

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL MEMORANDUM**

HB 963 – SB 937

April 15, 2015

SUMMARY OF ORIGINAL BILL: Creates the *Healthcare Provider Stability Act* (act). Prohibits a health insurer, third-party administrator (TPA), healthcare provider, or other person from effecting a material change to a previously agreed upon rate of payment for which a healthcare provider is paid for providing items or services more than once during a one year period. Requires a TPA or healthcare provider to send written notice of a material change to the other party sixty days prior to the effective date of such change. A healthcare provider or TPA may maintain an individual or class action as the sole remedy to enforce the provisions of the bill. Defines “material change” as a change in fees or payment methodologies that a reasonable person would attach importance to in determining the action to be taken upon the change. Exempts the state, local government, and local education insurance plans, the TennCare program, or any health plan administered by the Division of Health Care Finance and Administration from the provisions of the bill. Also exempts any entity that is subject to delinquency proceedings and for which the Commissioner of the Department of Commerce and Insurance has been appointed receiver or any entity placed under administrative supervision by order of the Commissioner. Applies to all policies, contracts, and health benefit plans issued, delivered, or renewed on or after October 1, 2015.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Not Significant

Other Fiscal Impact – Any change to the network rates of the carriers contracted with the state employee, local government, and local education health plans could indirectly affect the rates for these plans; the indirect impact of which cannot be reasonably determined.

IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Impact to Commerce - Due to a number of unknown factors, the impact to commerce cannot reasonably be determined.

SUMMARY OF AMENDMENTS (004145, 005795): Deletes all language after the enacting clause. Prohibits a health insurance entity from making a change to a provider’s fee schedule except for one-time during any 12-month period or if a health insurance entity and a hospital agree in writing to a change in the fee schedule. This prohibition does not apply to changes effected by federal or state government; certain reimbursements for drugs, immunizations, or injectables; changes due to the provider’s chargemaster under certain circumstances; any changes or additions to the list of Current Procedural Terminology (CPT)

HB 963 – SB 937 (CORRECTED)

codes or Healthcare Common Procedure Coding System; and any changes or additions to revenue codes established by the National Uniform Billing Committee. Authorizes a health insurance entity to effect a change only to any policies, procedures, or methodologies on two dates, April 1 and October 1, of a given year except for limited exclusions included within the bill. These provisions of the bill do not apply to the state employee, local education, and local government insurance plans or the health plans administered by the Division of Health Care Finance and Administration, including TennCare, Cover Kids, and AccessTN.

Establishes requirements between health insurance entities and healthcare providers and provider network contract amendments, including fee schedule disclosures and possible terminations of other network agreements based on a provider's decision. Creates reporting of alleged noncompliance procedures between the two parties. Requires health insurance entities to contract with independent reviewers to implement dispute resolution and the timeframes in which dispute procedures must be completed. Creates the Selection Panel for Health Insurance Reviewers and requires the Commissioner of Commerce and Insurance to appoint five individuals and a designee from the department. The panel will not be paid and will meet twice a year. The Commissioner will annually publish a report that includes the number of requests for independent reviews filed for each health insurance entity during the prior calendar year and generally report the outcome of these independent review requests.

Requires health insurance entities to provide the payment or fee schedules and all other information sufficient to enable the healthcare provider to determine the manner and amount of payments under the contract prior to the final execution or renewal of the contract. The health insurance entity shall make available to the healthcare provider access, free of charge, to that provider's individual fee schedule in a downloadable format either through a secure website or delivering the provider's fee schedule via electronic mail at the request of the provider. If the provider request the fee schedule delivered through U.S. mail, then the health insurance entity is authorized to charge a fee to cover their costs. Requires health insurance entities to provide notice of any change to the provider's fee schedule within 90 days prior to the effective date of the change. Requires health insurance entities to maintain detailed descriptions and copies of coding guidelines, policies, methodologies, and processes that would impact coverage or payment of items and services that are expected to be applied to claims; information that will enable the provider to determine what effect the application of claims edits and payment rules will have on payment prior to the provider's providing an item or services or submitting a claim; and information that will enable the provider to determine the potential basis for the health insurance entity's claim denial, reduction, or delay; any additional documentation needed by the health insurance entity that is necessary for payment; and any patient data or act that is a precondition to claim payment.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

On April 7, 2015, a fiscal memorandum was issued with an estimated fiscal impact of:

