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Final Fiscal Note

Drafting Number: LLS 22-0503 Date: September 14, 2022
Prime Sponsors: Rep. Esgar; Catlin Bill Status: Signed into Law
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Bill Topic: HEALTH INSURANCE SURPRISE BILLING PROTECTIONS

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

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

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

Fiscal Note Status: The fiscal note reflects the enacted 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;
- 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), applicable regulators of health care professions, and the State Board of Health, to adopt rules concerning a list of ancillary services exempt from balance billing by an out-of-network provider, as well as certain 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, and allows the commissioner to enter into a contract with a third party to facilitate the activities of the work group;
- creates certain guidelines related to arbitration;
- 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;
- requires a carrier offering individual health benefit plans or short-term limited duration health insurance policies to disclose to the covered individual the amount of compensation associated with plan selection and enrollment, and requires the commissioner to promulgate rules to implement these requirements; and
- 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.

Finally, a health care provider engages in a deceptive trade practice if the provider fails to provide disclosures to consumers about the potential effects of receiving emergency or nonemergency services from an out-of-network provider.

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 Revenue

Civil penalties. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to \$20,000 for each violation. Additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of cases that may be pursued by the Attorney General and district attorneys, as well as the wide range in potential penalty amounts, the fiscal note cannot estimate the potential impact of these civil penalties.

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. Standard operating and capital outlay costs are included
- 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.

Department of Law. Workload in the Department of Law will minimally increase to the extent that deceptive trade practice complaints are filed. The department will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

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.

Local Government

Similar to the state, to the extent district attorneys receive deceptive trade practice complaints related to the new deceptive trade practice under the bill, workload will increase to investigate complaints and seek relief when appropriate. It is assumed most such cases will be handled at the state level by the Attorney General.

Effective Date

The bill was signed into law by the Governor on June 8, 2022, and it took effect on August 9, 2022.

State Appropriations

For FY 2022-23, the bill requires and includes 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