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FISCAL IMPACT REPORT

SPONSOR Chávez/Cadena LAST UPDATED _____
ORIGINAL DATE 2/19/23
BILL _____
SHORT TITLE Surprise Billing Protection Act Sunset Date NUMBER House Bill 370
ANALYST Anderson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Human Services Department (HSD)

Aging and Long-Term Services Department (ALTSD)

Office Superintendent Insurance (OSI)

SUMMARY

Synopsis of House Bill 370

House Bill 370 delays by five years the repeal date for the reimbursement rates paid by health insurance companies to nonparticipating providers (providers not under contract with the insurance company) as part of the Surprise Billing Protection Act. Under HB370, the rates would sunset on July 1, 2028, instead of July 1, 2023.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed, in time to prevent the repeal in existing law.

FISCAL IMPLICATIONS

The Office of Superintendent Insurance (OSI), which must respond to consumer complaints about insurance providers, reports HB370 should have no fiscal impact on the agency; however, failure to pass the bill might. See “What Will be the Consequences of not Enacting This Bill” below.

SIGNIFICANT ISSUES

The Surprise Billing Protection Act (Sections 59A-57A-1 to 59A-57A-13 NMSA 1978) is intended to protect healthcare consumers from unknowingly or unavoidably being billed directly by a provider outside their insurance company’s network. The act limits the patient’s financial obligations for a “surprise” bill to the amount the patient would owe had the same services been received from a provider in the network. The Aging and Long-Term Services Department indicates the act “facilitates emergency treatment of individuals regardless of provider.”

OSI, which must set the reimbursement rates the insurance companies will pay out-of-network providers based on a formula in the act, says it has received no complaints about the current process. The act sets out the formula as follows:

... the sixtieth percentile of the allowed commercial reimbursement rate for the particular healthcare service performed by a provider in the same or similar specialty in the same geographic area, as reported in a benchmarking database maintained by a nonprofit organization specified by the superintendent after consultation with healthcare sector stakeholders; provided that no surprise bill reimbursement rate shall be paid at less than one hundred fifty percent of the 2017 Medicare reimbursement rate for the applicable healthcare service provided.

OSI reports the expectation was that existing formula would eventually be replaced but the conditions for that replacement are not yet in place:

This provision [with the formula] was meant to be temporary until the state could set a reimbursement rate based on data from New Mexico Department of Health’s All Payer Claims Database. Accordingly, the Legislature included a sunset for the above reimbursement rate of July 1, 2023. Because the APCD is not expected to be operational on July 1, 2023, this legislation seeks to extend the sunset deadline for five years to July 1, 2028.

The Aging and Long-Term Services Department notes the importance of the Surprise Billing Protection Act:

Surprise medical bills are a large source of financial hardships for many persons.¹ It is likely older New Mexicans are subject disproportionately to more surprise medical bills, as they have relatively higher rates of Emergency Department visits (4,907 visits per 10,000 population for 75 years and older *versus* 3,326 visits per 10,000 population for < 75 years of age).²

In January 2022, the [federal No Surprises Act] was passed to protect all patients nationally from surprise bills. However, *Gordon et al.*³ contends states with existing laws can continue to allow the consideration of charges as there may be differences in the manner in which insurer-provider disputes are adjudicated.

¹Cooper, Z., Scott Morton, F., & Nathan, S. (2018). Surprise! Out-of-network billing for emergency care in the United States (NBER Working Paper No. 23623).

²Emergency Department (ED) dataset, Health Systems Epidemiology Program, New Mexico Department of Health

³Gordon, A.S., Liu, Y., Chartock, B.L., and Chi, W.C. 2022. Provider Charges and State Surprise Billing Laws: Evidence From New York And California. *Health Affairs*. 41:9, 1316-1323

This affects older adults and people with disabilities who already find navigating complex health insurance issues difficult and do not have the resources, particularly in a medical crisis, to ask if out-of-network providers will be utilized in their treatment. They are also often ashamed to request assistance when they receive a large bill. The consequences of surprise billing may include inability to afford to pay for their basic needs and rationing future healthcare.

ADMINISTRATIVE IMPLICATIONS

Under HB370, OSI's administrative responsibilities would be unchanged. OSI expects complaints would increase if the existing rate-setting process were repealed and replaced by federal rules, meaning OSI's administrative workload could potentially increase if HB370 fails.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSI says, absent an extension of the New Mexico process for setting reimbursement rates under HB370, the process in New Mexico would be guided by federal law, which is more likely to draw complaints:

The federal No Surprises Act was effective on January 1, 2022. The federal act's reimbursement scheme for surprise medical bills involves significant negotiation between providers and insurers, including an independent dispute resolution process, but the act does not create a simple procedure to execute the reimbursement benchmark. As a result, the federal process is less streamlined and takes longer to resolve provider/insurer payment disputes than current New Mexico law. OSI has received complaints from providers about the difficulties of the reimbursement scheme under the federal No Surprises Act.

Upon failure to extend the state surprise billing reimbursement rate, New Mexico would be required to enforce the reimbursement scheme under the federal No Surprises Act. This may increase complaints from providers and delay resolution of surprise medical bills.