

## Department of Planning and Budget 2020 Fiscal Impact Statement

**1. Bill Number:** SB522

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

**2. Patron:** McDougale

**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 that when an elective service provider is determined to be out-of-network, in order for the covered person to assume financial responsibility for the out-of-network provider's charges, the health care facility or provider shall (i) inform the covered person of the out-of-network status of the provider, (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 for services performed by the out-of-network provider, and the covered person must sign the document described in clause (iii). The bill provides that such requirements will 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 preapproved or related to preapproved 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 measure 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:** See Item 8.
7. **Fiscal Impact Estimates:** See Item 8.
8. **Fiscal Implications:** The fiscal impact the proposed legislation may have to the state health insurance plans is indeterminate at this time. According to the Department of Human Resource Management's actuary, Aon, the number of emergency services provided by out-of-network providers varies each year; however, the number of emergency services provided by out-of-network providers is expected to remain low compared to the total number of state health insurance claims. The state health insurance plans are administered by carriers that generally have favorable network contract rates; however, under this bill, out-of-network providers could be paid more than in-network providers for emergency services. This may generate an incremental fiscal impact to the state health insurance plans.

The Secretary of Health and Human Resources, in collaboration with the Secretary of Administration, Secretary of Finance, and State Corporation Commission convened a workgroup to evaluate the options to prohibit the practice of balance billing by out-of-network health care providers for emergency services rendered, and to establish equitable and fair reimbursement for these health care providers pursuant to Item 281 F. of Chapter 854, 2019 Acts of Assembly. The workgroup's findings, published in January 2020, used the percentage of the state health insurance plan's out-of-network emergency services claims to project the fiscal impact in fiscal year 2021. The claims for emergency services in 2017 accounted for 0.03 percent of total claims paid in 2017.

The proposed legislation is similar to House Bill 1714-H1, introduced during the 2019 General Assembly Session, and one of the options considered by Aon and Oliver Wyman, an actuarial consultant for the State Corporation Commission's Bureau of Insurance, as part of the Virginia Surprise Billing Workgroup. Aon projected the fiscal impact for out-of-network providers in fiscal year 2021 to range from \$150,000 to \$250,000 and the costs for participating network providers in fiscal year 2021 to range from \$3.5 million to \$7.0 million. Oliver Wyman projected the overall costs for emergency services delivered by out-of-network providers to increase by 30 percent from current allowed costs and delivered facilities could increase between 25 to 45 percent; however, for all medical services, the overall impact is expected to increase between 0.1 to 0.3 percent.

Any impact on employer health insurance costs is expected to be paid approximately 50 percent from the general fund and 50 percent from nongeneral fund sources, based on the portion of employer premium expenditures paid from the general fund in fiscal year 2019.

The proposed legislation is not expected to impact the Department of Medical Assistance Services or Medicaid.

The State Corporation Commission expects to absorb any additional costs needed to implement the proposed legislation within its current operating budget

**9. Specific Agency or Political Subdivisions Affected:** State Corporation Commission  
Bureau of Insurance, the Department of Human Resource Management, and all state  
agencies.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.

Date: 2/5/2020