

SB21-085: ACTUARIAL REVIEW HEALTH INSURANCE MANDATE LEGISLATION
Concerning actuarial reviews of proposed legislation that may impose a new health benefit mandate on health benefit plans.

Details

Bill Sponsors:	Senate – Ginal (D) and Smallwood (R) House – Lontine (D)
Committee:	Senate Finance Committee <u>Senate Appropriations Committee</u>
Bill History:	2/16/2021- Introduced in Senate 3/30/2021- Senate Committee on Finance Refer Amended to Appropriations
Next Action:	Hearing in Senate <u>Finance Appropriations</u> Committee
Fiscal Note:	<u>March 22, 2021</u>

Background

The purpose of this policy brief is to provide an overview of the amended bill to the Board of Directors before discussion at the April 13, 2021 Board meeting. The track changes represent the changes that have occurred in this brief since it was presented during the March 9, 2021 Board meeting.

Bill Summary

Actuarial Review

By November 1, 2021, the Division of Insurance (DOI) is to retain an an ~~contractor~~ actuary that has experience with health care policy, equity, and actuarial reviews. The contractor is to perform actuarial reviews on proposed legislation that may impose a new health benefit mandate on health plans or reduce or eliminate mandated coverage under health benefit plans. Under the direction of the DOI, the contractor is to conduct such reviews of up to 5 legislative proposals that are being or will be considered for each regular session, at the request of a legislator, who is proposing the legislation. The contractor shall not conduct an actuarial review of a proposal unless the request is approved by the Senate President and Speaker of the House. If the DOI gets more than 5 requests, the chair of the House Health & Insurance Committee and the chair of the Senate Health & Human Services Committee shall select which legislative proposals the contractor is to review. A legislator who requests an actuarial review of the proposed legislation shall submit the request to the DOI before September 1 of the year preceding the regular legislative session for which the legislation is proposed.

An actuarial review must consider the predicted effects of the proposal during the 5 years immediately following the effective date of the proposed legislation, including:

- An estimate of the number of Coloradans who will be directly affected by the proposal
- Estimates of changes in the rates of utilization of specific health care services that may result from the proposal
- Estimates for any changes in consumer cost sharing that would result from the proposal, including information concerning who would benefit from the changes, which information, if available, must be disaggregated, at a minimum by race, ethnicity, sex, gender, and age
- Estimates of any premium increases for plans on the individual, small-group, and large-group markets (in terms of percentage increase as well as per-member, per-month charges)

- An estimate of the increases or decreases, if any, in the cost of coverage for the state employee group benefit plans, regardless of whether the proposal amends that section of statute or applies to the plans (in terms of dollar amounts)
- ~~An estimate of the increase in expenditures for Medicaid, if any, regardless whether the proposal amends that section of statute (in terms of dollar amounts)~~
- ~~An estimate of the increase in cost of coverage, if any, that would result from the proposal for employers with fewer than 100 employees, between 100 and 500 employees, and employers with 500 or more employees (in terms of dollar amounts)~~
- An estimate of the potential long-term cost savings associated with any new benefit or service described in the proposal (in terms of dollar amounts)
- Identification of any potential health benefits that would result from the proposal, including information concerning who would benefit from the changes, which information, if available, must be disaggregated, at a minimum by race, ethnicity, sex, gender, and age
- Information, if available, concerning any disproportionate effects that the proposed legislation may have on consumers as a result of their race, ethnicity, sex, gender, or age
- An estimate of the out-of-pocket health care savings associated with any new health benefit service described in the proposed legislation, including information concerning who would benefit from the changes, which information, if available, must be disaggregated, at a minimum by race, ethnicity, sex, gender, and age

In performing these reviews, the contractor shall utilize data from the all-payer claims database. Carriers are encouraged to provide information to and cooperate with the contractor and the DOI. A request for an actuarial review by a legislator and any information submitted to the contractor for the purpose of the review is work product¹ under the Colorado Open Records Act. Therefore, that request and submitted information would not be considered a public record and would not be open for public request and review. For the use of this section “health benefit plan” excludes Medicaid and the Children’s Health Plan Plus (CHP+). The Commissioner of Insurance may promulgate rules necessary to implement this section regarding the actuarial reviews. The actuarial review option is repealed in statute on November 1, 2024.

