Evaluation of HF785-1E

Report to the Minnesota Legislature pursuant to Minn. Stat. §62J.26

01/25/2022

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Executive Summary

House File 785-1E requires health plans to provide coverage for acupuncture services specifically related to treatment of ongoing pain. Commerce has determined that the bill would be a new state mandated benefit under the Affordable Care Act (ACA), which would require defrayal of costs by the state. The projected cost to the state due to SEGIP fiscal impact is approximately $107,000. The defrayal cost associated with the new benefit mandate is projected to be between $150,000 and $950,000.

Introduction and Policy Context

Pursuant to Minn. Stat. § 62J.26, subd. 3, the Minnesota Department of Commerce (Commerce) has been requested to perform an evaluation of House File 785-1E. The purpose of the evaluation is to provide the legislature with a detailed analysis of the potential impacts of any mandated health benefit proposal. House File 785-1E was introduced during the 2021-2022 legislative session and meets the definition of a mandated health benefit proposal. Per statute, mandated health benefit proposals include legislation that would:

(i) provide coverage or increase the amount of coverage for the treatment of a particular disease, condition, or other health care need;

(ii) provide coverage or increase the amount of coverage of a particular type of health care treatment or service or of equipment, supplies, or drugs used in connection with a health care treatment or service;

(iii) provide coverage for care delivered by a specific type of provider;

(iv) require a particular benefit design or impose conditions on cost-sharing for:

(A) the treatment of a particular disease, condition, or other health care need;

(B) a particular type of health care treatment or service; or

(C) the provision of medical equipment, supplies, or a prescription drug used in connection with treating a particular disease, condition, or other health care need; or

(v) impose limits or conditions on a contract between a health plan company and a health care provider.

A mandated health benefit proposal does not include health benefit proposals amending the scope of practice of a licensed health care professional.

Commerce is required to consult with the Departments of Health (MDH) and Management and Budget (MMB). Per statute, evaluations must focus on the following areas:

- Scientific and medical information regarding the proposal, including potential for benefit and harm
- Overall public health and economic impact
- Background on the extent to which services/items in the proposal are utilized by the population
- Information on the extent to which service/items in the proposal are already covered by health plans, and to which health plans the proposal would impact
- Cost considerations regarding the potential of the proposal to increase cost of care, as well as its potential to increase enrollee premiums in impacted health plans

- The cost to the State if the proposal is determined to be a mandated benefit under the Affordable Care Act (ACA)

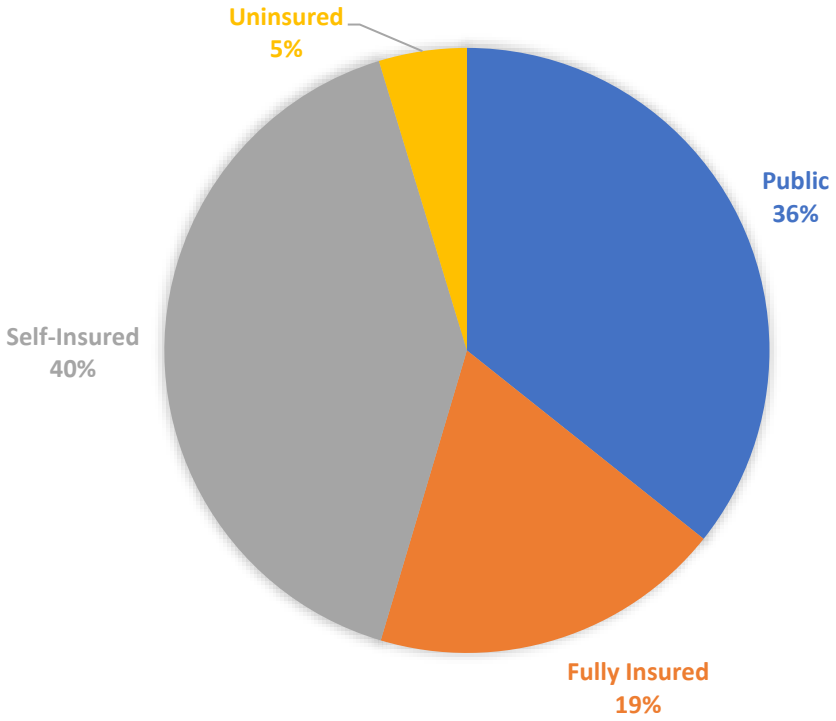
Bill Requirements and Impact

House File 785-1E requires regulated health plans in Minnesota to provide coverage for acupuncture services related to ongoing pain management. The bill also prohibits health plans from imposing any prior authorization requirements until after an enrollee has had 30 visits.

