



**Colorado
Legislative
Council
Staff**

**Initiative #121
INITIAL FISCAL
IMPACT STATEMENT**

Date: February 6, 2018

Fiscal Analyst: Bill Zepernick (303-866-4777)

LCS TITLE: TRANSPARENCY IN HEALTH CARE BILLING

Fiscal Impact Summary	FY 2018-19	FY 2019-20
State Revenue		<u>less than \$20,000</u>
General Fund		less than \$20,000
State Expenditures	<u>\$634,099</u>	<u>\$517,143</u>
General Fund	605,920	467,624
Cash Funds	28,179	49,519

Note: This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

Summary of Measure

Initiative #121 requires the disclosure of cost, price, and billing information to consumers in the health care system. The following sections outline the specific requirements on health care providers and facilities, pharmacies, and health insurance carriers.

Health providers and facilities. Under the measure, licensed and certified health care providers and health care facilities licensed by the Colorado Department of Public Health and Environment (CDPHE) that bill consumers must make their fee schedules or chargemasters available to the public at their physical locations and on their websites. In addition, the measure specifies that health care providers must itemize billing statements and disclose information to patients about the provider or facility's participation in the patient's health insurance plan and provider network, as well as whether services will be provided by out-of-network providers at an in-network facility. The measure specifies that if a health care provider or facility has not published its fees as required, then it cannot bill the patient or third-party payer for services rendered and the patient or third-party payer is not required to pay the charges.

The measure outlines information that must be disclosed, including billing codes, service descriptions, and price, among other things. The measure requires the CDPHE to issue rules for the implementation and administration of health care provider disclosures by April 30, 2019. Health care providers and facilities must update their fee schedule at least annually and maintain a record of changes to the published fee schedule. In addition, the measure repeals, and in effect replaces, the provisions of House Bill 17-065, which took effect on January 1, 2018, and requires certain health care providers and facilities to disclose direct pay prices for their most common procedures performed.

Pharmacies. Every pharmacy is required to publish a list of its retail drug prices at its physical location and on its website. The information must be updated promptly when prices change, and the pharmacy must maintain a record of all changes to its price list. The State Board of Pharmacy in the Department of Regulatory Agencies (DORA) is required to establish rules on price disclosures by pharmacies by April 30, 2019. If the state board determines that a pharmacy does not comply with the requirements of the measure, it may suspend or revoke the license of the pharmacy, or impose a civil penalty up to \$50,000, with an additional fine imposed for each day of continued noncompliance. Fine revenue is deposited into the General Fund.

Health insurance carriers. The measure requires health insurance carriers to post on their website and make available to covered persons upon request the following information:

- the basis for determining the payment or reimbursement to a provider for a health care service rendered by the provider to a covered person, including the factors on which the payment is based and whether the payment is calculated for an in-network or out-of-network provider;
- items that appear as charges on an explanation of benefits or provider billing statement which the carrier does not pay;
- detailed information regarding coverage and negotiated payment information by plan type and participating provider; and
- prescription drug prices.

In addition, health insurance carriers must publish detailed information on all forms of remuneration derived from rebates and other forms of incentives received as a result of health care services or prescription drugs. The Commissioner of Insurance is required to promulgate rules concerning the measure's requirements on insurance carriers by April 30, 2019. If the Commissioner determines that a carrier is not complying with the provisions of the measure, the Commissioner may suspend or revoke the carrier's license, or impose a civil penalty up to \$50,000, with an additional fine for each day of continued noncompliance. Fine revenue is deposited into the General Fund.

Lastly, the measure specifies that contracts between insurance carriers and health care providers and facilities cannot contain any provision that restricts the ability of the health insurance plan, third-party payer, or health care provider to furnish patients any required information that must be published under the measure. Any such provision in a contract is void and unenforceable.

State Revenue

Initiative #121 potentially increases General Fund revenue by up to \$20,000 per year beginning in FY 2019-20. This revenue is from civil fines levied against pharmacies and health insurance carriers. Because the Commissioner of Insurance and the State Board of Pharmacy have discretion in the amount of any fine imposed, the exact revenue impact cannot be estimated. Overall, a high level of compliance is assumed, so fine revenue is expected to be less than \$20,000 per year. Based on the rule-making deadlines in the measure and assuming a period for pharmacies and insurance carriers to come into compliance, fine revenue is not expected prior to the start of FY 2019-20.

