TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1503 - SB 1345

February 26, 2023

SUMMARY OF BILL: Creates the *Surprise Billing Consumer Protection Act*.

Establishes standards for health insurance providers reimbursement for medical services to prevent surprise billing. Establishes that insurers must pay nonparticipating providers the greatest of three figures for both emergency and non-emergency services:

- The verifiable contracted amount paid by all eligible insurers for the provision of the same or similar services as determined by rule by the Department of Commerce and Insurance (DCI);
- The most recent verifiable amount agreed to by the insurer and the nonparticipating provider for the provision of the same services during such time as the provider was in-network with the insurer; or
- A higher amount as the insurer may deem appropriate given the complexity and circumstances of the services provided.

Establishes that the amount that the insurer pays the nonparticipating provider is not required to include any amount of coinsurance, copayment, or deductible owed by the covered person or already paid by the covered person.

Requires the DCI to establish and maintain, subject to appropriation, an all-payer health claims database that maintains records of insurer payments and tracks the payments by healthcare services and geographic areas of this state.

Requires the DCI to implement an arbitration process requiring the Commissioner to select one or more resolution organizations to arbitrate certain claim disputes between insurers and out-of-network providers or out-of-network facilities. Requires the party whose final offer amount is not selected by the arbitrator to pay the amount of the award, the arbitrator's expenses and fees, and other fees assessed by the resolution organization, directly to the resolution organization.

Makes changes to network adequacy standards descriptions of managed health insurance issuers. Requires the comprehensive listing of a plan's network participating providers to be supplemented quarterly, rather than annually. Authorizes the Commissioner of the DCI to require a modification to a network, or institute a corrective action plan, if the Commissioner determines that a managed health insurance issuer has not met the required sufficiency standards. Requires the Commissioner to develop an appeal procedure for review of network adequacy and sufficiency.

FISCAL IMPACT:

Increase State Expenditures – $3,798,400/FY23-24
$3,793,400/FY24-25 and Subsequent Years

Increase Federal Expenditures - $6,646,326/FY23-24 and Subsequent Years

Other Fiscal Impact – Any expenditures incurred as a result of the all payer claims database beyond initial staffing needs within the Department of Commerce and Insurance is dependent upon federal grant approval. Such grant would total $2,500,000 over three years, FY23-24 through FY25-26. The availability of federal funding in FY26-27 and subsequent years is unknown. In the event additional federal funding is not available, an additional appropriation may be required from the General Fund.

Assumptions:

Department of Commerce and Insurance:

- Based on information provided by the DCI, the proposed legislation cannot be accommodated within existing resources. The DCI will require one Insurance Investigation Director position, one Policy Advisor position, and one Administrative Services Assistant 3 position to oversee the contract for the dispute resolution process, compose the grant application, ensure compliance with federal grant requirements, and manage the database.
- The one-time increase in state expenditures associated with the three positions is estimated to be $5,000 for computer costs in FY23-24.
- The total increase in state expenditures associated with the three positions is estimated to be $317,236 ($230,904 salary + $60,332 benefits + $15,000 administrative fee + $6,000 technology + $5,000 computers) in FY23-24 and $312,236 ($230,904 salary + $60,332 benefits + $15,000 administrative fee + $6,000 technology) in FY24-25 and subsequent years.
- The *Consolidated Appropriations Act of 2020* included the *No Surprises Act* which created and funded a federal three-year grant program for state all payer claims databases.
- Grant award amounts are $1,000,000 in each of the first two years and $500,000 in the third year, for a total of $2,500,000.
- Such grant would total $2,500,000 over three years, FY23-24 through FY25-26. The availability of federal funding in FY26-27 and subsequent years is unknown. In the event additional federal funding is not available, an additional appropriation may be required from the General Fund.

State Health Plans:

- Due to federal law, it is assumed the provisions of the bill will only apply to emergency out-of-network claims in the TennCare Program.
- Currently, out-of-network emergency claims are paid at least 80 percent of the lowest in-network provider rate within the program.

- Based on historical data for the past three calendar years, the program managed care organizations (MCOs) incurred an average of $39,956,691 in out-of-network emergency costs. It is assumed this represents 80 percent of the total that will be paid under the provisions of the bill; therefore, the increase in expenditures is estimated to be $9,989,173 [($39,956,691/80%) x 20%].
- TennCare medical expenditures are 34.515 percent state funds and 65.485 percent federal funds. The increase in state expenditures is estimated to be $3,447,763 ($9,989,173 x 34.515%) and $6,541,410 ($9,989,173 x 65.485%) in federal funds.
- There will be a similar impact to the CoverKids program. Based on historical data for the past two calendar years, the program managed care organizations (MCOs) incurred an average of $553,334 in out-of-network emergency costs. It is assumed this represents 80 percent of the total that will be paid under the provisions of the bill; therefore, the increase in expenditures is estimated to be $138,334 [($553,334/80%) x 20%].
- CoverKids expenditures are 24.157 percent state funds and 75.843 percent federal funds. The increase in state expenditures is estimated to be $33,417 ($138,334 x 24.157%) and $104,906 ($138,334 x 75.843%) in federal funds.
- The total increase in state expenditures will be $3,798,416 ($317,236 + $3,447,763 + $33,417) in FY23-24 and $3,793,416 ($312,236 + $3,447,763 + $33,417) in FY24-25 and subsequent years.
- The total increase in federal expenditures will be $6,646,326 ($6,541,410 + $104,916) in FY23-24 and subsequent years.
- The requirements in the legislation could result in an increase in expenditures to the the State Group Health Insurance plan if health carriers are required to raise provider rates or start paying providers that are not currently in-network. The extent of any increase in state and local expenditures associated with an increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the DCI.

IMPACT TO COMMERCE:

Other Commerce Impact – Due to multiple unknown factors, the exact impact to commerce cannot be determined.

Assumptions:

- Due to multiple unknown factors such as current coverage levels, what new coverage would be required, and the results of any future arbitrations, the exact impact to commerce cannot be determined.
- The requirements of the proposed legislation could increase health care plan costs, especially if the health carrier is required to raise provider rates or start paying providers that are not currently in-network.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner, Executive Director

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