

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5393 S SB	<b>Title:</b> Health provider contracting
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## Estimated Cash Receipts

NONE

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of Attorney General	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Health Care Authority	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Insurance Commissioner	8.3	0	0	2,173,821	7.9	0	0	2,009,312	7.9	0	0	2,009,312
<b>Total \$</b>	<b>8.3</b>	<b>0</b>	<b>0</b>	<b>2,173,821</b>	<b>7.9</b>	<b>0</b>	<b>0</b>	<b>2,009,312</b>	<b>7.9</b>	<b>0</b>	<b>0</b>	<b>2,009,312</b>

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

## Estimated Capital Budget Breakout

NONE

<b>Prepared by:</b> Jason Brown, OFM	<b>Phone:</b> (360) 742-7277	<b>Date Published:</b> Final 2/28/2023
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# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5393 S SB	<b>Title:</b> Health provider contracting	<b>Agency:</b> 100-Office of Attorney General
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Sandy Stith	Phone: 786-7710	Date: 02/17/2023
Agency Preparation: Dave Merchant	Phone: 360-753-1620	Date: 02/22/2023
Agency Approval: Edd Giger	Phone: 360-586-2104	Date: 02/22/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/22/2023

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

1. The Attorney General's Office (AGO) Government Compliance & Enforcement Division (GCE) has reviewed this bill and determined it will not significantly increase or decrease the division's workload in representing the Office of Insurance Commission (OIC). This bill would prohibit certain anticompetitive clauses in provider contracts between health plan carriers and hospitals or their affiliates, if that provider contract would impact health plans issued or renewed after January 1, 2024. It would not apply to most health plans that are not regulated by the OIC.

The OIC would have rulemaking authority. GCE would be asked for some small amount of legal advice relating to the implementation and rulemaking authorized by this bill. However, new legal services are nominal and costs are not included in this request.

2. The AGO Consumer Protection Division (CPR) has reviewed this bill and determined it will not significantly increase or decrease the division's workload. New legal services are nominal and costs are not included in this request.

3. The AGO Solicitor General's Office (SGO) has reviewed this bill and determined it will not significantly increase or decrease the division's workload. New legal services are nominal and costs are not included in this request.

### II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

NONE

### III. B - Expenditures by Object Or Purpose

NONE

**III. C - Operating FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

### III. D - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5393 S SB	<b>Title:</b> Health provider contracting	<b>Agency:</b> 107-Washington State Health Care Authority
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## Part I: Estimates

**No Fiscal Impact**

**Estimated Cash Receipts to:**

NONE

**Estimated Operating Expenditures from:**

NONE

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Sandy Stith	Phone: 786-7710	Date: 02/17/2023
Agency Preparation: Kate LaBelle	Phone: 360-725-1918	Date: 02/22/2023
Agency Approval: Tanya Deuel	Phone: 360-725-0908	Date: 02/22/2023
OFM Review: Marcus Ehrlander	Phone: (360) 489-4327	Date: 02/23/2023

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

See attached narrative.

### II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

See attached narrative.

### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

See attached narrative.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

NONE

### III. B - Expenditures by Object Or Purpose

NONE

**III. C - Operating FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

### III. D - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B - Expenditures by Object Or Purpose

NONE

### IV. C - Capital Budget Breakout

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

# HCA Fiscal Note

Bill Number: 5393 SSB

HCA Request #: 23-154

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This bill varies from the previous version in the following ways:

This bill no longer includes language pertaining to payment clauses in the event of an acquisition. Further, this section does not apply to independent health care provider groups, including emergency physicians, anesthesiologists, radiologists, pathologists, and hospitals that contract with hospitals to provide facility-based services, and are not otherwise affiliated with a hospital.

This version of the bill no longer requires carriers to file a declaration of compliance with the Office of the Insurance Commissioner (OIC).

Section 2 of this bill adds a new section to RCW 48.43 (Insurance Reform) to prohibit certain contract clauses for health plans issued or renewed after January 1, 2024, where such contracts are between a hospital or any affiliate of a hospital and a health carrier. This bill prohibits contracting clauses that include all-or-nothing, anti-steering, and anti-tiering. This bill prohibits contracting clauses that sets provider compensation agreements or other terms for hospital affiliates not included as participating providers.

Section 3 of this bill adds language to RCW 41.05.017 (Provisions applicable to health plans offered under this chapter) that requires health carriers to comply with Section 2 of this bill, opting the self-insured Uniform Medical Plan in alignment with Section 2 of this bill.

### II. B - Cash Receipts Impact

None

### II. C – Expenditures

#### Public Employee Benefits Board (PEBB) and School Employee Benefits Board (SEBB) Fiscal Impacts

No fiscal impact.

Section 2 of this bill adds a new section to RCW 48.43 which applies various prohibited clauses in the fully insured health carrier's future contracting and negotiations between a health carrier and hospitals and hospital affiliates.