State Diversions

This measure, if enacted, will divert \$20,759 from the General Fund in FY 2018-19 and \$32,032 in FY 2019-20. This revenue diversion occurs because the measure increases costs in the Department of Regulatory Agencies, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

Initiative #121 increases state expenditures by \$634,099 and 1.7 FTE in FY 2018-19 and \$517,143 and 4.6 FTE in FY 2019-20. Costs in the CDPHE are paid from the General Fund and costs in DORA are split between the Division of Professions and Occupations Cash Fund and the Division of Insurance Cash Fund. The measure will also impact workload and potentially costs in several other state agencies. These costs are summarized in Table 1 and the discussion below.

Table 1. Expenditures Under Initiative #121		
Cost Components	FY 2018-19	FY 2019-20
Department of Public Health and Environment	<u>\$605,920</u>	<u>\$467,624</u>
Personal Services	81,558	244,672
FTE	1.4 FTE	4.0 FTE
Operating Expenses and Capital Outlay Costs	20,142	3,800
Legal Services	15,984	5,328
Printing and Postage	330,000	60,000
Website Training Module	15,000	5,000
Travel	5,280	10,560
Indirect Cost Recoveries	119,331	83,987
Employee Benefits and Insurance	18,625	54,277
Department of Regulatory Agencies	<u>\$28,179</u>	<u>\$49,519</u>
Personal Services	15,166	36,400
FTE	0.2 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	4,703	475
Legal Services	5,328	5,328
Employee Benefits and Insurance	2,982	7,316
Department of Law		
FTE	0.1 FTE	0.1 FTE
TOTAL	<u>\$634,099</u>	<u>\$517,143</u>

Colorado Department of Public Health and Environment. The CDPHE will have costs of \$605,920 in FY 2018-19 and \$467,624 in FY 2019-20. While the CDPHE currently regulates licensed health facilities such as hospitals and surgical centers, it does not presently have oversight over many of the entities required to disclose cost data to consumers such as physician offices,

dentists, medical groups, and urgent care centers, among others. In order to promote compliance with the measure, the CDPHE will have costs for staff, legal services, and provider outreach, as discussed below.

Staff expenses. The CDPHE will require 1.4 FTE in FY 2018-19 and 4.0 FTE in FY 2019-20. These staff will conduct outreach and provide technical assistance to health care providers, and respond to consumer inquiries and complaints. Salary, operating, and capital outlay costs for these personnel are shown in Table 1 above. It is assumed that staff will be hired by February 1, 2019, and costs have been prorated to reflect this start date. In the first year, staff will be responsible for establishing program rules and procedures. Staffing costs are primarily associated with outreach and inquiries concerning health care providers and facilities who are not currently regulated by the CDPHE; it is assumed that assistance and oversight can be provided for currently licensed health facilities within the existing health facility licensure program.

Legal services. In the first year, the CDPHE will have costs of \$15,984 for 150 hours of legal services for rulemaking and general counsel concerning the requirements of the measure. In future years, costs of \$5,328 are expected for 50 hours per year of ongoing legal services.

Provider outreach. To ensure that health care providers and facilities comply with the law, it is assumed that the CDPHE will conduct a multi-pronged outreach effort. After rulemaking is complete, the CDPHE will have costs to mail notices to health care providers and facilities on the disclosure requirements established pursuant to the measure. This cost is estimated based on 220,000 current licensed healthcare professionals in the first year and 20,000 new professionals in future years, and printing and postage costs of \$1.50 per mailing. It is assumed this work will be conducted by the integrated document solutions unit in the Department of Personnel and Administration. The CDPHE will also have costs to establish an online training module where providers can access more detailed information on disclosure requirements. The CDPHE will have travel costs to provide in-person training and assistance to providers and facilities, both at the request of providers and facilities and in response to consumer complaints. These costs are shown in Table 1 above.

Indirect costs and employee benefits. The CDPHE will also have costs for indirect cost recoveries and employee benefits and insurance. These costs are shown in Table 1 above.

Potential costs. The estimate above is based on the CDPHE establishing program rules and providing technical assistance and outreach to ensure provider compliance. The measure does not list a specific *enforcement* role for CDPHE. For example, it does not give the CDPHE the authority to impose a fine for noncompliance, and since most health care providers are not licensed by the CDPHE (other than licensed health care facilities), the CDPHE would not have the ability to suspend or revoke a professional license. The only enforcement remedy specified in measure is that consumers are not required to pay a bill if the provider has not published their fees as required by the measure. The measure also does not appear to require the CDPHE to monitor all health care providers and facilities to proactively and regularly ensure that they have posted their fees. To the extent that the rules established by the CDPHE are based on different assumptions and differ from the interpretation in this analysis about the role of the CDPHE in enforcing compliance, costs could increase beyond this estimate.

