

Department of Planning and Budget

2019 Fiscal Impact Statement

1. Bill Number: SB1763

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: Sturtevant

3. Committee: Commerce and Labor

4. Title: Balance billing; emergency services.

5. Summary: Directs health carriers that provide individual or group health insurance that provides 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 an amount equal to the greatest of (i) the amount negotiated with in-network providers for the emergency service or, if more than one amount is negotiated, the median of these amounts; (ii) the regional average for commercial payments for emergency services; and (iii) the amount that would be paid under Medicare for an emergency service. The measure defines "regional average for commercial payments" as that fixed price that is determined and reported to the State Corporation Commission's Bureau of Insurance (the Bureau) by Virginia Health Information and adjusted annually by the Bureau in accordance with the United States Average Consumer Price Index (CPI) for medical care for the South region by considering the amounts paid to and accepted from health carriers or managed care plans in 2017 by similar providers for comparable out-of-network emergency services, as identified by Current Procedural Terminology codes, Health Care Common Procedure Coding System codes, diagnosis related group classifications, or revenue codes, in the community where the services were rendered, with the exclusion of amounts accepted by providers for patients covered by Medicare, TRICARE, or Medicaid. The bill removes from the determination of whether a medical condition is an "emergency medical condition" the final diagnosis rendered to the covered person. The measure provides that the State Corporation Commission shall resolve disputes between health care providers and health carriers regarding the appropriate reimbursement amount for such services rendered. The bill directs Virginia Health Information to submit a report to the Bureau establishing the regional average for commercial payments for emergency services based on 2017 data from the All-Payer Claims Database.

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 would prohibit the provider from balance billing the patient and require the health plan to pay the greatest of the following: (i) the amount negotiated with in-network providers for the emergency service or, if more than one amount is negotiated, the median of these amounts; (ii) the regional average for commercial payments for emergency services; and (iii) the amount that would be paid under Medicare for an emergency service. The "regional average for commercial payments" is based on the amounts paid to providers of out-of-network services in 2017 within a specific region.

DHRM does not know the regional average for commercial plans in any region; therefore, the fiscal impact of this bill cannot be determined. However, there were approximately 125 instances in fiscal year 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.