The full text of the bill is available in the Appendix of this document.

The bill would apply to all fully insured health plans regulated in Minnesota, as well as the State Employee Group Insurance Program (SEGIP). Requirements in the bill would not apply to self-insured employer plans, grandfathered plans, and Medicare and Medicare supplemental policies. Figure 1 shows a breakdown of health insurance coverage in Minnesota by type (including uninsured).

Figure 1. Minnesota Insurance Coverage 2019



Source: Minnesota Department of Health. Chartbook Section 2. Trends and Variations in Health Insurance Coverage. Accessed at https://www.health.state.mn.us/data/economics/chartbook/docs/section2.pdf.

State and Federal Law

This evaluation considers the interaction between state and federal law—specifically as it pertains to the potential for the bill to be considered a state benefit mandate understood under Section 1311(d)(3) of the ACA (45 CFR § 155.170), which indicates that new mandates related to specific care, treatment, or services not offered under the general essential health benefits (EHB) package in the state prior to January 1, 2012 must

have associated costs defrayed by the state. The state is only required to defray associated costs that would not have been provided by the health carrier without the requirements of the new mandate.

Per the EHB final rule[1], costs associated with benefit mandates passed prior to or on December 31, 2011 do not need to be defrayed by the state.

Evaluation of Mandated Health Benefit Proposal

Commerce's evaluation of HF785-1E included the following elements to meet criteria under Minn. Stat. §62J.26:

- Solicitation of feedback from potential stakeholders by publishing a request for information notice in the State Register
- Scoping review of available literature in PubMed
- Hybrid umbrella/systematic literature review of available resources
- Consultation with the Department of Health and MMB
- Solicitation of comments from health plans, including request for actuarial analysis
- Internal actuarial analysis

Additional information regarding the Department's literature review and search protocol may be found in the Appendix.

In Commerce's evaluation, the requirements of HF785-1E constitute a benefit mandate requiring state defrayal of associated costs. The requirements are related to specific care, treatment or services not currently covered by the benchmark plan, meaning the bill is considered a new benefit mandate requiring defrayal of costs from the state.

Scientific and Medical Analysis

Scientific and Medical Background

Chronic or ongoing pain is a complex health issue. Chronic pain can be attributed to a number of complicated factors, including a single (or multiple injuries). Chronic pain has a psycho-social component that is still not well-understood. Consequently, treatment for chronic pain is complex, multidisciplinary, and continues to evolve.

Despite having existed and having been practiced for centuries, acupuncture has only more recently increased in popularity in the U.S. and is becoming more recognized as one type of intervention for ongoing pain. Studies regarding acupuncture as an intervention when compared to placebo intervention for chronic low back pain, which is one of the most common forms of chronic pain in the U.S., have shown there is effectiveness to the treatment.[2][3]

Potential for Harm or Benefit

Overall, the potential for harm resulting from the passage of HF785-1E would be low. Chronic or ongoing pain impacts approximately 20 percent of the U.S. population. Among that 20 percent, a maximum of 50 percent

[1] 45 CFR Parts 147, 155, and 156 Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; Final Rule. Accessed at https://www.govinfo.gov/content/pkg/FR-2013-02-25/pdf/2013-04084.pdf.

[2] E Manheimer, A White, B Berman, K Forys, E Ernst Meta-analysis: acupuncture for low back pain. Ann Intern Med, 142 (2005), pp. 651-663

[3] https://www.hopkinsmedicine.org/health/conditions-and-diseases/chronic-pain

seek out acupuncture as a treatment. Although a new benefit mandate, the uptake of acupuncture services for treatment of ongoing or chronic pain is considered to be low. This assumption is based on estimations of prevalence of chronic pain and the projected number of individuals likely to seek out acupuncture services as an intervention.