Section 3 of this bill amends 41.05.017 that requires health plans to comply with Section 2 of this bill.

Section 2 of this bill amends RCW 48.43 which governs the fully insured health plans offered by the Public Employee Benefit Board (PEBB) and School Employees Benefits Board (SEBB) programs. This bill also applies to the self-insured Uniform Medical Plans (UMP) established and governed by RCW 41.05 due to the language in Section 3 requiring compliance with Section 2.

HCA assumes that the Office of the Insurance Commissioner (OIC) will have direct oversight of provider contracts for compliance with the provisions of this bill.

## HCA Fiscal Note

Bill Number: 5393 SSB

HCA Request #: 23-154

### **Medicaid**

No fiscal impact.

No impacts on the Medicaid lines of business because this legislation places the requirements under RCW 48.43.

### **Part IV: Capital Budget Impact**

None

### **Part V: New Rule Making Required**

None

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5393 S SB	<b>Title:</b> Health provider contracting	<b>Agency:</b> 160-Office of Insurance Commissioner
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	8.7	7.9	8.3	7.9	7.9
<b>Account</b>					
Insurance Commissioners Regulatory Account-State 138-1	1,169,165	1,004,656	2,173,821	2,009,312	2,009,312
<b>Total \$</b>	1,169,165	1,004,656	2,173,821	2,009,312	2,009,312

### Estimated Capital Budget Impact:

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Sandy Stith	Phone: 786-7710	Date: 02/17/2023
Agency Preparation: Jane Beyer	Phone: 360-725-7043	Date: 02/22/2023
Agency Approval: Michael Wood	Phone: 360-725-7007	Date: 02/22/2023
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 02/28/2023

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

Section 2(1), except as provided in subsections (2), (3), and (4) of this section, for health plans issued or renewed on or after January 1, 2024, prohibits a provider contract between a hospital or any affiliate of a hospital and a health carrier, directly or indirectly, from including any of the following provisions: An all-or-nothing clause; an antisteering clause; an antitiering clause; or any clause that sets provider compensation agreements or other terms for affiliates of the hospital that have not contracted with a carrier, or a carrier's contractor or subcontractor, to provide health care service to enrollees.

Section 2(2) provides that subsections 2(1)(b) and (c) apply only to health carrier networks in which tiering is based on quality metrics filed with the Office of Insurance Commissioner (OIC) in the provider contract.

Section 2(3) provides that the "all or nothing" and nonparticipating provider compensation prohibitions do not:

- Apply to the extent that the provisions would prevent a hospital, provider, or health carrier from participating in state-sponsored health care program, federally funded health care program, state or federal grant opportunity,
- Apply to the extent that the provisions would prevent a hospital, provider or carrier from participating in whole or part in a value-based purchasing arrangement to reduce unnecessary utilization, improve outcomes, and contain health care costs including agreements that involve financial risk.
- Apply to specialized services that are centralized in a single hospital within a health system's service area.
- Allow a carrier to exclude a hospital or an affiliate or specific hospital services where 50% or more of the total charges for that hospital or affiliate, or specific hospital services, are for Medicaid and/or Medicare.
- Allow a carrier to refuse to credential new physicians or ancillary providers who become employed by a hospital, physician group or its affiliate where the hospital or physician group have an existing contract with the carrier.

Section 2(4) allows critical access hospitals and sole community hospitals to negotiate rates on behalf of practitioners that the hospital is affiliated with.

Section 2(5) provides that the section does not apply to facility-based provider groups that are not otherwise affiliated with a hospital.

Section 3 applies the act to the PEBB/SEBB programs.

Section 4 permits OIC to conduct rulemaking to implement this act.

### II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

### II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

Section 2(1), except as provided in subsections (2), (3), and (4) of this section, for health plans issued or renewed on or after January 1, 2024, prohibits a provider contract between a hospital or any affiliate of a hospital and a health carrier, directly or indirectly, from including any of the following provisions: An all-or-nothing clause; an antisteering clause; an antitiering clause; or any clause that sets provider compensation agreements or other terms for affiliates of the hospital that have not contracted with a carrier, or a carrier's contractor or subcontractor, to provide health care service to enrollees.

Section 2(2) provides that subsections 2(1)(b) and (c) apply only to health carrier networks in which tiering is based on quality metrics filed with the Office of Insurance Commissioner (OIC) in the provider contract.

