

Department of Planning and Budget

2016 Fiscal Impact Statement

1. Bill Number: HB378

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

2. Patron: Farrell

3. Committee: Appropriations

4. Title: Workers' compensation; fee schedules for medical services.

5. Summary: Directs the Workers' Compensation Commission (the Commission) to adopt regulations establishing fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act, in the absence of a contract under which the provider has agreed to accept a specified amount for the medical service. The regulations implementing the fee schedules shall become effective on January 1, 2018. The initial fee schedules will set amounts based on a reimbursement objective, which is the average of all amounts paid to providers in the same category of providers for the medical service in the same medical community. The Commission is required to retain a firm to assist it in establishing the initial fee schedules. The firm will recommend a methodology that will provide statistically valid estimates of the reimbursement objective for fee scheduled medical services within the medical communities. Reimbursements for medical services provided to treat traumatic injuries and serious burns are excluded from the fee schedules and liability for their treatment costs will be based, absent a contract, on 80 percent of the provider's charges. However, the required reimbursement will be 100 percent of the provider's charges if the employer unsuccessfully contests the compensability of the claim. The Commission is required to review and revise the fee schedules in the year after they become effective and biennially thereafter. The liability of the employer for certain medical services not included in a fee schedule will be set by the Commission. A stop-loss feature allows hospitals to receive payments or reimbursements that exceed the fee schedule amount for certain claims when the total charges exceed a charge outlier threshold, which initially is 150 percent of the maximum fee for the service set forth in the applicable fee schedule. Providers are prohibited from using a different charge master or schedule of fees for any medical service provided for workers' compensation patients than the provider uses for health care services provided to patients who are not claimants. The measure requires the Commission, when determining whether the employee's attorney's work with regard to a contested claim resulted in an award of benefits that inure to the benefit of a third-party insurance carrier or health care provider, and in determining the reasonableness of the amount of any fee awarded to an attorney, to consider only the amount paid by the employer or insurance carrier to the third-party insurance carrier or health care provider for medical services rendered to the employee through a certain date and not to consider additional amounts previously paid to a health care provider or reimbursed to a third-party insurance carrier. The Commission shall have an independent, peer-reviewed study conducted every two years. The regulations setting fee

schedules are exempt from the Administrative Process Act if the Commission utilizes a regulatory advisory panel to assist in the development of such regulations and provides an opportunity for public comment on the regulations prior to adoption. The measure prohibits certain practices involving the use by third parties of contracts whereby a provider agrees to accept payment of less than the fee scheduled amount, including restricting the sale, lease, or other dissemination of information regarding the payment amounts or terms of a provider contract without the express written consent and prior notification of all parties to the provider contract and prohibiting an employer from shopping for the lowest discount for a specific provider among the provider contracts held in multiple PPO networks. The regulatory advisory panel is directed to make recommendations to the Commission prior to July 1, 2017, on workers' compensation issues relating to (i) pharmaceutical costs not previously included in the fee schedules; (ii) durable medical equipment costs not previously included in the fee schedules; (iii) certain awards of attorney fees; (iv) peer review of medical costs; (v) prior authorization for medical services; and (vi) other issues that the Commission assigns to it. The existing peer review provisions are repealed. The measure has an emergency clause.

6. Budget Amendment Necessary: Yes – Item 493 (Employment Assistance Services).

7. Fiscal Impact Estimates: Preliminary – see Item 8.

Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|---------------------------|-----------------------|-------------------------|--------------------|
| 2016 | \$0 | 0.00 | - |
| 2017 | \$1,661,034 | 2.00 | NGF |
| 2018 | \$266,034 | 2.00 | NGF |
| 2019 | \$656,034 | 2.00 | NGF |
| 2020 | \$266,034 | 2.00 | NGF |
| 2021 | \$656,034 | 2.00 | NGF |
| 2022 | \$266,034 | 2.00 | NGF |

8. Fiscal Implications: The estimated fiscal impact of HB378 includes the one-time cost in fiscal year 2017 for the actuarial firm to assist in the development of the initial fee schedule, costs to complete the peer-reviewed study every two years, and annual costs to support staff who will oversee the fee schedule requirements.

The Workers' Compensation Commission (Commission) estimates that \$1.0 million would be needed to retain an actuarial firm to assist in the development of the workers' compensation fee schedule to assist the Commission in the initial establishment of the fee schedule. The regulations implementing the fee schedules shall become effective on January 1, 2018. The Commission is required to review and revise the fee schedules in the year after they become effective and biennially thereafter.

The Commission is required to consult with the regulatory advisory panel prior to adopting any methodology in the development of the fee schedule. The advisory panel shall consist of one member from the following organizations: i) the American Insurance Association; (ii) the Property and Casualty Insurers Association of America; (iii) the Virginia Self-Insurers

Association, Inc.; (iv) the Medical Society of Virginia; (v) the Virginia Hospital and Healthcare Association; (vi) a Type One teaching hospital; (vii) the Virginia Orthopaedic Society; (viii) the Virginia Trial Lawyers Association; (ix) a group self-insurance association representing employers or a local government group self-insurance pool formed under Chapter 27 (§ 15.2-2700 et seq.) of Title 15.2; and (x) employers that are insured by third-party carriers. The Commission estimates it would cost \$5,000 in fiscal year 2017 to support the operating expenses of the 10-member advisory panel.

The Commission estimates the cost to complete the peer-reviewed study, which is required to be completed every two years beginning in 2016, is \$390,000. The study is to be completed by an independent, not-for-profit research organization. The purpose of the study is to determine how Virginia's workers' compensation system and workers' compensation medical costs compare with those of other states' systems and (ii) previous workers' compensation medical benchmarks studies conducted in Virginia. Such studies shall also review the status of access to medical services under Virginia's workers' compensation system.

In order to ensure the fee schedule requirements are met, the Commission would need to hire two additional full-time equivalents, a medical manager and research analyst. The estimated base salary for a medical manager is \$100,000 and \$85,000 for a research analyst. The annual cost, including benefits, for both positions is \$266,034.

HB378 requires the Commission to pay for the peer-reviewed studies through revenues generated pursuant to the administrative tax assessed pursuant to § 65.2-1000, Code of Virginia. The administrative tax pays the Commission's employees' salaries and other administrative expenses of the Workers' Compensation Services. The fund is primarily supported through an annual assessment on insurance carriers and self-insured employers. The maximum assessment rate is 2.5 percent of workers' compensation premium collected during the prior calendar year. The fund's cash balance includes approximately \$20 million for the Commission's capital outlay project. The Commission is expected to use the fund's revenues to pay for the actuarial study, advisory panel expenses, and staff, in addition to the peer-reviewed studies.

- 9. Specific Agency or Political Subdivisions Affected:** Workers' Compensation Commission, American Insurance Association, Property and Casualty Insurers Association of America, Virginia Self-Insurers Association, Inc., Medical Society of Virginia, Virginia Hospital and Healthcare Association, Virginia Orthopaedic Society, Virginia Trial Lawyers Association, and local governments.

10. Technical Amendment Necessary: No.

11. Other Comments: This legislation is similar to SB631 (Wagner).