

MEMORANDUM



JOINT BUDGET COMMITTEE

TO JBC Members
FROM JBC Staff
DATE March 14, 2022
SUBJECT Figure Setting - Comeback Packet 5

Included in this packet are staff comeback memos for the following items:

Personnel, page 1 (Tom Dermody): R1 Colorado Equity Office (*Tabled Item*)

DORA, page 8 (Mitch Burmeister): R2 Actuarial Review of Insurance Coverages (*Tabled Item*)

DORA, page 11 (Mitch Burmeister): R3 Align State Surprise Billing Law with Federal No Surprises Act (*Tabled Item*)

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
 FROM Tom Dermody, JBC Staff (303-866-4963)
 DATE March 8, 2022
 SUBJECT Dept. Personnel Tabled Decision Item – R1 Colorado Equity Office

During Figure Setting for the Department of Personnel on February 9, 2022, the Committee delayed decision on the Department’s R1 (Colorado Equity Office) request. The Committee asked for additional contextual information regarding expenditures from the COVID Heroes Collaboration Fund and the impact of the staff recommended placeholder on the various departments affected by this decision item.

COVID HEROES COLLABORATION FUND FY 2020-21 ACTUAL EXPENDITURES

JBC Staff presented a memorandum on January 19, 2022, discussing the appropriations related to H.B. 20-1153 (Colorado Partnership For Quality Jobs And Services Act). House Bill 20-1153 created a collective bargaining system between covered state employees and the state's executive branch. The directors of the Department of Personnel and the Department of Labor and Employment enforce certain aspects of the Partnership Agreement process, promulgate rules, and determine appropriate remedies to address violations under the bill. The bill created the COVID Heroes Collaboration Fund (Section 24-50-104 (1)(j)(III)(D), C.R.S.) and directed the State Treasurer to transfer \$7.0 million from the State Employee Reserve Fund (Section 24-50-104 (1)(j)(II)(A), C.R.S.) to the COVID Heroes Collaboration Fund upon enactment. Appropriations from the COVID Heroes Collaboration Fund are used to implement the provision of the bill. The staff memorandum can be accessed here: <https://leg.colorado.gov/sites/default/files/apphis-01-19-22.pdf>.

In FY 2020-21, \$2,842,581 total funds, including \$1,941,256 cash funds and \$954,305 reappropriated funds, were appropriated for the first-year implementation of H.B. 20-1153 (Colorado Partnership For Quality Jobs And Services Act). Of the cash funds appropriated, \$1,888,276 were from COVID Heroes Collaboration Fund. This appropriation was split among several departments, including: Corrections, Governor’s Office, Human Services, Labor and Employment, Law, Natural Resources, Personnel, Public Safety, and Revenue.

Actual FY 2020-21 expenditures from the Fund total \$1,618,548. The Department of Personnel accounts for 49.9 percent of these expenditures and the Department of Labor and Employment accounts for 25.5 percent. Of the total expenditures, 43.1 percent were for personal services and 36.1 percent were for legal services. The table below details FY 2020-21 actual expenditures by department and expense.

COVID HEROES COLLABORATION FUND FY 2021-22 EXPENDITURES		
DEPARTMENT	EXPENSE	EXPENDITURE
Corrections	Legal services	\$118,646
	Personal services	31,036
Governor's Office	Legal services	10,937
	Contract expenses	70,913
	Subtotal	\$112,885
Human Services	Operating expenses	96,132
Labor & Employment	Personal services	389,056

COVID HEROES COLLABORATION FUND FY 2021-22 EXPENDITURES		
DEPARTMENT	EXPENSE	EXPENDITURE
	Operating expenses	\$23,528
	Subtotal	\$412,584
Natural Resources	Legal services	25,904
	Personal services	278,241
Personnel	Operating expenses	16,696
	Legal services	383,760
	Contract expenses	128,225
	Subtotal	\$806,921
Public Safety	Legal services	18,996
Revenue	Legal services	\$26,479
Total	Personal services	\$698,332
	Operating expenses	136,356
	Legal services	584,722
	Contract expenses	199,138
	Grand Total	\$1,618,548

RECOMMENDED PLACEHOLDERS

As envisioned by the Department of Personnel's request, the General Fund appropriation related to this decision item would be made to the Department. This appropriation would subsequently be reappropriated to the various other departments affected by this request, in which non-prioritized requests were submitted. JBC Staff's recommendation follows the Department of Personnel's requested model.