A benefit of increased acupuncture coverage for chronic/ongoing pain, is the potential for reduction in opioid use. Studies are emerging demonstrating acupuncture as a useful alternative to opioids in adults.[4]

Public Health, Economic, and Fiscal Impact

For the purposes of this section, the following definitions apply:

Public Health: The science and practice of protecting and improving the health and wellbeing of people and their communities. The field of public health includes many disciplines, including medicine, public policy, biology, sociology, psychology and behavioral sciences, and economics and business.

Economic Impact: The general financial impact of a drug, service, or item on the population prescribing or utilizing a particular drug, service or item for a particular health condition.

Fiscal Impact: The quantifiable dollar amount associated with the implementation of the mandated health benefit proposal. The areas of potential fiscal impact that the Department reviews for are for the cost of defrayal of benefit mandates as understood under the ACA, the cost to SEGIP, and the cost to other state public programs. The fiscal impact is expressed in number of dollars required for the state to implement a proposal.

Public Health

Acupuncture as a treatment modality for ongoing pain is less invasive (especially compared to surgical intervention) and less negatively habit-forming (especially compared to opioids) than certain interventions that are or were commonly used. Expanding access to acupuncture treatment could have a positive impact on overall public health, assuming individuals with ongoing pain opt to seek out treatment.

Economic

Commerce assumes the economic impact of HF785-1E would not be substantive. This assessment is based on the narrow scope of the bill, which only mandates coverage for ongoing pain, as well as the expectation that acupuncture as an intervention for ongoing pain is not always the most frequently used intervention. Commerce anticipates an increase in overall utilization if HF785-1E were to become law but assumes that a slight increase in utilization would not alter the cost of acupuncture services or ongoing pain treatment services.

Fiscal

Commerce concludes that HF785-1E, if signed into law, would have a fiscal impact on the state. Acupuncture services in general are not covered under the state's benchmark plan, and therefore adding a requirement for the services to be covered would constitute a new state mandated benefit, requiring defrayal of cost.

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[4] Davis RT, Badger G, Valentine K, Cavert A, Coeytaux RR. Acupuncture for Chronic Pain in the Vermont Medicaid Population: A Prospective, Pragmatic Intervention Trial. Glob Adv Health Med. 2018 Apr 10;7:2164956118769557. doi: 10.1177/2164956118769557. PMID: 29662722; PMCID: PMC5896847.

Analysis by MMB concludes that there would also be a fiscal impact to SEGIP. While acupuncture is already a covered service for SEGIP, MMB estimates that an increase in utilization as a result of enactment of the bill would add costs to the plan. The following illustrates the estimated fiscal impact to SEGIP:

Table 2 – Estimated Cost of Acupuncture Coverage to SEGIP

Fiscal Year	2022	2023	2024	2025
State Fiscal Impact (SEGIP)[5]	$0	$50,992	$107,083	$112,437

In addition to the above fiscal impact from SEGIP, Commerce estimates annual defrayal costs ranging from $150,000 up to $950,000. More information on this is included the premium and ACA analysis sections.

Current Utilization

Commerce consulted with the Department of Health (MDH) which estimated accupuncture prevalence, utilization of services, and paid prices based on available data from the Minnesota All Payer Claims Database (MN APCD). In reviewing results for all Minnesotans with commercial health insurance plans that report data to the MN APCD, as well as for the subset of those Minnesotans who are covered by plans offered through the small group or individual markets in 2019, 17 percent (or 16,840 per 100,000) of Minnesotans covered by commercial insurance plans that report data had at least one pain diagnosis. In the individual and small group markets, 15 percent (or 14,980 per 100,000) had at least one pain-related diagnosis.

The five most common pain-related diagnoses in the APCD were:

- Pain in joint (ICD-10 M25.50-M25.579)
- Pain, not elsewhere specified (ICD-10 G89.0-G89.4)
- Osteoarthritis (ICD-10 M15.0-M19.93)
- Migraine (ICD-10 G43.001-G43.919)
- Spondylosis & other spondylopathies (ICD-10 M47.011-M48.38)

It was not uncommon for individuals to have more than one type of pain diagnosis.

