Colorado Legislative Council Staff

SB17-206

FISCAL NOTE

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 17-0931	**Date:**	March 20, 2017
Prime Sponsor(s):	Sen. Gardner Rep. Singer	**Bill Status:**	Senate Business
		Fiscal Analyst:	Bill Zepernick (303-866-4777)

BILL TOPIC: OUT-OF-NETWORK PROVIDERS PAYMENTS PATIENT NOTICE

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	**Less than $20,000**	**Less than $20,000**
Revenue change		
General Fund	Less than 20,000	Less than 20,000
State Diversion		
General Fund	(39,910)	(24,708)
Cash Funds	39,910	24,708
State Expenditures	**$39,910**	**$24,708**
Cash Funds	34,441	21,973
Centrally Appropriated Costs	5,469	2,735
TABOR Impact	Less than $20,000	Less than $20,000
FTE Position Change	0.5 FTE	0.3 FTE
Appropriation Required: $34,441 - Department of Regulatory Agencies (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increase and General Fund diversion.		

Summary of Legislation

Under current law, when an out-of-network health care provider renders services to a person covered under a health benefit plan at an in-network health care facility, the health insurer is required to cover the services of the out-of-network provider at no greater cost to the covered person than if the services were provided by an in-network provider. This bill requires state-regulated health insurers to follow certain procedures when paying claims for out-of-network provider services at in-network facilities. Specifically, the insurer is required to advise the out-of-network provider and covered person of the applicable in-network cost-sharing amount owed. Then, the health insurer is required to pay the out-of-network provider directly, with the amount being equal to the lesser of the out-of-network provider's billed charge or the 80th percent of all current charges for the particular health care service, provided under similar conditions, based on an independent benchmarking database specified by the Commissioner of Insurance.

The bill establishes an independent dispute resolution process through which a provider may have a payment for a claim under the procedures in the bill reviewed. It also requires in-network facilities, out-of-network providers practicing at in-network facilities, and health insurers to provide disclosures to a covered persons stating that an out-of-network provider may provide health care as part of their treatment at the in-network facility and explaining the billing process and the covered person's responsibility for paying the in-network cost-sharing amount. A health insurer engages in an unfair or deceptive practice in the business of insurance if it fails to reimburse out-of-network providers as required by the bill, or fails to provide the required notice to covered persons.

State Revenue

The bill potentially increases state revenue from fines and results in a diversion of revenue from the General Fund. These impacts are described below.

Fine revenue. The bill potentially increases General Fund revenue by less than $20,000 per year beginning in FY 2017-18 from fines assessed on insurance carriers by the Division of Insurance in the Department of Regulatory Agencies (DORA) for failure to meet the requirements of 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 in total for knowingly committing such violations; suspension or revocation of a company's license; and the mandated payment of contractual claims, if the violation resulted in failure to pay.

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 (less than $20,000 per year).

State diversions. This bill diverts $39,910 from the General Fund in FY 2017-18 and $24,708 in FY 2018-19. 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.

TABOR Impact

This bill may increase General Fund revenue from fines, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases both revenue to the General Fund and the refund obligation by equal amounts, there is no net impact on the amount of money available in the General Fund for the budget. However, the bill will increase money available for the General Fund budget in the future during years when the state does not collect money above the TABOR limit.

State Expenditures

This bill increases costs in DORA by **$39,910 in FY 2017-18 and $24,708 in FY 2018-19**, paid from the Division of Insurance Cash Fund. Staffing is increased by 0.5 FTE in FY 2017-18 and 0.3 FTE in FY 2018-19 in DORA and the Department of Law. These costs are described in Table 1 and discussed below.

Table 1. Expenditures Under SB 17-206		
Cost Components	**FY 2017-18**	**FY 2018-19**
Personal Services	$24,936	$12,468
FTE - DORA	0.4 FTE	0.2 FTE
FTE - Dept. of Law	0.1 FTE	0.1 FTE
Legal Services	9,505	9,505
Centrally Appropriated Costs*	5,469	2,735
TOTAL	**$39,910**	**$24,708**

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

Personal services. DORA will require 0.4 FTE in FY 2017-18 to establish program rules and to conduct an out-of-schedule rate review for the 2018 plan year. This rate review is required given that the bill will take effect immediately upon signature and after insurers file their rate plans with the Division of Insurance in May 2017. An additional 0.2 FTE is required in FY 2018-19 and beyond to oversee the independent dispute resolution process, certify dispute resolution entities, and respond to inquiries from health care providers and the public. The costs for this staff are shown in Table 1. It is assumed that dispute resolution entities will be private organizations, certified by the Division of Insurance, and paid directly by providers and insurance companies using their services.

Legal services. DORA will have legal service costs of $9,505 per year for rulemaking, investigation of complaints arising under the bill, and to take disciplinary action against health insurers committing violations. This cost is based on 100 hours of legal services at a rate of $95.05 per hour. The Department of Law requires 0.1 FTE to conduct this work.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB 17-206		
Cost Components	**FY 2017-18**	**FY 2018-19**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$3,235	$1,618
Supplemental Employee Retirement Payments	2,234	1,117
TOTAL	**$5,469**	**$2,735**

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2017-18, the bill requires an appropriation of $34,441 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund. Of this amount, $9,505 should be reappropriated to the Department of Law for legal services. The Department of Regulatory Agencies requires an allocation of 0.4 FTE and the Department of Law requires 0.1 FTE.

State and Local Government Contacts

Health Care Policy and Financing	Information Technology	Law
Personnel	Regulatory Agencies	