JBC STAFF RECOMMENDED FY 2022-23 PLACEHOLDERS FOR DPA R1 AND OTHER DEPARTMENTAL NON-PRIORITIZED REQUESTS						
DEPARTMENT (DECISION ITEM)	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS	FTE
Personnel (R1)	\$1,793,072	\$1,793,072	\$0	\$0	\$0	10.0
Health Care Policy/Finance (NP8) ¹	149,980	0	0	74,990	74,990	2.0
Human Services (NP6)	324,064	0	0	324,064	0	4.0
Regulatory Agencies (NP5)	61,845	0	0	61,845	0	1.0
Revenue (NP6)	194,878	0	0	194,878	0	3.0
Total	\$2,523,839	\$1,793,072	\$0	\$655,777	\$74,990	20.0

¹ The total in this table reflects an additional FTE that will be added to HCPF through matching Medicaid federal funds.

Staff recommends denial of this request as an appropriation through the Long Bill. Staff recommends this request be addressed through separate legislation, as the creation of a standalone office with substantively new responsibility is best accomplished through statute. If the Committee takes staff recommendation, staff recommends a placeholder for \$2,523,839 total funds, including \$1,793,072 General Fund, \$655,777 reappropriated funds, and \$74,990 federal funds, and 20.0 FTE. This represents an appropriation for the requested FTE, both through the prioritized request in the Department of Personnel and the non-prioritized requests in other departments, at the respective range minimums and the requested operating expenses for standing up the Colorado Equity Office.

ANNUALIZATION UPDATE

Staff's recommendation annualizes to \$2,512,665 total funds, including \$1,784,328 General Fund, and 20.0 FTE in FY 2023-24.

JBC STAFF RECOMMENDED FY 2023-24 ANNUALIZATION FOR DPA R1 AND OTHER DEPARTMENTAL NON-PRIORITIZED REQUESTS						
DEPARTMENT (DECISION ITEM)	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS	FTE
Personnel (R1)	\$1,784,328	\$1,784,328	\$0	\$0	\$0	10.0
Health Care Policy/Finance (NP8) ¹	149,842	0	0	74,921	74,921	2.0
Human Services (NP6)	325,979	0	0	325,979	0	4.0
Regulatory Agencies (NP5)	60,581	0	0	60,581	0	1.0
Revenue (NP6)	191,935	0	0	191,935	0	3.0
Total	\$2,512,665	\$1,784,328	\$0	\$653,416	\$74,921	20.0

¹ The total in this table reflects an additional FTE that will be added to HCPF through matching Medicaid federal funds.

Please note that the annualization of staff's recommendation provided in the *RECOMMENDATION* section below is replaced by the above recommendation, which does not apply the General Fund payday shift in FY 2023-24.

The staff write-up as presented during Figures Setting is provided below for informational purposes.

→ R1 COLORADO EQUITY OFFICE [REQUIRES LEGISLATION]

REQUEST: The Department requests an increase of \$2,536,213 General Fund and 19.0 FTE in FY 2022-23 for the creation of the Colorado Equity Office. The request annualizes to \$2.5 million General Fund and 19.0 FTE in FY 2023-24 and ongoing. Of the requested FTE, 10.0 will be placed in the central Colorado Equity Office housed in the Department, while the remaining 9.0 FTE will be placed in various departments. These FTE will include: a Program Director; Equity, Diversity, and Inclusion managers and coaches; data analysts; and Human Resources staff. The requested FTE will be distributed as shown in the following table.

R1 COLORADO EQUITY OFFICE FTE DISTRIBUTION	
DEPARTMENT	NUMBER OF FTE
Personnel	10.0
Human Services	4.0
Revenue	3.0
HCPF*	1.0
Regulatory Agencies	1.0
Total	19.0

* The total in this table does not reflect an additional FTE that will be added to HCPF through matching Medicaid federal funds.

RECOMMENDATION: Staff recommends denial of this request as an appropriation through the Long Bill. Staff recommends this request be addressed through separate legislation, as the creation of a standalone office with substantively new responsibility is best accomplished through statute. If the Committee takes staff recommendation, staff recommends a placeholder for \$1,793,072 General Fund and 19.0 FTE. This represents an appropriation for the requested FTE at the respective range minimums and the requested operating expenses for standing up the Colorado Equity Office.

