FISCAL NOTE

The fiscal impact, in the form revenue decreases and expenditure increases, is indeterminable, but could be significant.

In discussions with other states with similar laws, the Dept. of Enterprise Technology Services (ETS) has determined that it will be difficult to estimate an accurate cost to ETS. This bill requires agencies to delete and deidentify data, which can be costly, especially to legacy systems that do not currently have that functionality. It is unknown how many systems or at what total cost it would take to upgrade. ETS is unable to determine a reasonable estimate at this time.

According to the Dept. of Health (DOH), this bill would result in an incalculable but potentially significant revenue decrease because of the impossibility of securing express written authorization from every DOH client for every data purchase or transfer from vendors or with the federal government, as would be required in the bill in the proposed W.S. 9-21-202(a). These revenue decreases could reach up to a $350 million per year in Federal Medicaid Funds (Federal Medical Assistance Percentage (FMAP)), up to $6 million per year in Medicaid Estate Recovery Funds and up to $27 million per year in third party liability cost avoidance funds. These three major areas are not an exhaustive list. Although the bill provides an exception for transfers to occur without written consent as otherwise provided by law, federal law such as the HIPAA Privacy Rule does not preempt or override more stringent state privacy laws. Instead, HIPAA expressly provides that more stringent state law controls and limits the uses and disclosures that the HIPAA Privacy Rule would otherwise permit. The DOH would need to secure written consent for all transfers under the bill and could no longer rely on broad permissions under the HIPAA Privacy Rule, such as disclosures for treatment, payment, healthcare operations, public health activities, and under other scenarios generally not requiring individuals to execute an authorization to permit the use or disclosure of their protected health information. While an express permission for data sharing might be added to the Medicaid application (at cost), some eligibility groups, such as Supplemental Security Income and Foster Care Children also have automatic eligibility and thus would not be presented with such a form. Wyoming Medicaid could ultimately fail to comply with significant data sharing requirements (e.g., the required submission of all claims and eligibility data to the federal government). The loss of the ability to match clients with private insurers or conduct asset verification through data purchases would negatively impact some, if not all, of the revenue received from the Supplemental Security Income and Foster Care Children programs. In addition to the direct loss of third-party revenue (e.g., other insurers, estates of deceased Medicaid members), the federal Centers for Medicare and Medicaid Services (CMS) could withhold any amount of the Medicaid federal matching funds for failure to comply with required recovery and cost avoidance provisions, as well as the submission of claims and eligibility data for compliance purposes.

The Wyoming Retirement System (WRS) states that it transfers personal data to several vendors to conduct actuarial analysis of the WRS Retirement Fund (Fund), to pay benefits, to report taxes (1099R issuance), to audit for unreported deaths and to locate missing participants (address updates). All these duties are required, either by Wyoming statute or federal law & regulation, typically from the Dept. of Treasury (IRS) or Dept. of Labor (DOL). How this is done is typically not specified. It could be done internally or by employing a vendor (implying data transfer or purchase (i.e. dates of death). Federal requirements revolve around compliance of the plan in accordance with section 401a of the Internal Revenue Code (IRC) and guidance from DOL regarding procedures to safeguard funds withheld from employee pay or paid by the employer as part of compensation. These include requirements to maintain contact with members (address updates) and to pay benefits properly (death audits, end or transfer benefits upon death, etc). Our fiduciary duties include these requirements. The tax-advantage status of the WRS Retirement Fund depends on compliance. If the IRS or DOL were to determine in an audit that WRS was not making sufficient efforts in these areas per their “best practices guidance” (which includes utilizing vendors to locate participants) then WRS could be found in violation of our fiduciary duties and lose the tax qualification status of the WRS Retirement Fund.

According to the Dept. of Workforce Services (DWS), the duties proposed in W.S. 9-21-202(c) requiring an investigation has the potential to require additional personnel and expenditures, which are indeterminable at this time.

According to the Wyoming Community College Commission (Commission), this bill would place added requirements on the Commission, and by extension, the community colleges and other partners for which the Commission is responsible to administer data systems, such as the State Longitudinal Education Data System (SLEDS), the College Administrative Computing system (CACS) and other data systems. The fiscal impact of these added requirements is indeterminable at this time.

The Dept. of Education indicates concerns regarding the feasibility of implementing the requirements outlined in the bill. The associated administrative and financial impact is indeterminable without additional information.

The Wyoming Game and Fish Department anticipates a total expenditure increase of $2,305 due to the staff time required to develop policies and practices to be in compliance with the bill. Policy development and a request to retain personal data beyond three years for hunting and fishing licensing history, law enforcement purposes and hunting preference point data is expected to take approximately 38 hours of administrative time at an hourly rate of $60.66.

According to the Attorney General’s Office, this bill will create additional workload. However, it will not have a fiscal impact on the Attorney General’s Office.

The Governor’s Office, the Secretary of State’s Office, the State Auditor’s Office, the Dept. of Administration & Information, the Dept. of Transportation, and the Dept. of Family Services indicated that the bill would have no significant fiscal nor personnel impact of their agency.

NOTICE-AGENCY ESTIMATE OF ADMINISTRATIVE IMPACT REQUESTED

This bill has administrative impact that appears to increase duties or responsibilities of one or more state agencies and may impact agency spending or staffing requirements. As introduced, the bill does not modify any state agency budget or current personnel authorizations.
The following state agencies will be asked to provide their estimate of the administrative fiscal impact prior to the first committee meeting held to consider the bill:

Retirement System
Department of Health
University of Wyoming
Department of Parks and Cultural Resources

Prepared by: Dean Temte, LSO Phone: 777-7881
(Information provided by Alex Kean, University of Wyoming, 307-766-9028;
Caryn Erickson, Department of Parks and Cultural Resources, 777-6538;
Franz Fuchs, Department of Health, 777-2865;
Dave Swindell, Retirement System, 777-5994;
Kirsten Anderson, Enterprise Technology Services, 307-275-6193;
Ivy Castleberry, Department of Workforce Services, 777-8229;
Michael Swank, Community College Commission, 777-7068;
Trent Carroll, Department of Education, 777-7720;
Meredith Wood, Game and Fish Department, 777-4618;
Steve Winders, Attorney General's Office, 777-7840
Rory L. Horsley, Governor’s Office, 777-5010;
Jesse Naiman, Secretary of State’s Office, 777-5873;
Kristi Racines, State Auditor’s Office, 777-7831;
Rory L. Horsley, Dept. of Administration & Information, 777-5010;
Rodney Freier, Jr., Dept. of Transportation, 777-4174;
Roxanne O’Connor, Dept. of Family Services, 777-6101)