Department of Planning and Budget
2019 Fiscal Impact Statement

1. **Bill Number:** HB 2538

House of Origin	☒	Introduced	☐	Substitute	☐	Engrossed
Second House	☐	In Committee	☐	Substitute	☐	Enrolled

2. **Patron:** Ware

3. **Committee:** Commerce and Labor

4. **Title:** Balance billing; emergency and elective services.

5. **Summary:** Requires health care facilities and health care providers to determine if providers scheduled to deliver elective services to a covered person are in the network of the covered person's managed care plan. The measure requires out-of-network elective service providers to do the following in order for the covered person to assume financial responsibility: (i) inform the covered person of its out-of-network status, (ii) provide the covered person with the opportunity to be referred to an in-network provider, and (iii) prepare a document for signature by the covered person in which the covered person or his legal representative assumes financial responsibility. The bill provides that such requirements also apply to a health care provider in an office-based setting making a referral for elective radiology or pathology services. The bill identifies post-stabilization services, performed in order to maintain or improve a person's stabilized condition related to an emergency medical condition, as emergency services if (a) the post-stabilization services are pre-approved or related to pre-approved services; (b) for an out-of-network facility, the health carrier does not effectuate transfer of the covered person within a reasonable amount of time after being notified by the facility of the covered person's need for post-stabilization services; (c) for an out-of-network health care professional, the facility is in-network; or (d) the out-of-network facility is unable to reasonably obtain health carrier information from the covered person prior to the furnishing of such services.

   The bill directs health carriers that provide individual or group health insurance that provide any benefits with respect to services rendered in an emergency department of a hospital to pay directly to an out-of-network health care provider the fair market value, as defined in the bill, for the emergency services, less applicable cost-sharing requirements. The bill provides that direct payment from the health carrier to the out-of-network health care provider precludes the out-of-network health care provider from billing or seeking payment from the covered person for any other amount other than the applicable cost-sharing requirements. The bill removes from the determination of whether a medical condition is an emergency medical condition the final diagnosis rendered to the covered person.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** Indeterminate, see Item 8.

8. **Fiscal Implications:** The impact of this bill is indeterminate. The Department of Human Resource Management (DHRM) anticipates that this bill could potentially have a substantial fiscal impact on the state employee health plan. Currently, the state employee health plan provides coverage for employees treated for emergencies by non-network providers. In these situations, the plan pays all of the allowable charge, which is the amount that the plan would pay an in-network provider for the service. However, there is nothing to prevent the provider from balance billing the patient. Balance billing entails billing for any charges not paid for by the insurance company or the patient's out-of-pocket costs.

   This bill requires the plan to pay fair market value to out-of-network providers for emergency services, and precludes the provider from balance billing the patient. Fair market value may be different from an individual plan's allowable charge, because it may be based on an average of allowable charges across all plans. The bill also includes other fee arrangements, such as single-case agreements, as part of the calculation.

   DHRM does not know the amount of other plans' allowable charges or other fee arrangements; therefore, the fiscal impact of this bill cannot be determined. However, there were approximately 125 instances in FY 2018 in which state health plan members received emergency services from out-of-network providers. The state health plan is administered by carriers that generally have favorable network contract rates. Therefore, under this bill, out-of-network providers could be paid more than in-network providers for emergency services. This would likely generate an incremental fiscal impact to the plan. Any potential impact if out-of-network providers begin receiving higher fees than in-network providers is indeterminate; in such case, providers could potentially choose to leave the network or request higher fees.

   The State Corporation Commission does not expect to have a fiscal impact from this bill.

   The Department of Medical Assistance Services had indicated that the provisions of this bill will not apply to the Medicaid program.

9. **Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, State Corporation Commission.

10. **Technical Amendment Necessary:** No

11. **Other Comments:** None