The recommended annualizes to \$1,675,272 General Fund and 19.0 FTE in FY 2023-24.

R1 JBC STAFF RECOMMENDED PLACEHOLDER AND ANNUALIZATION			
DEPARTMENT	COST ELEMENT	FY 2022-23	FY 2023-24
Personnel	Personal services	\$611,795	\$611,795
	Operating expenses (FTE)	75,500	13,500
	Operating expenses (startup)	450,000	450,000
	Centrally appropriated costs	0	146,086
	FTE	10.0	10
	Subtotal	\$1,137,295	\$1,075,295
Human Services	Personal services	\$293,864	\$293,864
	Operating expenses	30,200	5,400
	Centrally appropriated costs	0	63,459
	FTE	4.0	4
	Subtotal	\$324,064	\$299,264
Regulatory Agencies	Personal services	\$54,295	\$54,295
	Operating expenses	7,550	1,350
	Centrally appropriated costs	0	13,889
	FTE	1.0	1
	Subtotal	\$61,845	\$55,645
Health Care Policy/Finance	Personal services	\$67,440	\$67,440
	Operating expenses	7,550	1,350
	Centrally appropriated costs	0	15,073
	FTE	1.0	1
	Subtotal	\$74,990	\$68,790
Revenue	Personal services	\$172,228	\$172,228
	Operating expenses	22,650	4,050
	Centrally appropriated costs	0	42,507
	FTE	3.0	3
	Subtotal	\$194,878	\$176,278
Total		\$1,793,072	\$1,675,272

DISCUSSION: The Colorado Partnership for Quality Jobs and Services Act (Section 24-50-1101 et seq., C.R.S.) creates a collective bargaining system between covered state employees and the State's Executive Branch. The Act requires the State to enter into a partnership agreement with certified employee organizations, defines the duties of the parties, and sets standards and procedure related to disputes. The Act defines covered employees as those who are employed in the State's personnel system with the following exceptions:

- Confidential employees;
- Managerial employees;
- Executive employees;
- The director, the director of the division of labor standards and statistics, the governor's designee, and employees working with either director to implement the Act;
- Administrative law judges and hearing officers;
- State troopers;
- Employees of the Legislative Branch; or
- Temporary appointees as described in Section 24-50-114, C.R.S.

For budgetary purposes, Sections 24-50-1111 and 24-50-1117, C.R.S., are the most pertinent. The former enunciates the duties of the State and the oversight role of the General Assembly. In particular, Section 24-50-1111 (6), C.R.S., referencing the State's budgeting process, directs that:

“The provisions of a partnership agreement that require the expenditure of money shall be contingent upon the availability of money and the specific appropriation of money by the general assembly. *If the general assembly rejects any part of the request, or while accepting the request takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations concerning economic issues.*” [emphasis added]

Section 24-50-1117, C.R.S., states that for FY 2022-23 and subsequent fiscal years, the costs of “implementation or administration” of the Act “shall be paid from the [General Fund], subject to available appropriation.”

EXECUTIVE ORDER D 2020 175 (EQUITY, DIVERSITY, AND INCLUSION FOR THE STATE OF COLORADO)

Executive Order D 2020 175¹, signed on August 27, 2020, directs the Department of Personnel to be the lead agency for development and implementation of the Governor’s directives regarding equity, diversity, and inclusion in the state workforce. The Executive Order instructs the Department to create a Universal Policy “to guide and direct State agencies in creating long-term strategic plan with the goal of inclusive, anti-discriminatory workplace cultures, and implementing equitable hiring, compensation, and retention practices.” Additionally, the Department is ordered to create and distribute employee training, develop public reporting standard operating procedures for state agencies, and to create statewide standards of accessibility. The Executive Order directs state agencies to take a coordinated approach to “operationalize equity in systems, policies, and practices.”

UNIVERSAL POLICY FOR EQUITY, DIVERSITY, AND INCLUSION IN STATE EMPLOYMENT

The *Universal Policy for Equity, Diversity, and Inclusion in State Employment*², which was finalized on September 16, 2020 (see Appendix E), sets workforce and workplace “expectations regarding equity, diversity, and inclusion” for classified employees in the Executive Branch. The Policy is intended to ensure that the State’s workforce is comprised of individuals with diverse backgrounds that reflect the communities from which they come. The Policy provides specific duties and responsibilities for the entire workforce, including the State Personnel Director, the Statewide Chief Human Resources Office, and Department Heads.