Department of Regulatory Agencies. DORA is required to establish rules for disclosures by pharmacies and insurance carriers. Generally, it is assumed that outreach with pharmacies and insurance carriers will be conducted within existing communication channels by staff in the Division

of Professions and Occupations and the Division of Insurance respectively. DORA requires an additional 0.2 FTE for rulemaking in the first year and 0.5 FTE to respond to respond to consumer complaints and inquiries in the second year.

Specifically, for the Division of Insurance, costs will increase by \$20,759 and 0.1 FTE in FY 2018-19 and \$32,032 and 0.3 FTE in FY 2019-20; for the Division of Professions and Occupations, costs will be \$7,419 and 0.1 FTE in FY 2018-19 and \$17,486 and 0.2 FTE in FY 2019-20. Costs for staff in both divisions are shown in Table 1 and are prorated in the first year to reflect a start date of February 1, 2019. The Division of Insurance in DORA will have increased legal services expenses (\$5,328 per year) for 50 hours of legal services relating to rulemaking and enforcement activity.

State employee health insurance. To the extent that this measure increases administrative costs for health insurance carriers and health care providers, costs for state employee health insurance may increase. Because state employee health insurance contributions are based upon prevailing market rates, with costs shared between the employer and employee, this measure is not expected to affect the state's share of employee health insurance premiums until FY 2019-20. Because insurance rates are influenced by a number of variables, the exact effect of this measure cannot be determined. Any increase caused by the measure will be addressed through the total compensation analysis included in the annual budget process.

Office of Administrative Courts and trial courts. The measure may potentially increase workload for the Office of Administrative Courts in the Department of Personnel and Administration and the trial courts in the Judicial Department in several ways. First, pharmacies and insurance carriers may challenge any enforcement action against them for noncompliance with the measure, which would likely first be heard by an administrative law judge, and potentially appealed to the trial courts. Assuming a high level of compliance, these impacts are likely minimal. Prohibiting health care providers from charging a patient if their fees or chargemaster are not published could result in litigation and increased workload for the trial courts. It is unknown how frequently such cases would arise and it is assumed that they can be accomplished by existing judicial staff. If additional appropriations are required, they will be requested through the annual budget process.

Department of Law. The Department of Law will require an additional 0.1 FTE to provide legal services to the CDPHE and DORA. The costs of this staff will be paid using reappropriated funds.

Local Government Impact

Similar to the state employee insurance impact discussed above, local governments offering health insurance coverage to their employees may experience an increase in costs. To the extent that the requirements of the measure lead to higher insurance premiums, local government costs for employee health insurance may increase. Health insurance premiums depend on a variety of factors and an exact estimate of any potential increase cannot be determined.

Economic Impact

By promoting greater transparency about costs in the health care system, Initiative #121 may help consumers more effectively spend their health care dollars and could promote greater price competition among health care providers and pharmacies, which over the long term could

lead to lower health care costs for Coloradans. However, these savings may be offset by higher administrative costs for health care providers and facilities, pharmacies, and health insurance carriers.

Effective Date

The measure takes effect on January 1, 2019, if approved by voters at the 2018 general election.

State and Local Government Contacts

Corrections
Higher Education
Judicial
Personnel

Counties
Human Services
Law
Regulatory Agencies

Health Care Policy and Financing
Information Technology
Municipalities
Public Health and Environment

Abstract of Initiative 121: TRANSPARENCY IN HEALTH CARE BILLING

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of February 5, 2018, identifies the following impacts:

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

State expenditures. Initiative #121 requires health care providers and facilities, pharmacies, and health insurance carriers to disclose prices, fees and other information to consumers. The Colorado Department of Public Health and Environment and the Department of Regulatory Agencies must establish rules and take action to implement the measure's disclosure requirements, which will increase state expenditures by \$634,099 in FY 2018-19 and \$517,143 in FY 2019-20. Additional costs may be incurred to the extent the measure leads to higher state employee insurance premiums or results in litigation in the courts.

State revenue. Initiative #121 allows fines to be levied on pharmacies and health insurance carriers that do not comply with the measure's disclosure requirements. This potentially increases state revenue from fines by up to \$20,000 per year beginning in FY 2019-20.

Local government. The measure potentially increases costs for local governments that pay for employee health insurance.

Economic impact. By promoting greater transparency about costs in the health care system, Initiative #121 may help consumers more effectively spend their health care dollars and could promote greater price competition among health care providers and pharmacies, which over the long term could lead to lower health care costs for Coloradans. However, these savings may be offset by higher administrative costs for health care providers and facilities, pharmacies, and health insurance carriers.