

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 12, 2021

TO: Honorable Tom Oliverson, Chair, House Committee on Insurance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3235 by Klick (Relating to the investigation by the commissioner of insurance of acts of health care fraud and the prosecution of health care fraud; creating a criminal offense.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3235, As Introduced : an impact of \$0 through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	\$0
2023	\$0
2024	\$0
2025	\$0
2026	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from Dept Ins Operating Acct 36</i>	<i>Probable Revenue Gain/(Loss) from Dept Ins Operating Acct 36</i>	<i>Change in Number of State Employees from FY 2021</i>
2022	(\$1,537,919)	\$1,537,919	1.0
2023	(\$1,563,419)	\$1,563,419	1.0
2024	(\$1,563,419)	\$1,563,419	1.0
2025	(\$1,563,419)	\$1,563,419	1.0
2026	(\$1,563,419)	\$1,563,419	1.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the investigation by the commissioner of insurance of acts of health care fraud and the prosecution of health care fraud, and creating a criminal offense. The bill would require the Department of Insurance (TDI) Fraud Unit to prioritize investigative resources primarily on health benefit claim insurance fraud, including cases where medical care is viewed as inappropriate when compared to recognized standards within a particular discipline. As these investigations will result in analysis of the standard of care required, physicians from each practice area will be necessary to provide expert opinions on the standard of care and whether that standard was violated based upon specific evidence obtained during the course of an investigation. Further, the physician will have to be qualified as an expert witness and available to testify in

criminal trials.

Methodology

Based on information provided by TDI, the agency estimates the fee for a document review by contracting with a physician in the appropriate specialty will be \$250 per hour, and the fee for expert testimony in hearings and/or trials to be between \$350 and \$500 per hour. There is potential that rates required for retention of an expert in a criminal case with an anticipated trial could be substantially higher than rates estimated above.

The TDI Fraud Unit currently possesses the capacity to investigate approximately 270 cases at any single time. If the unit were to prioritize health benefit claim insurance fraud, the agency anticipates investigating approximately 136 such cases, more than half of unit capacity. For each case, the agency estimates experts would be required for document review between 20-40 hours on average, with another 10-20 hours for trial preparation when necessary and 5-10 hours for hearing and trial testimony. If all cases require document review, the agency estimates the cost to be \$1.0 million in General Revenue-Dedicated Fund 36. Further, the agency estimates approximately one-third of cases are prepared for trial and would require expert witness consultation, resulting in a cost of \$0.3 million in General Revenue-Dedicated Fund 36. The agency anticipates most cases prepared for trial will be against physicians, and anticipates almost all would require a trial to reach resolution/disposition, costing an additional \$0.1 million in General Revenue-Dedicated Fund 36. Due to the additional coordination efforts that these cases would involve, the agency anticipates the need for 1.0 FTE (Program Specialist) at a cost of \$64,000 in General Revenue-Dedicated Fund 36 amounts per fiscal year.

Based on the above information provided by TDI, total fiscal impact of the bill would be \$1.5 million and 1.0 FTE per fiscal year in General Revenue-Dedicated Fund 36 amounts. Due to self-leveling of TDI Operating Account Fund 36, any additional appropriations made from the account would be considered in the annual adjustment of the maintenance tax rates. Therefore, the overall revenue into the TDI operating account will be equal to the expenses and no net change in fund balance would occur because of the bill.

Based on information provided by the Comptroller of Public Accounts, the criminal penalties for health care fraud range from a Class C misdemeanor to a first-degree felony. Although expanding the behaviors that constitute an offense could potentially result in an increase in revenue due to fines, costs, or fees associated with an offense, the extent to which state revenue would be impacted cannot be estimated. As any restitution collected would be returned to victims, no other revenue is anticipated.

Technology

There is a negligible technology impact as a result of implementing this bill related to hardware for new FTEs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 304 Comptroller of Public Accounts, 454 Department of Insurance

LBB Staff: JMc, AAL, MB, MPUK