The Policy defines five specific terms: equity, diversity, inclusion, inequity, and underutilization/underrepresented. The following definitions can be found in Section III of the Universal Policy. (pgs. 2-3)

“**Equity:** When everyone, regardless of who they are or where they come from, has the opportunity to thrive. Equity recognizes that some individuals have an advantage because of their identity, while others face barriers. Unlike equality, which suggests giving the same thing to everyone, equity works to provide opportunities to those facing barriers by providing additional resources to those who do not have these

¹ Executive Order D 2020 175 can be accessed here: <https://www.colorado.gov/governor/2020-executive-orders>.

² The *Universal Policy for Equity, Diversity, and Inclusion in State Employment* can be accessed here: <https://dhr.colorado.gov/state-hr-professionals/universal-policies>.

advantages. This requires eliminating barriers like poverty and repairing systemic injustices.

Diversity: A description of differences usually based on identities such as race, gender, sexual orientation, class, or ability, etc. Diversity does not equal equity and does not always occur intentionally.

Inclusion: What an organization does with diversity to ensure individuals have the opportunity to fully participate. Inclusion intentionally promotes a sense of belonging where people's inherent worth and dignity are recognized and their abilities, qualities, and perspectives are leveraged for the collective good.

Inequity: When policies and processes create fewer opportunities for historically marginalized groups that are systemic, avoidable, and unjust.

Underutilization or Underrepresented: Employment of members of a race, ethnicity, gender, or other group at a rate below their availability (representation in the labor market)."

LEGISLATIVE AUTHORIZATION

The Governor and Department of Personnel assert that they have sufficient existing statutory authority to create the Colorado Equity Office. They cite Section 24-1-107, C.R.S., and Section 24-50-101, C.R.S., as the necessary and sufficient statutory authority. The former states that the:

“head of a principal department, with the approval of the governor, may establish, combine, or abolish divisions, sections, and units other than those specifically created by law and may allocate and reallocate powers, duties, and functions to divisions, sections, and units under the principal department, but no substantive function vested by law in any officer, department, institution, or other agency within the principal department shall be removed from the jurisdiction of such officer, department, institution, or other agency under the provisions of this section.”

The latter statutory citation is the general creations statute for the Department of Personnel, which describes the duties and responsibilities of the Executive Director, also known as the “state personnel director.” The Executive Branch argues that these two sections of statute, in combination with the requested appropriation through the Long Bill, is sufficient enough to meet their obligation under the Partnership Agreement and the most efficient way to establish the Colorado Equity Office.

While the Executive Branch may be technically correct that the cited statute gives them the authority to standup the Colorado Equity Office without further authorization, this method of creating a new office is not best practice. There are numerous examples of functional units of government being created within statute. Without explicit statutory authorization, the Colorado Equity Office would only be bound by Executive fiat. The Partnership Agreement is between COWINS and the Executive Branch. The Universal Policy is created and managed by the Executive. The Executive Order is at the sole discretion of the Governor. All of these can be changed or revoked without the consent of

the General Assembly. To appropriate in the manner requested does nothing to guarantee that the Executive Branch will use the appropriation for its intended purpose.

What happens when the Governorship changes? What prevents the Governor or Department from changing the underlying requirements of the Universal Policy? What happens when the COWINS Partnership Agreement is renegotiated in 2024? Without explicit legislative authorization, there are no guardrails against unilateral Executive decisions.

Furthermore, Article 8.2.A of the Partnership Agreement explicitly directs the Executive Branch and COWINS to:

“Jointly seek legislation and funding of \$2,500,000 per fiscal year to establish an Equity Office with 10 positions within DPA and 9 additional positions within certain State Entities on July 1, 2022 that will support and hold accountable the equity, diversity and inclusion initiatives of the State and State Entities.”

The Governor is bound to seek the negotiated and agreed upon elements of the Partnership Agreement by Section 24-50-1112 (5), C.R.S., state:

“A partnership agreement that is executed by the state and the certified employee organization is enforceable and binding on the state, the certified employee organization, and covered employees covered by the agreement. In the event of conflict between the provisions of a partnership agreement and state laws or rules in effect as of the initial partnership agreement, state laws and rules control.”