NOT SIGNIFICANT

Based on updated information provided by the Department of Finance and Administration and the Bureau of TennCare, it was determined that the fiscal impact was incomplete. The estimated fiscal impact is as follows:

(CORRECTED)

**Increase State Expenditures – \$5,150,700/FY15-16
\$587,500/FY16-17 and Subsequent Years**

**Increase Federal Expenditures – \$3,408,300/FY15-16
\$1,099,500/FY16-17 and Subsequent Years**

Other Fiscal Impact – Due to a number of unknown factors, the exact impact to the claims costs of the state sponsored group health plans are difficult to determine. Any change to the network rates of the carriers contracted with the state employee, local government, and local education health plans could indirectly affect the rates for these plans. Based on an actuarial report, a possible increase in claims expenditures in FY15-16 could be \$1,683,800 in state funds and \$56,900 in federal funds.

Assumptions for the bill as amended:

Department of Commerce and Insurance:

- The Department of Commerce and Insurance will be responsible for enforcing the provisions of the bill related to health insurance carriers. This enforcement will be accomplished through the investigation of any complaints against health benefit plans. This requirement will not significantly increase the department's workload.
- The Commissioner of Commerce and Insurance is to appoint and serve on the selection panel and prepare and publish a required report. Based on information provided by the department, these additional requirements can be accommodated within existing resources.

Division of Health Care Finance and Administration:

- The provisions of the bill as amended will require the vendors contracted with the Division of Health Care Finance and Administration (HCFA) to provide benefits through the TennCare program, the CoverKids program, and the AccessTN program to make website modifications including user interface modifications, increase existing functionality, and data management.
- *Section 3:* Current Tenn. Code Ann. § 56-7-1013 (c) is being amended to require health insurance entities to provide a healthcare provider access, free of charge, to the provider's individual fee schedule in a format by maintaining the fee schedule on a secure web site, through email, or in a hard copy so that access to the fee schedule is available at any time throughout the term of the provider's contract with the health insurance entity. These provisions will result in costs estimated as follows:

Program	Web build (one-time)	State	Federal
TennCare	\$522,000	\$182,517	\$339,483
CoverKids	\$21,000	\$5,250	\$15,750
AccessTN	\$1,500	\$1,500	

- Section 3 will also result in additional staffing for one of the vendors resulting in the following recurring expenditures:

Program	Staffing (recurring)	State	Federal
TennCare	\$1,578,000	\$551,748	\$1,026,252
CoverKids	\$63,000	\$15,750	\$47,250
AccessTN	\$6,000	\$6,000	

- *Section 4:* One of the vendors will incur the following one-time costs related to the building of a provider porthole for each provider to utilize to ascertain data by network to meet the requirements of the bill. These one-time costs are estimated as follows:

Program	Provider Porthole (one-time)	State	Federal
TennCare	\$3,630,000	\$1,269,230	\$2,360,771
CoverKids	\$190,000	\$47,500	\$142,500
AccessTN	\$20,000	\$20,000	

- *Section 5:* One of the vendors will incur the following recurring costs related to increased audit and financial recovery staff necessary to meet the requirements of the bill. These recurring costs are estimated as follows:

Program	Staffing (recurring)	State	Federal
TennCare	\$40,000	\$13,986	\$26,014
CoverKids	\$0	\$0	\$0
AccessTN	\$0	\$0	

Division of Benefits Administration:

- Currently, the state sponsored groups plans contract with two carriers and use their networks to provide benefits to enrollees. The state is currently in the process of issuing a request for proposal for these contracts that will be effective, January 1, 2016. The estimated costs are based on their current contracts. It is unclear how these costs will be shifted to the state sponsored group insurance plans due to the uncertainty of the contracting process and that the new contracts will become effective at the same time as the effective date of the bill as amended.
- If the state were to continue their current contracts, the following is the estimated administrative costs incurred as a result of the proposed legislation.

