject to discovery or admissible in any civil action against the hospital. The bill requires HHSC to compile information regarding the denial of payment to hospitals and to make that data available in a user-friendly format on HHSC's website. The bill prohibits HHSC from providing information in a manner that identifies a Medicaid recipient on HHSC's website.

C.S.H.B. 852 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

C.S.H.B. 852 requires the executive commissioner of HHSC to adopt rules relating to the nonpayment of hospitals for preventable adverse conditions not later than November 1, 2009.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 852 differs from the original by adding to the preventable adverse events for which a hospital is to be prohibited from receiving additional payment by rule surgery performed on the wrong body part, surgery performed on the wrong person, and the wrong surgical procedure performed on a recipient. The substitute adds provisions not included in the original authorizing the executive commissioner of HHSC to adopt rules to define additional such preventable adverse conditions and consider only certain types of health care-associated adverse conditions or events when adopting such rules. The substitute makes nonsubstantive clarifying corrections not included in the original.