ALTERNATIVE TO STAFF RECOMMENDATION

This request is associated with Article 8.2.A of the Partnership Agreement, which is shown in the previous section. If the Committee desires, a placeholder of \$2.5 million General Fund and 19.0 FTE for legislation to create the Colorado Equity Office would meet the negotiated requirements of the COWINS Partnership Agreement.

LEVEL OF EVIDENCE PURSUANT TO S.B. 21-284

Senate Bill 21-284 states that a program or practice is “theory-informed” if a theory of change has been identified and implemented. The Department identified this budget request as a theory-informed practice, and identified the theory of change as “equity, diversity, and inclusion.” The Department’s objective is “create an equitable, diverse, and inclusive environment that allows our workforce to thrive and the state to be an ‘employer of choice.’”

A theory of change is a method that explains how a given intervention, or set of interventions, is expected to lead to specific outcomes, drawing on a causal analysis based on available evidence. There are no identifiable outputs related to the Colorado Equity Office, JBC staff disagrees that it qualifies as an intervention that is intended to lead to a specific change with measurable outcomes. JBC staff has determined that, pursuant to S.B. 21-284 (Evidence-based Evaluations for Budget), assignment of a level of evidence is not applicable to this request.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Mitch Burmeister, JBC Staff (303-866-3147)
DATE March 14, 2022
SUBJECT JBC staff Comeback for the Department of Regulatory Agencies – R2 and R3

→ R2 ACTUARIAL REVIEW OF INSURANCE COVERAGES [REQUIRES LEGISLATION]

REQUEST: THE DEPARTMENT REQUESTS an increase of \$237,924 cash funds from the Division of Insurance Cash Fund and 0.3 FTE for FY 2022-23 to establish a process for objective, reliable, and independent reviews of proposed legislative changes to private insurance coverage.

RECOMMENDATION: Staff recommends denial of the request. This request requires legislation, and the Department is not asking the Committee to sponsor any legislation. As such, these funds should not appear in the Long Bill. The Department is, however, asking that the Committee consider setting aside these funds for potential legislation.

ANALYSIS:

CURRENT LAW

In the past, the State has had dedicated processes to do actuarial reviews of proposed health insurance coverage mandates. In 2003, S.B. 03-068 created a Commission on Mandated Health Insurance Benefits. This commission was tasked with reviewing existing and proposed health benefit mandates for their impact on individuals, employers, and health insurers. The commission was repealed on July 1, 2010.

This is not to say that there is currently no mechanism by which reviews are required. Section 10-16-103 (1), C.R.S. states,

“Every person or organization which seeks legislative action which would mandate a health coverage or offering of a health coverage by an insurance carrier, nonprofit hospital and health-care service corporation, health maintenance organization, or prepaid dental care plan organization as a component of individual or group policies shall submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage, including the efficacy of the treatment or service proposed.”

While this statute exists, it is either not being followed at all or not to the degree that would produce valuable information for decision-makers. The Department reports that they believe that no review or report has ever been submitted to a committee of reference as is required by statute.

