



Legislative
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HB 19-1174

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 13, 2019)

Drafting Number: LLS 19-0709 **Date:** April 12, 2019
Prime Sponsors: Rep. Esgar; Catlin **Bill Status:** Senate Judiciary
 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:**
- State Revenue
 - State Expenditure
 - State Diversion
 - TABOR Refund
 - Local Government
 - 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 creates an arbitration process for settling billing disputes. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill requires appropriations totaling \$97,808 to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

**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	\$63,924	\$34,713
	Centrally Appropriated	\$22,931	\$12,970
	Total	\$120,739	\$61,690
Total FTE		1.3 FTE	0.8 FTE
Diversions	General Fund	(\$77,456)	(\$43,301)
	Cash Funds	\$77,456	\$43,301
	Total	\$0	\$0
TABOR Refund		-	-

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, and creates an arbitration process for settling billing disputes. 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.

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.

Arbitration. The bill creates an arbitration process for insurance carriers and health care providers or facilities to settle billing disputes, and requires the commissioner to promulgate rules to implement the process. Arbitration may be requested if a provider believes a payment made in accordance with this bill was not sufficient given the complexity and circumstances of the services provided. When the parties to a billing dispute are unable to resolve the matter through an informal settlement teleconference, the commissioner will appoint an arbitrator to resolve the dispute. The commissioner will monitor the arbitration process and will report to the General Assembly on outcomes listed in the bill.

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 carrier'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 Diversions

The bill diverts \$77,456 from the General Fund in FY 2019-20 and \$43,301 in FY 2020-21 and future years. This revenue diversion occurs because the bill increases costs in the Division of Insurance in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

This bill will increase state expenditures by \$120,739 and 1.3 FTE in FY 2019-20, and \$61,690 and 0.8 FTE in FY 2020-21. This includes an increase in General Fund expenditures of \$43,283 in FY 2019-20 and \$18,389 in FY 2020-21 for the CDPHE, and an increase in cash fund expenditures of \$77,456 in FY 2019-20, and \$43,301 in FY 2020-21 and future years 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	\$58,366	\$34,143
Operating Expenses and Capital Outlay Costs	\$5,558	\$570
Centrally Appropriated Costs*	\$13,532	\$8,588
FTE - Personal Services	0.9 FTE	0.6 FTE
Subtotal (DORA)	\$77,456	\$43,301
Total Cost	\$120,739	\$61,690
Total FTE	1.3 FTE	0.8 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. DORA will incur one-time costs to track utilization of out-of-network providers and calculate aggregate cost savings in the first year; and to promulgate rules defining geographic areas, governing disclosure for health insurance carriers and health care providers, establishing a payment schedule for out-of-network emergency ambulance services, and implementing an arbitration process. This can be accomplished with 0.3 FTE in FY 2019-20 only. In addition, DORA will require an additional 0.6 FTE per year starting in FY 2019-20, to facilitate the arbitration process and respond to provider or facility inquiries verifying that they have been paid the highest of the rates specified by the bill.

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.

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 \$22,931 in FY 2019-20 and \$12,970 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
- \$66,924 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund and an allocation of 0.9 FTE.

State and Local Government Contacts

Regulatory Agencies
Personnel
Higher Education
Municipalities
Information Technology

Public Health and Environment
Health Care Policy and Financing
Counties
Law