- Section 3: Current Tenn. Code Ann. § 56-7-1013 (c) is being amended to require health insurance entities to provide a healthcare provider access, free of charge, to the provider's individual fee schedule in a format by maintaining the fee schedule on a secure web site, through email, or in a hard copy so that access to the fee schedule is available at any time throughout the term of the provider's contract with the health insurance entity. These provisions will result in one-time costs estimated to be \$441,000.
- Section 4: Both of the vendors will incur the following one-time costs related to the building of a provider porthole for each provider to utilize to ascertain data by network to meet the requirements of the bill. These one-time costs are estimated to be \$2,890,000.
- Section 2: Due to a number of unknown factors, including but not limited to, the timeframe in which any provider network reimbursement costs will increase, the possible increased volatility that could affect the provider networks, how this volatility will impact provider rates and the provider network itself, and how this will in turn affect the state employee, local government, and local education health plans' new contract rates, any increase in expenditures to the state health plan or the fiscal year in which these expenditures will occur are difficult to quantify.
- If additional costs are incurred within a carrier's commercial networks, there could be an indirect increase in network rates that could subsequently affect the costs associated with the state employee, local government, and local education insurance plans. Any network rate changes will be based on a number of factors that are unknown.
- Based on a memo from the Division of Benefits Administration's contracted actuary, the actuary projects that there will be an initial increase in health care expense cost trend by approximately one percent (1%) but in the long term, the volatility will smooth out and correct itself. This increase in the trend level will be reliant on the proposed fee schedule changes and how close the change is to the 12 month effective date. Due to this, the estimated impact, based on the current contracts would be one-half of one percent (0.5%) of claims in the first full year (calendar year 2016) and one-fourth of one percent (.25%) of claims in the second full year (calendar year 2017). Beyond this timeframe, the actuary predicts the healthcare carriers and providers to incorporate the new process into the rate negotiations.
- Based on information provided by the Division, the total net payments in calendar year 2013 were \$922,923,700 for both the state and local education plans. A one-half of one percent (0.5%) increase in calendar 2016 would result in an increase of \$4,614,619. The state's portion of this is estimated to be \$3,367,566 and there will be federal funds of \$113,788. This would result in costs of \$1,683,783 in state expenditures and \$56,894 for one-half of the fiscal year based on the effective date of the bill.

Total Fiscal Impact:

- The provisions of the bill as amended will not be effective until January 1, 2016; therefore, the FY15-16 expenditures are based on the total one-time increases and one-half of the recurring increases in expenditures.
- The increase in FY15-16 state expenditures is estimated to be \$5,150,739 { \$182,517 + \$5,250 + \$1,500 + \$1,269,230 + \$47,500 + \$20,000 + \$441,000 + \$2,890,000 + [(\$551,748 + \$15,750 + \$6,000 + \$13,986) x 0.50]}.

- The increase in FY15-16 federal expenditures is estimated to be \$3,408,262 { \$339,483 + \$15,750 + \$2,360,771 + \$142,500 + [(\$1,026,252 + \$47,250 + \$26,014) x 0.50]}.
- The total increases in FY16-17 and subsequent year's state expenditures are estimated to be \$587,484 (\$551,748 + \$15,750 + \$6,000 + \$13,986).
- The total increases in FY16-17 and subsequent year's federal expenditures are estimated to be \$1,099,516 (\$1,026,252 + \$47,250 + \$26,014).
- The provisions of the bill as amended that place requirements on health insurance entities regarding the changes to provider fee schedule procedures are added as new sections to Title 56, Chapter 7, Part 33. There is language in the bill that specifically exempts TennCare, the state sponsored health plans, and the Cover Tennessee plans from these provisions. It is assumed these exemptions will allow both the TennCare program and the state sponsored health plans to continue with their current payment reform program which is estimated to realize savings of over \$10 million in FY15-16. If the current payment reform program is negatively impacted, those savings would not be realized.

IMPACT TO COMMERCE:

Increase Business Revenue – Exceeds \$8,000,000/FY15-16

Increase Business Expenditures – Exceeds \$8,000,000/15-16

Assumptions:

- Health insurance carriers and health care providers will incur additional one-time and recurring expenditures to make the necessary changes to the current functionality and user interfaces. There will also be additional administrative costs to meet the requirements of the bill.
- It is unknown the exact amount of expenditures that will be incurred by these businesses, but it is assumed that it will exceed the total amount of state and federal expenditures to the TennCare and state employee health plans of \$8,000,000 since these expenditures will be paid to these entities to cover the state portion of the carriers costs.
- It is reasonably assumed that any increase in expenditures will be passed on to the consumers, resulting in a corresponding increase in business revenue of at least \$8,000,000.

CERTIFICATION:

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



Jeffrey L. Spalding, Executive Director

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