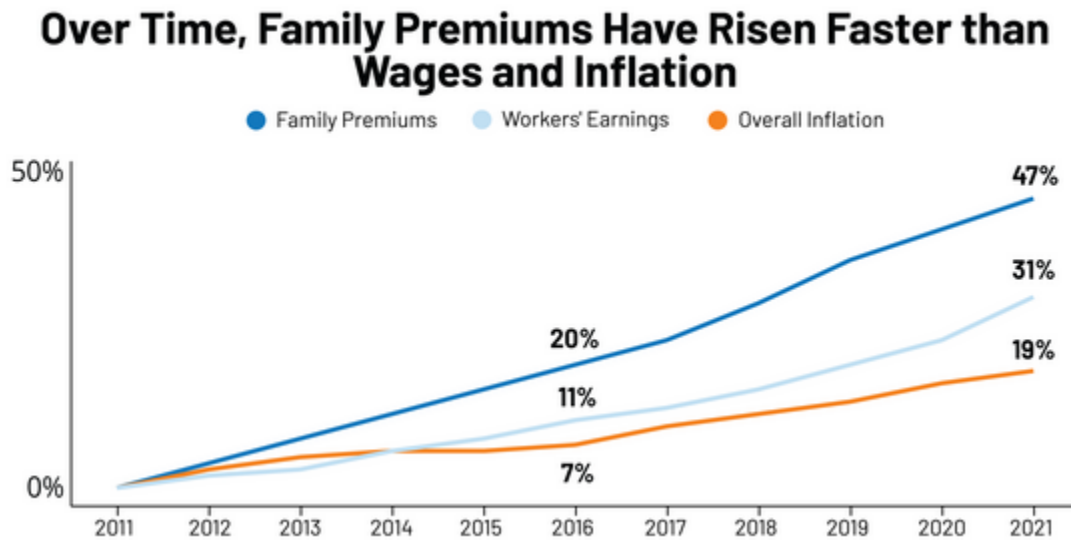
Further, there are also two main issues with the requirements of this statute. It requires that any ‘person or organization...shall submit a report to the legislative committee of reference’. The first issue is that the statute places the burden of review on the person or organization who wants to introduce the change, and reviews like this can be very expensive. If the person or organization does not have the

resources to conduct or commission such a review, they are either barred from participation or are placed at a severe disadvantage lacking evidence behind their claims.

The second issue is one of potential bias in any review conducted. When the person or organization that is proposing the change is the same as the one conducting the review, there is no way to control for biased data and results. The statute places guidelines on what must be studied, but mentions no requirement of impartiality on the reviewer's part.

ISSUE

The Department has identified a few problems that could be solved with independent review of proposed health benefit changes. The first is that health insurance premiums are expensive. The following graph, from the Kaiser Family Foundation, illustrates the national trends over the past 10 years for inflation, workers' earnings, and family health insurance premiums.



Source: <https://www.kff.org/health-costs/>

While this is the case for the nation as a whole, the situation in Colorado is slightly different. In October, 2021, the Division released its rate filing approvals for 2022 health insurance plans which show that premium prices in the individual market will increase only 1.1 percent over 2021 premiums.¹ With premiums seemingly ever-increasing, an independent review of proposed health benefit mandates could help to avoid further increases from mandates that don't give benefits to justify the increase. Related to this is the consideration of long term costs and benefits of new coverages. An independent review could help illuminate long term benefits or detriments of a policy that aren't immediately apparent, especially as they relate to populations that have historically faced barriers to health.

The other two problems were mentioned above, namely that decision-makers often don't have enough information or evidence to support an informed decision on new mandates, and that the risk of

¹ <https://doi.colorado.gov/for-consumers/consumer-resources/insurance-plan-filings-approved-plans>

impartiality with the current law could lead to misleading or harmful outcomes. An independent review process would help alleviate these problems.

SOLUTION

The Department has identified the solution to this problem as legislation to create an independent review process carried out by actuarial and consulting firms to review any proposed changes to mandated health benefits. There is significant precedent for having a mechanism for this in place, as was seen in Colorado from 2003 through 2010. Additionally, as of 2012, 33 other states had mandate review requirements in law intended to analyze costs and benefits of proposed changes.²

Staff agrees that there should be a mechanism for impartial review in this context, however it would likely be more cost-effective to begin building support within government to carry out these reviews, especially because there is an expectation that this will be a necessary task for the foreseeable future. It would likely be a slow process to build this capacity, so hiring actuarial and consulting firms for the first few years and then phasing in government support would in staff's opinion be the best way forward.

Until then, the Department has provided an estimate on how much hiring third parties would cost given a few assumptions – prime among them is that there would be a limit of 5 reviews that could be conducted each year. The following table breaks down the Department's cost estimates.

INDEPENDENT REVIEW PROCESS COST	
	COST PER YEAR
Division FTE (0.3)	\$37,924
Actuarial Contractor	80,000
Consulting Firm	45,000
Claims Data	75,000
Total	\$237,924

SENATE BILL 22-040:

Senate Bill 22-040 is currently scheduled in Senate Appropriations and does almost exactly what this request would do, except the amended bill would increase the number of reviews that could be done annually from five to six. These reviews would also be split amongst the House of Representatives and the Senate, with two members of the majority party and one member of the minority party in each chamber allowed to request reviews. Staff expects that this change will increase the appropriation required to hire the actuarial contractors.

