



Legislative
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Nonpartisan Services for Colorado's Legislature

HB 19-1174

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 5, 2019)

Drafting Number: LLS 19-0709 **Date:** March 13, 2019
Prime Sponsors: Rep. Esgar; Catlin **Bill Status:** House Appropriations
 Sen. Gardner; Pettersen **Fiscal Analyst:** Max Nardo | 303-866-4776
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Bill Topic: OUT-OF-NETWORK HEALTH CARE SERVICES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires health care providers, facilities, and health insurance carriers to provide disclosures to consumers about the potential effects of receiving services from an out-of-network provider or at an out-of-network facility. The bill establishes reimbursement schedules for out-of-network providers who are providing services at an in-network facility and out-of-network providers of emergency services. It increases state expenditures in FY 2019-20 and FY 2020-21.

Appropriation Summary: For FY 2019-20, the bill requires appropriations totaling \$50,224 to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Committee on Health and Insurance.

**Table 1
State Fiscal Impacts Under HB 19-1174**

		FY 2019-20	FY 2020-21
Revenue	General Fund	up to \$20,000	up to \$20,000
	Total	up to \$20,000	up to \$20,000
Expenditures	General Fund	\$33,884	\$14,007
	Cash Funds	\$16,340	-
	Centrally Appropriated	\$12,697	\$4,382
	Total	\$62,921	\$18,389
Total FTE		0.6 FTE	0.2 FTE
Transfers		-	-
TABOR Refund	General Fund	up to \$20,000	

Summary of Legislation

The bill requires health care providers, facilities, and health insurance carriers to provide disclosures to consumers about the potential effects of receiving services from an out-of-network provider or at an out-of-network facility. The bill establishes reimbursement amounts for out-of-network providers who are providing services at an in-network facility or who are providing emergency services.

Required disclosure for out-of-network services. The Commissioner of Insurance (commissioner) and the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA) and the State Board of Health in the Department of Public Health and Environment (CDPHE) must adopt rules to specify the disclosure requirements. Among other things, the rules must address the timing and content of disclosures, and how the disclosures must be made. By January 1, 2020, carriers must develop and provide disclosures to covered individuals in compliance with the rules.

Reimbursement for out-of-network providers. The bill establishes rates to be paid by carriers to three categories of providers of out-of-network health care services. The rates established by the bill are multipliers of actual rates paid by various carriers for the same services in similar facility types in that geographic area. The three provider categories are:

- out-of-network providers that provide health care services to covered persons at an in-network facility;
- out-of-network facilities that provide emergency services to a covered person, other than any facility operated by the Denver Health and Hospital Authority; and
- out-of-network facilities that provide emergency services to a covered person and are operated by the Denver Health and Hospital Authority.

The bill exempts ambulance services from the emergency services payment schedule and requires the commissioner to make a rule establishing a payment methodology for these entities.

Carriers are required to provide the commissioner with information concerning the utilization of out-of-network providers and facilities, including the impact on premiums and the aggregate cost savings achieved by the rates set by this bill. Providers may request data from the commissioner to evaluate the carrier's compliance in paying the highest rate required.

The bill adds a deceptive trade practice for health care providers and creates an unfair or deceptive practice for insurance carriers that fail to comply with the payment requirements for out-of-network health care services.

State Revenue

The bill potentially increases General Fund revenue by up to \$20,000 per year beginning in FY 2019-20 from fine penalties for violations under the bill. This fine revenue, which is subject to the state TABOR limits, is discussed below.

Penalty for deceptive trade practices. A health care provider found in violation of the payment requirements of the bill may be found to have committed a deceptive trade practice. Penalties for deceptive trade practices, which are \$2,000 for the first violation and up to \$10,000 for subsequent violations, are deposited in the General Fund. These civil penalties may be imposed by the court

upon the motion of the Attorney General or a district attorney alleging the deceptive trade practice. The fiscal note assumes a high level of compliance by health care providers and facilities, and that any revenue received will be less than \$20,000 per year.

Penalty for deceptive or unfair insurance practice. Under the bill, the Division of Insurance in DORA may assess penalties on health insurance carriers for failure to comply with the payment requirements in the bill. Under current law, an insurance carrier found to have committed an unfair or deceptive practice may face a range of potential disciplinary actions, including a fine of up to \$3,000 per act and up to \$30,000 per year in total if unknowingly committing the violations, or up to \$750,000 per year and suspension or revocation of a company's license for knowingly committing such violations. The fiscal note assumes a high level of compliance by insurance carriers and that any violations that occur will likely be addressed and resolved through cease and desist orders from the Division of Insurance. Therefore, the potential increase in fine revenue is assumed to be minimal.

