

LEGISLATIVE BUDGET BOARD
Austin, Texas

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Revision 1

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TO: Honorable Eddie Lucio III, Chair, House Committee on Insurance

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **SB1264** by Hancock (relating to consumer protections against certain medical and health care billing by certain out-of-network providers.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1264, Committee Report 2nd House, Substituted: a negative impact of (\$10,493,160) through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill. The Texas Department of Insurance, Employees Retirement System, Teacher Retirement System, and any other state agency subject to this Act are required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the agencies may, but are not required to, implement a provision of this Act using other appropriations available for that purpose.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$4,060,911)
2021	(\$6,432,249)
2022	(\$6,792,710)
2023	(\$7,172,745)
2024	(\$7,575,055)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Savings/(Cost) from GR Dedicated Accounts 994	Probable Savings/(Cost) from Federal Funds 555	Probable Savings/(Cost) from State Highway Fund 6
2020	(\$4,060,911)	(\$225,915)	(\$976,214)	(\$644,428)
2021	(\$6,432,249)	(\$357,836)	(\$1,546,267)	(\$1,020,737)
2022	(\$6,792,710)	(\$377,889)	(\$1,632,919)	(\$1,077,938)
2023	(\$7,172,745)	(\$399,031)	(\$1,724,277)	(\$1,138,246)
2024	(\$7,575,055)	(\$421,412)	(\$1,820,990)	(\$1,202,089)

Fiscal Year	Probable Savings/(Cost) from Other Special State Funds 998	Probable Savings/(Cost) from Local/Not Appropriated Funds 8888	Probable Savings/(Cost) from School Employees UGIP Trust Fund 855	Probable Savings/(Cost) from RETIRED SCHOOL EMP GROUP INSURANCE 989
2020	(\$47,771)	(\$38,803)	(\$16,619,425)	(\$2,944,183)
2021	(\$75,667)	(\$61,463)	(\$24,929,138)	(\$4,416,275)
2022	(\$79,908)	(\$64,906)	(\$24,929,138)	(\$4,416,275)
2023	(\$84,378)	(\$68,537)	(\$24,929,138)	(\$4,416,275)
2024	(\$89,111)	(\$72,383)	(\$24,929,138)	(\$4,416,275)

Fiscal Analysis

The bill would amend the Insurance Code relating to consumer protections against certain medical and health care billing by certain out-of-network providers.

The bill would amend Chapter 1467 of the Insurance Code to apply mandatory mediation only to health benefit claims by out-of-network providers that are facilities. The bill would change the initiator of a mediation request from the enrollee to an out-of-network provider, health benefit plan issuer, or administrator. The bill would require the Texas Department of Insurance (TDI) to select a mediator in place of the State Office of Administrative Hearings (SOAH). The bill would allow the out-of-network provider the right to a reasonable payment from an enrollee's health benefit plan for covered services and supplies provided to the enrollee for which the provider has not been fully reimbursed. If no agreement is reached after the mediator's report, either party may file a civil action to determine the amount due to the out-of-network provider.

The bill would establish an arbitration program to resolve claim disputes from out-of-network providers who are not a facility. The bill would allow an arbitrator to determine the reasonable amount for services or supplies provided to an enrollee by an out-of-network provider. The arbitrator must determine whether the billed amount or the initial payment made by the issuer is the closest to the reasonable charge for the services and select that amount as the binding award amount.

If the attorney general receives a referral from the appropriate regulatory agency, the bill would allow the attorney general to bring a civil action to enjoin an individual or entity from a violation relating to an insurer exhibiting a pattern of intentionally violating the balance billing prohibitions. The bill would require an appropriate regulatory agency to take disciplinary action against a physician, practitioner, facility, or provider for violating a law prohibiting certain balance billing.

The bill applies only to a health care or medical service or supply provided on or after January 1, 2020. The bill states that TDI, Employees Retirement System (ERS), Teacher Retirement System (TRS), and any other state agency subject to the bill would be required to implement the provisions of the bill only if the Legislature appropriates money specifically for that purpose. The bill would take effect on September 1, 2019.

Methodology

Based on information provided by TRS, this analysis assumes that the provision of the bill requiring the arbitrator to select the billed amount or the initial payment amount as the binding award amount for certain providers would result in estimated additional costs of \$16.6 million in fiscal year 2020 and \$24.9 million per year thereafter to the School Employees Uniform Group Insurance Program Fund 855 (ActiveCare); and costs of \$2.9 million in fiscal year 2020 and \$4.4 million per year thereafter to the Retired School Employee Group Insurance Fund 989 (TRS-Care). Additional costs would not increase the statutorily-required state contributions to TRS-Care and ActiveCare for the 2020-21 biennium; therefore, no significant fiscal impact to the General Revenue Fund is anticipated. However, the additional costs may result in the need for higher contribution rates from the State, employers, or members to the TRS-Care and ActiveCare programs.

ERS assumes that, based upon fiscal year 2018 claims data, approximately \$19.0 million in claims would be brought to arbitration. The results of arbitration, after applying benefit cost growth, would cost the entire Group Benefits Program approximately \$7.1 million in fiscal year 2020, the state portion of which is represented in the tables above. This analysis does not include the additional potential cost of in-network providers leaving the network due to higher reimbursements to out-of-network providers. The bill also provides an out-of-network provider the right to a reasonable payment from an enrollee's health benefit plan for certain covered services and supplies. ERS indicates that the impact of this provision cannot be determined, but could have a significant cost impact to the Plan depending on how it is defined and implemented.

This analysis assumes prorated costs to ERS and TRS in fiscal year 2020 due to the bill only applying to a health care or medical service or supply provided on or after January 1, 2020.

This analysis assumes an anticipated increase in complaints to the Texas Medical Board related to balance billing. This analysis assumes an estimated cost of approximately \$142,793 from the General Revenue Fund each fiscal year to handle the increased workload that will be absorbed within the agency's existing resources.

Based on analysis by the Office of the Attorney General, additional staff resources may be required to enforce the provisions of the bill in the event that numerous instances of noncompliance occur. However, it is assumed that these costs could be absorbed using existing resources.

Based on information provided by TDI, SOAH, Office of Court Administration, Health and Human Services Commission, The University of Texas System Administration, and Texas A&M University System Administration, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 323 Teacher Retirement System, 327 Employees Retirement System, 360 State Office of Administrative Hearings, 454 Department of Insurance, 503 Texas Medical Board, 529 Health and Human Services Commission, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

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