² <https://www.ncsl.org/research/health/state-ins-mandates-and-aca-essential-benefits.aspx>

→ R3 ALIGN STATE SURPRISE BILLING LAW WITH THE FEDERAL NO SURPRISES ACT
[REQUIRES LEGISLATION]

REQUEST: THE DEPARTMENT REQUESTS an increase of \$159,912 cash funds from the Division of Insurance Cash Fund for FY 2022-23 to support 2.0 FTE that would work to harmonize the State's surprise billing law with the federal law. This is one time funding to support term-limited FTE to implement and align state statutory provisions regarding out-of-network billing restrictions and the federal No Surprises Act (NSA).

RECOMMENDATION: **Staff recommends denial of the request.** This request requires legislation, and the Department is not asking the Committee to sponsor any legislation. As such, these funds should not appear in the Long Bill. The Department is, however, asking that the Committee consider setting aside these funds for potential legislation.

ANALYSIS:

BACKGROUND

Surprise bills emerge from the practice of balanced billing, when an individual is cared for by an out-of-network provider and then billed the difference between the charges the provider billed and the amount paid by the individual's health plan. When consumers don't know that this will happen because they are unaware of the out-of-network status of their provider, or they are not in a position to choose a provider because of an emergency situation, this is called surprised billing.³

Currently, Colorado has a mechanism in statute whereby individuals with health benefit plans regulated by the Division are protected from receiving surprise bills when receiving emergency care from an out-of-network provider or facility, or when receiving non-emergency care at an in-network facility from an out-of-network provider. The bill that established this statute is H.B. 19-1174 (Out-of-Network Health Care Services).

That legislation enacted the following rules:

- Established payment methodologies for carriers when reimbursing providers or facilities for out-of-network services;
- Requires insurers, providers, and facilities to develop and provide disclosures to consumers about the effects of receiving out-of-network services; and
- Created an arbitration process for carriers, providers, and facilities to use to settle out-of-network billing disputes.

Since the bill's enactment, the Division has promulgated various other rules to govern:

- Data reporting requirements for out-of-network reimbursements;
- Disclosures for emergency and non-emergency out-of-network services;
- Payment methodology for non-contracted service agencies that provide ambulance services; and
- The establishment of a carrier payment arbitration program for out-of-network providers.

³ <https://www.cms.gov/nosurprises/Ending-Surprise-Medical-Bills>

NO SURPRISES ACT

The U.S. Congress, in December 2020, passed H.R. 3630 – No Surprises Act (NSA). This act became effective on January 1, 2022 and shares the same overall goal of the Colorado law – to protect individuals from surprise billing for certain out-of-network emergency facility services and out-of-network services at an in-network facility. While the intent is the same, the federal act and Colorado law differ in a few ways.

First, the federal law does not establish reimbursement methodologies for out-of-network providers and facilities. Instead, it created an independent dispute resolution process for carriers, providers, and facilities. Colorado’s independent dispute resolution process is only used if a provider or facility asserts its payment was insufficient.

Some other aspects where Colorado and federal law differ is in protections for air and ground ambulance transports and post stabilization care, as well as which plans are actually covered under the laws. State law applies only to fully insured plans while the federal law applies to both fully insured and self-insured plans.

ALIGNMENT

Through this request, the Division hopes to align current statute with the No Surprises Act. The goal of this is to ensure consistency and efficient implementation of surprise billing requirements for consumers, providers, and insurers. One important aspect of this alignment that the Department has emphasized is that it will not simply be changing Colorado law to match federal law, it will be a blending of both to ensure the strongest consumer protections.

The Department has identified four areas for potential alignment:

- The arbitration process;
- Reporting and noticing requirements;
- Situations in which the laws apply; and
- Technical changes to streamline administration for the Division and carriers.

To achieve the desired alignment, the Department would hire two term-limited FTE to implement provisions of the NSA into Colorado law. One position would support setting up the arbitration process and the provider payment methodology confirmation process pursuant to Section 10-16-704, C.R.S. The position would also be responsible for creating procedures to ensure the arbitration timelines are met and for tracking the outcomes of arbitrations. The second position would support the rulemaking process to implement new provisions as a result of the NSA and update existing rules. Additionally, the position would also assist in setting up procedures and informational materials to support the increase in consumer complaints that the Department anticipates.