In 2019, 7,999 (three percent) of 250,426 Minnesotans with commercial coverage in the MN APCD with at least one pain-related diagnosis had at least one paid health care claim in 2019 for an acupuncture service.

[5] Figures in this table represent the cost to the state from SEGIP impact. The total cost impact to the SEGIP plan—specifically, adding in the employee share of the overall premium—will be higher.

Similarly, 682 (one percent) of 64,287 Minnesotans with individual or small group coverage with at least one pain-related diagnosis had at least one paid claim for acupuncture. Commerce does not have data regarding how many Minnesotans in any of these markets received acupuncture treatment outside of their pan networks.

Tables 1a (all commercial plans in the MN APCD) and 1b (small group and individual plans in the MN APCD) show the total number of claims and paid amounts for each acupuncture service, and overall, for 2019:

Table 1a. Claims and Paid Amounts for Acupuncture Services among Commercially Insured Minnesotans with Pain, 2019.

Type of Service	Number of Insured with Pain Dx AND ≥ 1 Acupuncture Claim	Total Claims	Total Paid (plan + patient)	Patient Paid per Unit	Plan Paid per Unit	Total Paid (plan + patient) per Unit
ACUPUNCTURE 1/> NDLES W/O ELEC STIMJ INIT 15 MIN (97810)	7,569	57,198	$2,486,141.77	$12.09	$31.38	$43.47
ACUPUNCTURE 1/> NDLS W/O ELEC STIMJ EA 15 MIN (97811)	4,484	37,537	$1,024,797.85	$3.46	$23.84	$27.30
ACUPUNCTURE 1/> NDLS W/ELEC STIMJ 1ST 15 MIN (97813)	858	4,330	$178,797.95	$12.73	$28.56	$41.29
ACUP 1/> NDLS W/ELEC STIMJ EA 15 MIN W/RE-INSJ (97814)	583	3,433	$181,411.16	$8.63	$44.22	$52.84
TOTAL	**7,999**	**102,498**	**$3,871,148.73**	**$8.84**	**$28.93**	**$37.77**

Source: Health Economics Program (MDH) analysis of data in the Minnesota All Payer Claims Database (MN APCD). Note that commercial plans covered by ERISA are not required to report data to the MN APCD.

Current Health Insurance Coverage

Health plans offering EHBs must provide coverage substantially equal to that of the state's benchmark plan. The HealthPartners Open Access Choice Small Employer health plan from 2017 is Minnesota's benchmark plan, and specifically indicates it does not cover acupuncture services for its enrollees. Other health plans must make sure

that individual policies and small group policies that they sell are substantially equal in benefits relative to the state benchmark plan. Other carriers may offer acupuncture services, but generally are not required to do so if the benchmark plan does not.

Impact on Insurance Benefits

House File 785 applies coverage requirements to individual health plans, group health plans, health carriers, health maintenance organizations (HMOs) and health service plan corporations defined under Minn. Stat. §62A.011, as well as to health plan companies defined under Minn. Stat. §62Q.01. House File 785-1E does not apply to self-insured employer plans, Medicaid, MinnesotaCare, Medicare, or Medicare supplemental policies.

Impact on Health Insurance Premiums

Commerce performed an analysis of the potential impact on healthcare premiums. The Department assumed:

- 15.0-20.4% of the insured population has chronic or ongoing pain
    - 2-5% of people with chronic or ongoing pain currently use acupuncture for treatment
    - 10-30% increase in utilization due to mandate
- There is no strong evidence supporting an expected number of acupuncture visits for treatment of ongoing pain
    - Generally, most acupuncture patients receive about six to eight sessions.[6]

Based on these assumptions, Commerce estimates that the premium impact associated with HF785-1E would range from $0.01 to $0.60 PMPM.

Summary of Public Comments

Commerce placed a request for information in the November 22, 2021 publication of the State Register, soliciting comments regarding all mandated health benefit proposals, including HF785-1E. The Department received feedback from health plans, generally. No specific comments from a stakeholder or advocacy group were submitted for this bill.

