TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 437 – SB 491

March 13, 2017

SUMMARY OF BILL: Declares that any employee, consultant, affiliate, or subcontractor of a health insurance entity that approves, disapproves, acts in an advisory role concerning, or recommends appropriate medical care or treatment for, a patient to a health care provider, to be practicing a healing art and requires such person: to be licensed as a healthcare provider under Tennessee Code Annotated title 63 (professions of the healing arts), chapter 6 (medicine and surgery), 7 (nursing), 9 (osteopathic physicians), or 19 (physician assistants); to agree to be subject to any civil or criminal penalty, enforcement procedure, or other liability, including a health care liability action to the same extent as any practitioner who is licensed under the heretofore enumerated chapters; and to be required to obtain appropriate staff privileges at any hospital or facility in order to approve, disapprove, advise, or recommend appropriate medical care or treatment at the facility. Authorizes a hospital or facility to remove or condition the staff privileges of any such employee, consultant, affiliate, or subcontractor of a health insurance entity in the same manner as it would for any other practitioner at the facility. An effective date of January 1, 2018.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - $65,076,700/FY17-18
$130,153,400/FY18-19 and Subsequent Years

Increase Federal Expenditures – $119,886,600/FY17-18
$239,773,200/FY18-19 and Subsequent Years

Increase Local Expenditures – $131,300/FY17-18/Permissive
$262,500/FY18-19 and Subsequent Years/Permissive

Other Fiscal Impact – This bill will result in an increase in licenses issued by the Division of Health Related Boards, and therefore, an increase in licensure fee revenue and an increase in license issuance expenditures will be realized by the various boards under the Division; however, the number and type of additional licenses issued by the various boards under the Division cannot be estimated with reasonable certainty. As of June 30, 2016, the Division had a cumulative reserve balance of $31,069,033.

Assumptions:

- This legislation is estimated to have a significant impact upon the managed care contractors (MCCs) and pharmacy benefits manager (PBMs) utilized by the Bureau of TennCare.
- Utilization review agents for these MCCs ensure appropriate utilization review (UR) of all medically necessary, covered services, including implementation of prior authorization requirements on some services and concurrent review performed by and/or supervised by physician reviewers of the MCCs.
- This legislation will require that any person performing UR be licensed with the appropriate health related board and have staff privileges at any hospital or health facility at which the medical care or treatment is provided to TennCare recipients. This provision alone would require staff privileges for UR agents for nearly all hospitals in the state.
- This will restrict the ability of UR agents to perform UR, resulting in a decrease in cost savings that have historically been realized from UR.
- Based on information provided by the Bureau, this legislation will result in a five percent increase in state and federal medical spending.
- In FY15-16, total medical spending for the Bureau was $6,428,000,000.
- A recurring increase in costs to TennCare plans of $321,400,000 ($6,428,000,000 x 5.0%).
- Based on information provided by the Bureau, similar impacts will be experienced by UR agents for its PBM.
- In FY15-16, total pharmacy spending for the Bureau was $1,102,000,000.
- A recurring increase in pharmacy costs to TennCare of four percent, or $44,080,000 ($1,102,000,000 x 4.0%).
- A total recurring increase in costs to the Bureau of $365,480,000 ($321,400,000 + $44,080,000).
- This amount will be expended at a state rate of approximately 34.395 percent and will receive federal matching funds at a rate estimated to be 65.605 percent.
- The recurring increase in state expenditures is estimated to be $125,706,846 ($365,480,000 x 34.395%). The recurring increase in federal funds is estimated to be $239,773,154 ($365,480,000 x 65.605%).
- Based on information provided by Benefits Administration, the division's two carriers issued approximately 20,000 prior authorizations in FY15-16, denying approximately 1.5 percent for an estimated savings of $7,500,000 per year.
- Based on information provided by Benefits Administration, due to the licensure staff privilege requirements, the ability for an effective authorization review to be implemented will be negatively impacted, resulting in a decrease in denials of services and treatments which would not pass UR, thereby, reducing the cost savings normally realized through UR.
- A recurring increase in state expenditures of $7,500,000 across three plans as follows:
    - State Employee Health Plan is $4,050,000 ($7,500,000 x 54.0%);
    - Local Education Plan is $2,925,000 ($7,500,000 x 39.0%);
    - Local Government Plan is $525,000 ($7,500,000 x 7.0%).

- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in a recurring increase in state expenditures of $3,240,000 ($4,050,000 x 80.0%).
- The state portion of the Local Education Plan is 45 percent of local education agency (LEA) instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The recurring increase in state expenditures relative to the Local Education Plan is estimated to be $1,206,563 [($2,925,000 x 75.0% x 45.0%) + ($2,925,000 x 25.0% x 30.0%)].
- Each local government that opts into the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will cover at least 50 percent of the cost resulting in a permissive recurring increase in local expenditures of $262,500 ($525,000 x 50%).
- The total recurring increase in state expenditures is estimated to be $130,153,409 ($125,706,846 + $3,240,000 + 1,206,563).
- The total recurring increase in federal expenditures is estimated to be $239,773,154.
- The total permissive recurring increase in local expenditures is estimated to be $262,500.
- An effective date of January 1, 2018 will result in a first year impact equal to 50 percent of the first full year impact.
- The increase in state expenditures in FY17-18 is estimated to be $65,076,705 ($130,153,409 x 50.0%).
- The increase in federal expenditures in FY17-18 is estimated to be $119,886,577 ($239,773,154 x 50.0%).
- The permissive increase in local expenditures in FY17-18 is estimated to be $131,250 ($262,500 x 50.0%).

IMPACT TO COMMERCE:

Increase Business Expenditures - $10,000,000

Assumptions:

- This legislation will have a negative impact on health insurance companies in this state, as it will prevent such companies from applying UR to effectively deny service or treatment which is determined not to be medically necessary.
- Due to numerous unknown factors, including but not limited to, the number of insurance companies in this state which employ UR agents, the number of denials which result from UR, and the subsequent cost savings realized by such companies, an impact to such companies cannot be determined with any reasonable certainty; however, the recurring increase in business expenditures to such plans is reasonably estimated to exceed $10,000,000 statewide.

CERTIFICATION:

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

Krista M. Lee

Krista M. Lee, Executive Director

/jdb