



Legislative Council Staff
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Final Fiscal Note

Drafting Number:	LLS 22-0251	Date:	September 12, 2022
Prime Sponsors:	Rep. Jodeh; Sirota Sen. Winter; Buckner	Bill Status:	Senate HHS
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Bill Topic: COVERAGE REQUIREMENTS FOR HEALTH-CARE PRODUCTS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Diversion	<input type="checkbox"/> Statutory Public Entity

The bill modifies prescription drug coverages, prohibits changes in a carrier's prescription drug coverage formulary during the plan year, and requires reporting and analysis on prescription drug rebates. It increases state expenditures and diversions on an ongoing basis beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$252,667 to the Department of Regulatory Agencies.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under HB 22-1370**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	Cash Funds	\$252,667	\$183,782
	Centrally Appropriated	\$55,213	\$53,748
	Total Expenditures	\$307,880	\$237,530
	Total FTE	1.7 FTE	2.0 FTE
Diversions	General Fund	(\$307,880)	(\$237,530)
	Cash Funds	\$307,880	\$237,530
	Net Diversion	\$0	\$0
Other Budget Impacts		-	-

Summary of Legislation

Beginning January 1, 2023, the bill requires that health insurance carriers that offer an individual or small group health benefit plan to Coloradans to offer at least 25 percent of its plans on the Colorado Health Benefit Exchange and at least 25 percent of its plans not on the exchange in each bronze, silver, gold, and platinum benefit levels in each service area as copayment-only payment structures for all prescription drug cost tiers. The Commissioner of Insurance in the Department of Regulatory Agencies (DORA) may promulgate rules to implement and enforce this policy.

Also beginning in 2023, the bill requires the Department of Health Care Policy and Financing (HCPF), in collaboration with the administrator of the All-Payer Claims Database, to conduct an annual analysis of the prescription drug rebates received in the previous calendar year, by carrier and prescription drug tier, and make the analysis available to the public.

By June 1, 2023, the Division of Insurance must conduct or contract with a third party to conduct a study to evaluate how rebates may be applied in the individual market to reduce a covered person's out-of-pocket costs at the point of sale or to reduce out-of-pocket costs in prescription drug tiers.

Starting January 1, 2024, health insurers are required to ensure that:

- 100 percent of discounts received from a manufacturer in connection with dispensing or administering prescription drugs in the insurer's formulary for that plan year are used to reduce costs;
- 100 percent of the estimated rebates received in connection with dispensing or administering prescription drugs in the insurer's formulary for that plan year are used to reduce policyholder costs.

Each health insurer shall annually report data demonstrating that all discounts and rebates received by health insurers are used to reduce costs for policyholders in compliance with this section. The commissioner must promulgate rules to implement and enforce this section.

Beginning in 2024, a carrier offering a health benefit plan on the individual market or its pharmacy benefit manager is prohibited from modifying or applying a modification to the current prescription drug formulary during the current plan year, such as eliminating a prescription drug from the formulary or moving a prescription drug to a higher cost-sharing tier.

Finally, the bill requires carriers, private utilization review organizations, and pharmacy benefits managers to perform expedited reviews of a step therapy exception request following procedures outlined in the bill.

State Diversions

This bill diverts about \$310,000 from the General Fund in FY 2022-23 and about \$240,000 in FY 2023-24 and ongoing. This revenue diversion occurs because the bill increases costs in DORA, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state cash fund expenditures in DORA by about \$310,000 in FY 2022-23 and about \$240,000 in FY 2023-24 and ongoing from the Division of Insurance Cash Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 22-1370**

	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$157,972	\$181,082
Operating Expenses	\$2,295	\$2,700
Capital Outlay Costs	\$12,400	-
Contractor Costs	\$80,000	-
Centrally Appropriated Costs ¹	\$55,213	\$53,748
Total Cost	\$307,880	\$237,530
Total FTE	1.7 FTE	2.0 FTE

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

Department of Regulatory Agencies. The Division of Insurance in DORA will have new staffing and contractor costs to monitor and enforce provisions against carriers and to collect and audit compliance data. First-year staffing costs are prorated for a September 1 start date. Standard operating and capital outlay costs are included.

- **Staff.** The division requires 1.0 FTE rate and financial analyst to create a template for formulary review and to review changes in prescription drug formularies for roughly 100 drugs lists for the individual and small group market and roughly 200 drugs lists for the large group market. The position will also provide support to carriers in correcting errors to their submissions. In addition, the bill's rebate provision requires the division to collect data from carriers and perform an analysis to determine the feasibility of applying rebates to reduce a person's cost sharing at the point of sale, which necessitates 1.0 FTE actuary to review data submissions from carriers, perform research to verify carrier attestations regarding rebates, and to review filings submitted by carriers indicating they are in compliance and using rebates to reduce consumers' costs. Finally, the division requires 0.1 FTE rate and financial analyst for rulemaking related to regulations regarding carriers offering copayment-only plans, changes in step therapy protocol, and to create a step therapy protocols exception request form.
- **Contractor costs.** The division requires 200 hours of a contractor at \$400 per hour to assist in evaluating how rebates may be applied to reduce a covered persons defined cost sharing for each prescription drug at the point of sale and determine how rebates may be applied to reduce defined cost sharing and the impact on premiums.

- **Legal services.** Preliminarily, legal services costs for rulemaking are assumed to be accomplished within the division’s existing legal services budget.

Health Care Policy and Financing. HCPF will have an increase in workload to provide reporting and analysis on prescription drug rebates in connection with its administrator of the All-Payer Claims Database. This work can be accomplished within existing contracts.

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 shown in Table 2.

Statutory Public Entity

Because the bill codifies into statute existing regulations on the plan types and designs the Health Benefit Exchange must offer, there is no fiscal impact to Connect for Health Colorado.

Effective Date

The bill was signed into law by the Governor on May 18, 2022, and it took effect August 10, 2022. Section 1 of the bill applies to health benefit plans issued or renewed on or after January 1, 2023. Sections 2 through 6 of this act apply to health benefit plans issued or renewed on or after January 1, 2024.

State Appropriations

For FY 2022-23, the bill requires and includes an appropriation of \$252,667 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund and 1.7 FTE.

State and Local Government Contacts

Connect for Health Colorado
Information Technology
Regulatory Agencies

Health Care Policy and Financing
Law