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FISCAL NOTE

Drafting Number: LLS 19-0709 **Date:** March 5, 2019
Prime Sponsors: Rep. Esgar; Catlin **Bill Status:** House Health & Insurance
 Sen. Gardner; Pettersen **Fiscal Analyst:** Max Nardo | 303-866-4776
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Bill Topic: OUT-OF-NETWORK HEALTH CARE SERVICES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires health care providers, facilities, and health insurance carriers to provide disclosures to consumers about the potential effects of receiving services from an out-of-network provider or at an out-of-network facility. The bill establishes reimbursement amounts for out-of-network providers who are providing services at an in-network facility or who are providing emergency services. It increases state expenditures in FY 2019-20 and FY 2020-21.

Appropriation Summary: For FY 2019-20, the bill requires appropriations totaling \$42,054 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under HB 19-1174**

		FY 2019-20	FY 2020-21
Revenue	General Fund	up to \$20,000	up to \$20,000
	Total	up to \$20,000	up to \$20,000
Expenditures	General Fund	\$33,884	\$14,007
	Cash Funds	\$8,170	-
	Centrally Appropriated	\$11,048	\$4,382
	Total	\$53,102	\$18,389
Total FTE		0.5 FTE	0.2 FTE
Transfers		-	-
TABOR Refund	General Fund	up to \$20,000	up to \$20,000

Summary of Legislation

The bill requires health care providers, facilities, and health insurance carriers to provide disclosures to consumers about the potential effects of receiving services from an out-of-network provider or at an out-of-network facility. The bill establishes reimbursement amounts for out-of-network providers who are providing services at an in-network facility or who are providing emergency services.

Required disclosure for out-of-network services. The Commissioner of Insurance and the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA) and the State Board of Health in the Department of Public Health and Environment (CDPHE) must adopt rules to specify the disclosure requirements. Among other things, the rules must address the timing and content of disclosures, and how the disclosures must be made. By January 1, 2020, carriers must develop and provide disclosures to covered individuals in compliance with the rules.

Reimbursement for out-of-network providers. Out-of-network providers that provide health care services to covered persons at an in-network facility and out-of-network providers or facilities that provide emergency services must be reimbursed at the greater of:

- the carrier's average in-network rate of reimbursement for that service in the same geographic area;
- 125 percent of the Medicare reimbursement rate for the same service in the same geographic area; or
- 100 percent of the median in-network rate of reimbursement for the same service in the same geographic area for the prior year.

The bill adds a deceptive trade practice for health care providers and creates an unfair or deceptive practice for insurance carriers that fail to comply with the payment requirements for out-of-network health care services.

State Revenue

The bill potentially increases General Fund revenue by up to \$20,000 per year beginning in FY 2019-20 from fine penalties for violations under the bill. This fine revenue, which is subject to the TABOR limits, is discussed below.

Penalty for deceptive trade practices. A health care provider found in violation of the payment requirements of the bill may be found to have committed a deceptive trade practice. Penalties for deceptive trade practices, which are \$2,000 for the first violation and up to \$10,000 for subsequent violations, are deposited in the General Fund. These civil penalties may be imposed by the court upon the motion of the Attorney General or a district attorney alleging the deceptive trade practice. The fiscal note assumes a high level of compliance by health care providers and facilities, and that any revenue received will be less than \$20,000 per year.

Penalty for deceptive or unfair insurance practice. Under the bill, the Division of Insurance in DORA may assess penalties on health insurance carriers for failure to comply with the payment requirements in 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 and suspension or revocation of a company's license for knowingly

committing such violations. 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.

State Expenditures

This bill will increase state expenditures by \$53,102 and 0.5 FTE in FY 2019-20, and \$18,389 and 0.2 FTE in FY 2020-21. This includes an increase in General Fund expenditures of \$43,283 and 0.4 FTE in FY 2019-20 and \$18,389 and 0.2 FTE in FY 2020-21 for the CDPHE, and an increase in cash fund expenditures of \$9,819 and 0.1 FTE in FY 2019-20 for DORA from the Division of Insurance Cash Fund. These costs are shown in Table 2 and described below.

**Table 2
 Expenditures Under HB 19-1174**

	FY 2019-20	FY 2020-21
Department of Public Health and Environment		
Personal Services	\$29,181	\$14,007
Operating Expenses and Capital Outlay Costs	\$4,703	-
Centrally Appropriated Costs*	\$9,399	\$4,382
FTE - Personal Services	0.4 FTE	0.2 FTE
Subtotal (CDPHE)	\$43,283	\$18,389
Department of Regulatory Agencies		
Personal Services	\$8,075	-
Operating Expenses and Capital Outlay Costs	\$95	-
Centrally Appropriated Costs*	\$1,649	-
FTE - Personal Services	0.1 FTE	-
Subtotal (DORA)	\$9,819	
Total Cost	\$53,102	\$18,389
Total FTE	0.5 FTE	0.2 FTE

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

Department of Public Health and Environment. CDPHE will conduct a stakeholder process to develop rules for disclosures at health care facilities and work with DORA on developing consistent rules for carriers and providers. It is expected that the stakeholder process can be completed and draft rules written in FY 2019-20 with 0.4 FTE. In FY 2020-21, State Board of Health rulemaking requires staff time for analysis, public comment, and to facilitate rulemaking, which can be accomplished with 0.2 FTE.

Department of Regulatory Agencies. The bill requires DORA to promulgate rules defining the geographic areas referenced in the bill and to promulgate disclosure rules for health insurance carriers and health care providers. It is estimated that this work can be accomplished with

200 hours of work or 0.1 FTE in FY 2019-20. The fiscal note assumes there is sufficient balance in the Division of Insurance Cash Fund to pay this expense and that no General Fund diversion will be necessary.

Department of Law and Judicial Department. The bill creates a deceptive trade practice for health care providers to fail to comply with the payment requirements for out-of-network healthcare services. To the extent that health care providers violate these protocols, it could increase workload for the Attorney General and the Department of Law to address complaints and file motions with the county courts. It is assumed that this enforcement workload will be prioritized by the Department of Law within its existing appropriations. Likewise, any impact on the trial courts is assumed to be minimal.

State employee insurance. Lower reimbursement rates for out-of-network providers may contribute to lower health insurance premiums, which may reduce costs for state agencies. Because state employee health insurance contributions are based upon prevailing market rates, with costs shared between the employer and employee, this bill is not expected to affect the state's share of employee health insurance premiums until FY 2020-21. Because insurance rates are influenced by a number of variables, the exact effect of this bill cannot be determined. Any increase caused by the bill will be addressed through the total compensation analysis included in the annual budget process.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by up to \$20,000 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$11,048 in FY 2019-20 and \$4,382 in FY 2020-21.

Local Government

The bill increases workload and costs for local governments in the following areas.

District attorneys. Similar to the Department of Law impact described above, district attorneys, who are also able to file motions related to deceptive trade practices, may have additional workload and costs under the bill. It is assumed that enforcement actions related to violations under the bill will be prioritized within existing resources. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Denver County Court. To the extent motions related to deceptive trade practice are filed in Denver, workload for the Denver County Court, which is managed and funded by the City and County of Denver, will increase. This workload impact is assumed to be minimal.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2019-20, the bill requires the following appropriations:

- \$33,884 from the General Fund to the Department of Public Health and Environment and an allocation of 0.4 FTE; and
- \$8,170 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund and an allocation of 0.1 FTE.

State and Local Government Contacts

Regulatory Agencies

Personnel

Higher Education

Municipalities

Information Technology

Public Health and Environment

Health Care Policy and Financing

Counties

Law