

Department of Planning and Budget 2014 Fiscal Impact Statement

1. **Bill Number:** HB1083

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input checked="" type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. **Patron:** Ware, R.L.

3. **Committee:** Commerce and Labor

4. **Title:** Workers' compensation; payment for medical services.

5. **Summary:** Limits the liability of an employer for medical treatment provided to an injured person that is rendered by a nurse practitioner or physician assistant serving as an assistant-at-surgery to no more than 20 percent of the reimbursement due to the physician performing the surgery and the liability for treatment provided by an assistant surgeon in the same specialty as the primary surgeon to no more than 50 percent of the reimbursement due to the physician performing the surgery. The measure requires multiple procedures completed on a single surgical site associated with medical, surgical, and hospital services rendered on or after July 1, 2014, to be coded and billed with appropriate Current Procedural Terminology modifiers and paid according to the National Correct Coding Initiative rules and hospital in-patient care to be coded and billed through the International Statistical Classification of Diseases and Related Health Problems. The measure also (i) establishes prompt payment requirements with respect to health care services provided under the Workers' Compensation Act; (ii) prohibits an employer or insurer from seeking recovery of a payment made to a health care provider for health care services rendered after July 1, 2014, absent fraud, unless recovery is sought less than one year from the date payment was made; (iii) prohibits a health care provider from submitting a claim to the Workers' Compensation Commission contesting the sufficiency of payment for health care services rendered to a claimant on or after July 1, 2014, unless such claim is filed within one year from the date the last payment is received by the provider or the date the medical award for a specific item or treatment that is denied or contested by the employer becomes final; and (iv) provides that health care providers located outside of the Commonwealth shall be reimbursed according to these prompt payment and claims limitations and the "same community" shall be deemed the principal place of business of the employer if located in the Commonwealth or, if no such location exists, the location where the Commission hearing regarding the dispute is conducted. The Senate substitute prohibits providers from contesting payment sufficiency after one year from the date of payment receipt instead of the date payment is made.

6. **Budget Amendment Necessary:** Indeterminate. See Item 8.

7. **Fiscal Impact Estimates:** Fiscal impact is indeterminate. See Item 8.

- 8. Fiscal Implications:** The fiscal impact of this bill is indeterminate. According to the Workers' Compensation Commission, the bill is not expected to affect the Commission's administrative expenses. The bill may be expected to produce some savings to the extent that it caps employer liability for treatment provided by certain medical personnel assisting in surgery. This may reduce some workers' compensation payments made by the State Employee Workers' Compensation Services program, administered by the Department of Human Resource Management, and claims paid from the Workers' Compensation Commission's Uninsured Employer's Fund. An estimate of the impact of any such changes in medical payments is not available, as relevant claims data is not available at this time from either the Department of Human Resource Management or the Uninsured Employer's Fund and it is unknown how these limitations compare to current payment practices.

Additionally, the impact of the bill's provisions relating to payment of out of state providers is uncertain. Determining payment rates according to the prevailing community rate of the employer's location is expected to require more detailed data regarding an employee's physical work location than may currently be available and the provisions applying to reimbursement of out of state vendors may lead to additional litigation if challenged by the providers. According to the Department of Human Resource Management (DHRM), it does not currently record data on the physical location where an employee works for all state agencies that have multiple work locations, which it expects will be the location required to determine rates for out of state reimbursement. DHRM reports that to do so would likely require programming changes within its claim system, the creation of an Electronic Data Interchange (EDI) bridge to transmit the information between the agency's claim service provider and its bill adjudication provider, and systematic changes on the part of its bill adjudication provider to capture and utilize the data within its billing process. The costs of such changes are currently unknown. All of these systems are maintained by outside vendors, which will likely pass the cost of necessary changes to DHRM.

According to DHRM, its outside counsel and the Office of the Attorney General are uncertain whether the Commonwealth can successfully compel out of state providers to comply with the Commonwealth's Workers' Compensation laws. Therefore, the additional pricing and claims requirements placed on out of state providers by the bill could increase the agency's legal costs. If a provider challenges a payment, DHRM incurs the costs to defend the amount, which is done by outside counsel and typically costs between \$2,000 and \$6,000 to defend the payment through the Virginia Workers' Compensation Commission. Under current practices, the amount DHRM pays out of state providers is typically a negotiated amount, which minimizes its risk of having a payment challenged. This bill provides that out of state providers shall be reimbursed at the prevailing community rate of the employer's principal place of business. DHRM anticipates this change will at least initially result in additional payment challenges from providers, as it has been advised by the Office of the Attorney General and its outside counsel that is unclear whether out of state vendors can be compelled to comply with Virginia Workers' Compensation payment laws.

DHRM reports that it is also possible due to the uncertainty of whether Virginia's Workers' Compensation laws will be successfully applied to out of state providers that such a provider

may file suit directly against an injured employee for the difference between the billed amount and that reimbursed by the State Employee Workers' Compensation program, despite being prohibited by current state law. If this were to occur, DHRM expects that the State Employee Workers' Compensation program would incur the cost to defend the injured employee. The cost of defending cases of this kind are estimated to be at least three times more costly than defending reimbursement of a prevailing community rate, which ranges from \$2,000 to \$6,000 for Commission hearings. Cases of this kind have occurred in other states; for instance, the agency's outside council is currently defending two claims from other states in which claimants were treated within the Commonwealth and reimbursement was made according to the fee schedule of the state in which the claim occurred. In these two cases, the Virginia provider has filed suit against the injured workers for the balance of treatment costs and the insurance carriers are paying the defense costs.

9. Specific Agency or Political Subdivisions Affected: Virginia Workers' Compensation Commission; Department of Human Resource Management.

10. Technical Amendment Necessary: No.

11. Other Comments: According to the Department of Human Resource Management, it is far more difficult for a carrier or the Workers' Compensation Commission to determine when a provider receives payment, the date of which determines the deadline for the provider to contest payment sufficiency. Alternatively, the date a payment is made is simple to document, as it is the date a check is issued, and may wish to be considered as an alternative date for determining the deadline.

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