Actuarial Reviews in Fiscal Notes

In preparing a fiscal note, Legislative Council Staff (LCS) is to include the information produced by the contractor (to the extent practicable) as well as an indication of how the contractor’s entire report can be obtained. If no information is produced by the contractor for the proposal, that fact must be indicated in the fiscal note. This section requiring that LCS is to note that an actuarial review has been performed in fiscal notes is repealed November 1, 2024.

Repeal

The bill repeals current statutory language that requires entities seeking legislative action that would mandate coverage to submit a report to the committee of reference that addresses the social and financial impacts of such coverage, including the efficacy of the treatment of service proposed.

Definitions in Statute

In Article 16, Title 10, related to health care insurance, the bill adds that only in respect to the section regarding actuarial reviews does the term “health benefit plan” exclude Medicaid and CHP+.

Effective Date

The bill, subject to a petition, takes effect at 12:01am on the day following the expiration of the 90 day period after the final adjournment of the General Assembly.

¹ C.R.S. § 24-72-202(6.5)

Fiscal Note

For FY2021-22, the introduced version of the bill requires an appropriation of \$104,783 to the Department of Regulator Agencies. The following chart from the fiscal note delineates where these funds would be used. Please note that \$13,925 of the below funds would be centrally appropriated costs.

Table 2
Expenditures Under SB 21-085

	FY 2021-22	FY 2022-23
Department of Regulatory Agencies		
Personal Services	\$21,783	\$21,783
Actuarial Contractor	\$50,000	\$50,000
All-Payer Claims Database Fees	\$33,000	\$33,000
Centrally Appropriated Costs ¹	\$13,925	\$13,925
Total Cost	up to \$118,708	up to \$118,708
Total FTE	0.2 FTE	0.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Reasons to Support

Independent data could inform decisions regarding the introduction and passage of health plan benefit legislation. The analyses could help legislators see the possible costs and benefits of mandating certain services be included in the benefits package of health insurance plans regulated by the state.

Supporters

- America's Health Insurance Plans
- Anthem Blue Cross Blue Shield
- Cigna
- Colorado Association of Health Plans
- Colorado Chamber of Commerce
- Colorado Competitive Council
- Colorado Hospital Association
- Colorado State Association of Health Underwriters
- Craig Hospital
- CVS Health
- Denver Health
- Denver Metro Chamber of Commerce
- HCA- The Healthcare Company
- Healthier Colorado
- Kaiser Foundation Health Plan
- Kaiser Permanente

Reasons to Oppose

There remains concern about the timing of such analysis, it is likely that it could affect consumer engagement as many proposals generated by consumers may not occur until after the September 1st deadline. This timeline is before new legislators are elected in election years and typically well before drafts of legislation have been started. This bill could restrict health care innovation as it may tie all stakeholders' hands with a difficult timeline.

Although reviews are not mandated, it may become a de facto requirement for a bill to move forward in the legislative process.

Opponents

- Opposition has not been made public at this time Colorado Center on Law & Policy
- Colorado Consumer Health Initiative

Other Considerations

As the bill was amended in the Senate Finance committee, the bill includes more considerations regarding the equity of the changes being proposed. Further, the bill no longer includes any benefit changes to public insurance programs, like Medicaid and CHP+. The required submission by September 1, the year prior to the regular legislative session, gives more likelihood that such legislation with health benefit changes could be passed in a single legislative session. Finally, the amended bill also allows for reviews to be requested for not only benefit additions but also benefit reductions.

- Would there be enough funding to truly investigate and review the potential effects of proposed legislation?
- Would the DOI be able to find a contractor that can complete the actuarial review and also have the expertise to review the demographic impacts?

About this Brief

This brief was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. This brief is accurate to staff knowledge as of date printed. For more information about this brief or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org