State Expenditures

This bill will increase state expenditures by \$62,921 and 0.6 FTE in FY 2019-20, and \$18,389 and 0.2 FTE in FY 2020-21. This includes an increase in General Fund expenditures of \$43,283 and 0.4 FTE in FY 2019-20 and \$18,389 and 0.2 FTE in FY 2020-21 for the CDPHE, and an increase in cash fund expenditures of \$19,638 and 0.2 FTE in FY 2019-20 for DORA from the Division of Insurance Cash Fund. These costs are shown in Table 2 and described below.

**Table 2
 Expenditures Under HB 19-1174**

	FY 2019-20	FY 2020-21
Department of Public Health and Environment		
Personal Services	\$29,181	\$14,007
Operating Expenses and Capital Outlay Costs	\$4,703	-
Centrally Appropriated Costs*	\$9,399	\$4,382
FTE - Personal Services	0.4 FTE	0.2 FTE
Subtotal (CDPHE)	\$43,283	\$18,389
Department of Regulatory Agencies		
Personal Services	\$16,150	-
Operating Expenses and Capital Outlay Costs	\$190	-
Centrally Appropriated Costs*	\$3,298	-
FTE - Personal Services	0.2 FTE	-
Subtotal (DORA)	\$19,638	-
Total Cost	\$62,921	\$18,389
Total FTE	0.6 FTE	0.2 FTE

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

Department of Public Health and Environment. CDPHE will conduct a stakeholder process to develop rules for disclosures at health care facilities and work with DORA on developing consistent rules for carriers and providers. It is expected that the stakeholder process can be completed and draft rules written in FY 2019-20 with 0.4 FTE. In FY 2020-21, State Board of Health rulemaking requires staff time for analysis, public comment, and to facilitate rulemaking, which can be accomplished with 0.2 FTE.

Department of Regulatory Agencies. The bill requires DORA to promulgate rules defining the geographic areas referenced in the bill, governing disclosure for health insurance carriers and health care providers, and describing a payment schedule for out-of-network emergency ambulance services. It is estimated that this work can be accomplished with 400 hours of work, or 0.2 FTE, in FY 2019-20. The fiscal note assumes there is sufficient balance in the Division of Insurance Cash Fund to pay this expense and that no General Fund diversion will be necessary. DORA must also compile data from carriers on the cost savings and premium impacts of the payment schedules defined in the bill and respond to inquiries verifying carrier compliance; the fiscal note assumes this work can be accomplished within existing appropriations.

Department of Law and Judicial Department. The bill creates a deceptive trade practice for health care providers to fail to comply with the payment requirements for out-of-network healthcare services. To the extent that health care providers violate these protocols, it could increase workload for the Attorney General and the Department of Law to address complaints and file motions with the county courts. It is assumed that this enforcement workload will be prioritized by the Department of Law within its existing appropriations. Likewise, any impact on the trial courts is assumed to be minimal.

State employee insurance. Lower reimbursement rates for out-of-network providers may contribute to lower health insurance premiums, which may reduce costs for state agencies. 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 2020-21. 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.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by up to \$20,000 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

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 estimated to be \$12,697 in FY 2019-20 and \$4,382 in FY 2020-21.

Local Government

The bill increases workload and costs for local governments in the following areas.

District attorneys. Similar to the Department of Law impact described above, district attorneys, who are also able to file motions related to deceptive trade practices, may have additional workload and costs under the bill. It is assumed that enforcement actions related to violations under the bill will be prioritized within existing resources. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Denver County Court. To the extent motions related to deceptive trade practice are filed in Denver, workload for the Denver County Court, which is managed and funded by the City and County of Denver, will increase. This workload impact is assumed to be minimal.

Effective Date

The bill takes effect January 1, 2020, if no referendum petition is filed, and applies to health benefit plans issued or renewed on or after this date.

State Appropriations

For FY 2019-20, the bill requires the following appropriations:

- \$33,884 from the General Fund to the Department of Public Health and Environment and an allocation of 0.4 FTE; and
- \$16,340 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund and an allocation of 0.2 FTE.

State and Local Government Contacts

Regulatory Agencies	Public Health and Environment
Personnel	Health Care Policy and Financing
Higher Education	Counties
Municipalities	Law
Information Technology	