In summary, the comments received from health plans affirmed the Department's analysis regarding the overall impact HF785-1E and the potential for it to increase enrollee premiums by a small degree. According to their comments, they mirrored the Department's analysis that there would likely be an increase in utilization.

ACA Benefit Mandate Impact and Analysis

The benchmark plan in Minnesota does not cover acupuncture, and in fact specifically excludes the service. Other health plans offering EHBs may currently provide coverage for acupuncture, but this would still be a state mandated benefit as understood under the ACA.

Using the same assumptions regarding premium increases for HF785-1E, and expected increases in utilization, the Department estimates a range of that the cost for defrayal between $150,000 to $950,000.. The state would be required to defray costs back to health plans offering QHPs one year following passage of the bill.

[6] https://www.mayoclinic.org/tests-procedures/acupuncture/about/pac-20392763

Appendix

Bill Text

A bill for an act
relating to health; providing health plan coverage for certain acupuncture services;
proposing coding for new law in Minnesota Statutes, chapter 62Q.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [62Q.523] COVERAGE FOR ACUPUNCTURE SERVICES.
(a) Health plans must cover acupuncture services for the treatment of pain and ongoing pain management when those services are performed by a person who is authorized to practice acupuncture.
(b) Coverage under this section must include at least 30 visits for acupuncture services before a health plan company can require a prior authorization for further acupuncture services.

EFFECTIVE DATE. This section is effective January 1, 2022, and applies to health plans offered, issued, or renewed to a Minnesota resident on or after that date.

Associated Codes

Diagnosis (ICD-10) Code(s):

A18.01 -- Tuberculosis of spine
E89.41 -- Symptomatic postprocedural ovarian failure
F45.41 -- Pain disorder exclusively related to psychological factors
G43.001-G43.919 -- Migraine
G44.001-G44.59 -- Other headache syndromes
G50.0 -- Trigeminal neuralgia
G89.0-G89.4 -- Pain, not elsewhere classified
M00.9 -- Pyogenic arthritis, unspecified
M06.4 -- Inflammatory polyarthropathy
M07.60-M07.69 Enteropathic arthropathies
M12.50-M12.59 -- Traumatic arthropathy
M12.80-M12.9 -- Other specific arthropathies, not elsewhere classified
M13.0 -- Polyarthritis, unspecified
M13.10-M13.179 -- Monoarthritis, not elsewhere classified
M13.80-M13.89 -- Other specified arthritis
M15.0-M19.93 -- Osteoarthritis
M25.50-M25.579 -- Pain in joint
M43.8X8 -- Other specified deforming dorsopathies, sacral and sacrococcygeal region
M43.8X9 -- Other specified deforming dorsopathies, site unspecified
M45.0-M46.1 -- Ankylosing spondylitis & other inflammatory spondylopathies
M46.50-M46.99 -- Other and unspecified infective and inflammatory spondylopathies
M47.011-M48.38 -- Spondylosis & other spondylopathies
M48.50XA-M48.9 -- Spondylosis & other spondylopathies
M49.80-M49.89 -- Spondylopathy in diseases classified elsewhere
M50.20-M50.23 -- Other cervical disc displacement
M50.90-M50.93 -- Cervical disc disorder, unspecified
M51.24-M51.27 -- Other thoracic, thoracolumbar and lumbosacral intervertebral disc displacement

; with electrical stimulation, each additional 15 minutes of personal one-on-one contact with the patient, with re- insertion of needle(s) (List separately in addition to code for primary procedure)

HCPCS Code(s):

NDC Code(s):

N/A

Description of Review

The Department performed an umbrella review of available information related to acupuncture treatment related to chronic or ongoing pain. An umbrella review is similar to a systematic literature review, but with a focus on reviewing relevant information or studies that are essentially other systematic reviews and/or meta-analyses. This approach allows for gathering of significant high-level, but pertinent, information regarding the topic being researched.

The Department searched PubMed utilizing combinations of the terms “chronic pain,” “ongoing pain,” “long-term pain,” “treatment,” “standard of care,” “experimental,” “investigative,” “alternative treatment,” and “comparative analysis.” The search limited these terms to peer-reviewed articles published in the last 20 years.

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