LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 3, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

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; authorizing a fee.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1264, Committee Report 1st House, Substituted: a negative impact of ($17,682,459) 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	($8,605,798)
2021	($9,076,661)
2022	($9,576,850)
2023	($10,105,388)
2024	($10,662,954)

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	($8,605,798)	($470,643)	($2,033,725)	($1,342,522)
2021	($9,076,661)	($497,005)	($2,147,638)	($1,417,720)
2022	($9,576,850)	($524,831)	($2,267,880)	($1,497,095)
2023	($10,105,388)	($554,235)	($2,394,937)	($1,580,969)
2024	($10,662,954)	($585,253)	($2,528,972)	($1,669,449)

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	($99,521)	($80,838)	($48,500,000)	($12,000,000)
2021	($105,096)	($85,365)	($48,500,000)	($12,000,000)
2022	($110,980)	($90,145)	($48,500,000)	($12,000,000)
2023	($117,197)	($95,197)	($48,500,000)	($12,000,000)
2024	($123,756)	($100,523)	($48,500,000)	($12,000,000)

Fiscal Year	Change in Number of State Employees from FY 2019
2020	1.5
2021	1.5
2022	1.5
2023	1.5
2024	1.5

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; authorizing a fee.

The bill would allow the attorney general to bring a civil action to enjoin an individual or entity from a violation relating to the billing of an insured in an amount greater than the insured's responsibility under a managed care plan. The bill would allow an appropriate regulatory agency to take disciplinary action against a physician, practitioner, facility, or provider for violating a law prohibiting the billing of an insured in an amount greater than the insured's responsibility under a managed care plan.

The bill would amend Chapter 1467 of the Insurance Code to establish an arbitration program to resolve disputes for out-of-network provider claims in place of the current mandatory mediation. The bill would allow the health benefit plan issuer or provider to initiate arbitration and require that an arbitrator 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 without modification.

The bill applies only to a health care or medical service or supply provided on or after the effective date of the bill. The bill states the Texas Department of Insurance (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

TRS 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 without modification would result in estimated additional annual costs of $48.5 million to the School Employees Uniform Group Insurance Program Fund 855 (ActiveCare) and $12.0 million 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 $25.0 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 $14.7 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.

Based on the analysis of the Texas Medical Board, it is estimated that there would be approximately 250 additional complaints related to the prohibition of balance billing. It is estimated that implementing the provisions of the bill would result in the need for 1.5 additional Full-Time-Equivalent (FTE) positions. This analysis assumes that the 1.5 FTEs would require recurring costs to the General Revenue Fund of $105,828 in salaries, $1,587 in payroll contribution costs, and $35,378 in related support and benefit costs each fiscal year. Additional program costs include a one-time cost of $3,000 for computers.

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, State Office of Administrative Hearings, 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.

Technology

This analysis estimates a total one-time technology cost of $3,000 in fiscal year 2020 for computers required to implement the provisions of the bill.

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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