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Fiscal Note

Drafting Number: LLS 22-0503 Date: April 11, 2022
Prime Sponsors: Rep. Esgar; Catlin Bill Status: House Health & Insurance
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Bill Topic: HEALTH INSURANCE SURPRISE BILLING PROTECTIONS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

The bill aligns current state surprise billing laws with the federal No Surprises Act. The bill increases state expenditures in FY 2022-23 only, and may increase state workload on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires appropriations of \$250,524 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 22-1284

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), and Diversion (General Fund, Cash Funds, Net Diversion).

Summary of Legislation

The bill aligns state surprise billing laws with the federal No Surprises Act. Among its provisions, the bill:

- allows an individual to request an independent external review to determine if the items or services that were provided or may be provided to a covered individual by an out-of-network provider or at an out-of-network facility can be covered at an in-network level;
- allows an entity that provides or administers a self-funded health benefit plan to elect to be subject to the state law on coverage from out-of-network providers and facilities;
- requires that payments made for health care services or emergency health care services provided at an in-network facility or by an out-of-network provider be applied to the covered individual's in-network deductible and any out-of-pocket maximum amounts as if the services were provided by an in-network provider;
- requires a carrier to provide a disclosure to a covered individual about the possible impacts of receiving services from an out-of-network provider or at an out-of-network facility, and requires the Commissioner of Insurance (commissioner), the Director of the Division of Professions and Occupations, and the State Board of Health to adopt rules concerning disclosure requirements;
- requires the commissioner to convene a work group to effectively facilitate the implementation of the payment of claims for services provided by an out-of-network provider at an in-network facility, and for services related to a medical emergency;
- creates certain guidelines related to arbitration; and
- allows an out-of-network provider and an out-of-network facility to charge a covered individual a balance bill for certain health care services if the out-of-network provider complies with specific notice requirements and obtains the covered individual's signed consent.

Finally, the bill requires carriers to submit information to the commissioner concerning the use of out-of-network providers and out-of-network facilities, and the impact on health insurance premiums for consumers, by March 1 of each year.

Background

[House Bill 19-1174](#) requires health insurance carriers and health care providers and facilities to provide disclosures to covered individuals about the potential effects of receiving services from an out-of-network provider or at an out-of-network facility, and establishes payment rates for out-of-network providers providing health care services at an in-network facility, and for emergency services. The federal No Surprises Act protects individuals covered under group and individual health plans from receiving surprise medical bills for most emergency services, non-emergency services from out-of-network providers at in-network facilities, and services from out-of-network air ambulance service providers.

State Diversion

The bill diverts \$280,127 from the General Fund to the Division of Insurance Cash Fund in FY 2022-23. This revenue diversion occurs because the bill increases costs in the Division of Insurance (DOI), which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures by \$292,771 in FY 2022-23 only. This includes an increase of \$280,127 for the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and \$12,644 for the Department of Public Health and Environment from the General Licensure Cash Fund. These costs are shown in Table 2 and explained below.

**Table 2
 Expenditures Under HB22-1284**

Cost Components	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$99,745	-
Operating Expenses	\$2,160	-
Capital Outlay Costs	\$12,400	-
Legal Services	\$88,713	-
Contractor Costs	\$30,000	-
Centrally Appropriated Costs ¹	\$47,109	-
FTE – Personal Services	1.6 FTE	-
FTE – Legal Services	0.5 FTE	-
DORA Subtotal	\$280,127	-
Department of Public Health and Environment		
Personal Services	\$7,506	-
Centrally Appropriated Costs ¹	\$5,138	-
FTE – Personal Services	0.1 FTE	-
CDPHE Subtotal	\$12,644	-
Total	\$292,771	-
Total FTE	2.2 FTE	-

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Regulatory Agencies.

- **Personal services and contractor costs.** In FY 2022-23 only, the DOI requires 1.6 FTE to support implementation of the arbitration and provider payment methodology confirmation processes, and to assist with rulemaking and the creation of procedures and informational materials to support the anticipated increase in consumer complaints under the bill. The DORA also requires a contractor to assist with drafting the work group report and development of recommendations for the implementation of the carrier-provider payment methodology. Costs assume a September 1, 2022, start date.

- **Legal services.** The DORA will require 900 hours of legal services for oversight and enforcement actions related to self-funded health benefit plans that opt-in to state regulation, rulemaking assistance, and support with the arbitration process as well as representation. In FY 2023-24 and ongoing, the workload increase associated with administration of the bill does not require additional appropriations. Legal services are provided by the Department of Law at a rate of \$98.57 per hour.

Department of Public Health and Environment. In FY 2022-23 only, the CDPHE requires 0.1 FTE to facilitate a stakeholder meeting and work with the Division of Insurance to update rules. It is assumed that staff will be hired at the current average salary, and that costs are adjusted for a September 1, 2022, start date.

State employee insurance. To the extent that the bill impacts the cost of health insurance premiums, costs for state agencies may be adjusted. Because state employee health insurance contributions are based upon prevailing market rates, with costs shared between the employer and employee, this bill is not expected to affect the state's share of employee health insurance premiums until FY 2023-24. Because insurance rates are influenced by a number of variables, the exact effect of this bill cannot be determined. Any increase caused by the bill will be addressed through the total compensation analysis included in the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires the following appropriations

- \$233,018 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies, and 1.6 FTE, of which \$88,713 is reappropriated to the Department of Law and 0.5 FTE; and
- \$7,506 from the General Licensure Cash Fund to the Department of Public Health and Environment, and 0.1 FTE.

State and Local Government Contacts

Information Technology
Law
Regulatory Agencies

Judicial
Public Health and Environment