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FINAL FISCAL NOTE

Drafting Number: LLS 20-0376 Date: September 14, 2020
Prime Sponsors: Rep. Buckner Bill Status: Postponed Indefinitely
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Bill Topic: PHARMACY BENEFITS CARRIER & PBM REQUIREMENTS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Diversion, TABOR Refund, Local Government, Statutory Public Entity

The bill would have required health insurance carriers and pharmacy benefit management firms to report specified information related to compensation to state regulators, and prohibited certain business practices in this industry. It would have increased state expenditures and diverted revenue from the General Fund on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill would have required an appropriation of \$53,860 to the Department of Regulatory Agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1 State Fiscal Impacts Under HB 20-1198

Table with 4 columns: Category, Sub-category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total, Total FTE), Diversions (General Funds, Cash Funds, Total), and TABOR Refund.

Summary of Legislation

The bill requires health insurance carriers and pharmacy benefit management firms (PBMs), as applicable, to submit the following information to the Division of Insurance (DOI) within the Department of Regulatory Agencies:

- a list of all PBMs that a carrier uses;
- its program for compensating pharmacies and pharmacists and its prescription drug formulary for the next benefit year; and
- the amount that the PBM expects to receive from a carrier for pharmacist services that are eligible for reimbursement under the health benefit plan.

The Commissioner of Insurance is authorized to adopt rules to facilitate this reporting. In addition, carriers and PBMs must submit specified itemized claims data to the DOI and the All Payer Claims Database annually, or more frequently if required by the Commissioner of Insurance by rule. The commissioner may review the compensation programs to ensure that reimbursement for pharmacist services paid to a PBM is fair and sufficient to provide network adequacy.

Beginning in 2021, health insurance carriers and PBMs are prohibited from the following:

- using or allowing untrue or misleading advertising or promotion;
- charging a fee for the adjudication of a pharmacist's claim;
- requiring pharmacy accreditation standards inconsistent with or more stringent than those required by the State Board of Pharmacy;
- reimbursing an independent pharmacy or pharmacist an amount less than the amount paid to an affiliate for providing the same services; and
- modifying its prescription drug formulary during a benefit year.

In addition, the bill establishes that termination of a pharmacy or pharmacist from a network does not release a health insurance carrier or PBM from payment obligations for services previously rendered.

Health insurance carriers that use PBMs must ensure that the PBM complies with the requirements of this bill, and must periodically audit them in order to accomplish this. Failure to comply constitutes an unfair method of competition and unfair or deceptive act or practice in the business of insurance. The DOI may audit insurance carriers and PBMs to ensure compliance with the bill; data acquired in such an audit is deemed confidential and not subject to the Colorado Open Records Act.

State Revenue

State revenue may increase from fines on health insurance carriers for noncompliance. The fiscal note assumes a high level of compliance and that any fine revenue will be minimal. Fine revenue is deposited into the General Fund and is subject to state revenue limits under TABOR.

State Diversions

The bill diverts an estimated \$70,171 from the General Fund to the Division of Insurance Cash Fund in FY 2020-21 and \$63,382 in FY 2021-22 and future years. This revenue diversion occurs because the bill increases costs in the DOI, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures in the Department of Regulatory Agencies by an estimated \$70,171 in FY 2020-21 and \$63,382 in FY 2021-22 and future years. These costs are shown on Table 2 and described below.

**Table 2
Expenditures Under HB 20-1198**

	FY 2020-21	FY 2021-22
Department of Regulatory Agencies		
Personal Services	\$46,715	\$46,715
Operating Expenses	\$945	\$945
Capital Outlay	\$6,200	-
Centrally Appropriated Costs*	\$16,311	\$15,722
Total Cost	\$70,171	\$63,382
Total FTE	0.7 FTE	0.7 FTE

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

Department of Regulatory Agencies. DOI staff will review the annual filings required by the bill. The fiscal note assumes the bill creates 150 new filings from carriers and PBMs, requiring an average of 10 hours to review. This total includes the time required to develop a reporting structure, adopt rules, and conduct audits of carriers and PBMs.

Department of Personnel. The Department of Personnel and Administration administers the state employee health insurance plans, which will be subject to the requirements of the bill. Insurance carriers that offer these plans may experience cost increases to comply with the bill, including reporting to the state and costs related to the inability to charge fees for claim adjudication. Any cost increase could contribute to higher insurance premiums, which would be shared by state agencies and employees. Because insurance rates are influenced by a number of variables and the cost split between the state and state employees has not been determined, the impact of this bill on premiums is not estimated.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$16,311 in FY 2020-21 and \$15,722 in FY 2021-22.

Effective Date

The bill was postponed indefinitely by the House Health and Insurance Committee on June 10, 2020.

State Appropriations

For FY 2020-21, the bill requires an appropriation of \$53,860 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and 0.7 FTE.

State and Local Government Contacts

Health Care Policy and Financing
Public Health and Environment

Personnel
Regulatory Agencies