Section 2(3) provides that the “all or nothing” and nonparticipating provider compensation prohibitions do not:

- Apply to the extent that the provisions would prevent a hospital, provider, or health carrier from participating in state-sponsored health care program, federally funded health care program, state or federal grant opportunity,
- Apply to the extent that the provisions would prevent a hospital, provider or carrier from participating in whole or part in a value-based purchasing arrangement to reduce unnecessary utilization, improve outcomes, and contain health care costs including agreements that involve financial risk.
- Apply to specialized services that are centralized in a single hospital within a health system’s service area.
- Allow a carrier to exclude a hospital or an affiliate or specific hospital services where 50% or more of the total charges for that hospital or affiliate, or specific hospital services, are for Medicaid and/or Medicare.
- Allow a carrier to refuse to credential new physicians or ancillary providers who become employed by a hospital, physician group or its affiliate where the hospital or physician group have an existing contract with the carrier.

Section 2(4) allows critical access hospitals and sole community hospitals to negotiate rates on behalf of practitioners that the hospital is affiliated with.

Section 2(5) provides that the section does not apply to facility-based provider groups that are not otherwise affiliated with a hospital.

Section 3 applies the act to the PEBB/SEBB programs.

Sections 2 and 3 will increase the number of provider contracts received and require the OIC to develop and apply a new review standard for health provider contracts. Currently, hospital delivery systems are permitted to negotiate a single provider contract and compensation exhibit for an entire hospital delivery system (meaning multiple hospitals and/or affiliates) or negotiate single hospital-by-hospital contracts and compensation exhibits with a health carrier. Health carriers file approximately 575 hospital provider contracts each year and it takes approximately 2 hours of review time per filing. As a result of this bill, the total review time per filing will increase to 4 hours beginning in FY2024 requiring an additional 1,150 hours (575 provider contract filings x 2 additional hours of review) of a Functional Program Analyst 4 (FPA4) (190 hours) and a Functional Program Analyst 3 (FPA3) (960 hours). Additionally, the OIC assumes health carriers will convert some of their previous contracts to individual contracts to address the different exceptions in Section 2(2) and (3) with an average of 10 entities that were previously included in a single provider contract. It is estimated that 50% of the current provider contracts filed will include at least one or more of the exceptions to specific hospitals or affiliates named in the contract and will result in health carriers entering into new contracts with 10 hospital delivery system entities, i.e. hospitals or affiliated entities. Therefore, it is anticipated an additional 2,875 hospital provider contracts (575 provider contract filings x 50% x 10 new entities) will be filed each year, beginning in FY2024, requiring 11,500 hours (2,875 filings x 4 hours) of a FPA4 (1,917 hours) and FPA3 (9,583 hours). The OIC will also require one-time costs, in FY2024, of 16 hours of a FPA4 to develop new review standards, update checklist documents and filing instructions, and train staff.

The provisions in Sections 2 and 3 will lead to an increase in enforcement actions. The OIC anticipates an average of two additional enforcement action per year to address allegations specific to health provider contracts. Enforcement actions require the equivalent of approximately 40 hours per case requiring 80 hours (2 cases x 40 hours) of an Insurance Enforcement Specialist beginning in FY2024.

Section 4 authorizes the OIC to adopt rules necessary to implement this act. ‘Complex’ rulemaking, in FY2024, will be required.

Ongoing costs:

Salary, benefits and associated costs for 6.51 FTE Functional Program Analyst 3, 1.30 FTE Functional Program Analyst 4, and .05 FTE Insurance Enforcement Specialist.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
138-1	Insurance Commissioners Regulatory Account	State	1,169,165	1,004,656	2,173,821	2,009,312	2,009,312
<b>Total \$</b>			1,169,165	1,004,656	2,173,821	2,009,312	2,009,312

### III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	8.7	7.9	8.3	7.9	7.9
A-Salaries and Wages	672,463	587,137	1,259,600	1,174,274	1,174,274
B-Employee Benefits	243,669	216,588	460,257	433,176	433,176
C-Professional Service Contracts					
E-Goods and Other Services	229,033	200,931	429,964	401,862	401,862
G-Travel					
J-Capital Outlays	24,000		24,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total \$</b>	1,169,165	1,004,656	2,173,821	2,009,312	2,009,312

### III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Functional Program Analyst 3	73,260	6.5	6.5	6.5	6.5	6.5
Functional Program Analyst 4	80,952	1.5	1.3	1.4	1.3	1.3
Insurance Enforcement Specialist	99,516	0.1	0.1	0.1	0.1	0.1
Senior Policy Analyst	108,432	0.7		0.3		
<b>Total FTEs</b>		8.7	7.9	8.3	7.9	7.9

### III. D - Expenditures By Program (optional)

NONE

## Part IV: Capital Budget Impact

### IV. A - Capital Budget Expenditures

NONE

### IV. B - Expenditures by Object Or Purpose

NONE

### IV. C - Capital Budget Breakout

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**IV. D - Capital FTE Detail:** *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

## **Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

Section 4 authorizes the Office of Insurance Commissioner (OIC) to adopt rules necessary to implement this act. 'Complex' rulemaking, in FY2024, will be required.