



Legislative Council Staff

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Final Fiscal Note

Drafting Number:	LLS 23-0773	Date:	June 20, 2023
Prime Sponsors:	Rep. Daugherty; Soper Sen. Mullica; Smallwood	Bill Status:	Signed into Law
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Bill Topic: RX DRUG BENEFITS CONTRACT TERM REQUIREMENTS

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 limits the amount that carriers or pharmacy benefit managers (PBMs) may charge beneficiaries of employer-sponsored plans for prescription drugs to no more than the amount paid by the plan to contracted pharmacies, and specifies enforcement mechanisms. The bill increases state expenditures and may increase state revenue on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$10,000 to the Department of Regulatory Agencies.

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

**Table 1
State Fiscal Impacts Under HB 23-1201**

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Revenue		-	-	-	-
Expenditures	Cash Funds	\$10,000	-	-	\$250,000
	Total Expenditures	\$10,000	-	-	\$250,000
Diversion	General Fund	(\$10,000)	-	-	(\$250,000)
	Cash Funds	\$10,000	-	-	\$250,000
	Net Diversion	\$0	-	-	\$0
Other Budget		-	-	-	-

Summary of Legislation

The bill limits the amount that health insurance carriers or pharmacy benefit managers (PBMs) may charge beneficiaries of select employer-sponsored plans for prescription drugs to no more than the amount paid by the plan or PBM to a contracted pharmacy. The bill applies to select contracts issued or renewed on or after January 1, 2025. The bill grants audit authority to the Department of Health Care Policy and Financing (HCPF) for Medicaid contractors and the Department of Regulatory Agencies (DORA) for all other contracts. Failure to comply a deceptive trade practice in the business of insurance.

State Revenue

Civil penalties. A person committing a deceptive trade practice in the business of insurance may be subject to a civil penalty of up to \$3,000 for each act, with potentially higher penalties for willful or repeat violations, up to a maximum annual penalty specified in statute. Given that insurers are assumed to comply with the requirements of the bill, and the wide range in potential penalty amounts in any cases that are pursued by the commissioner, the fiscal note cannot estimate the potential impact of these civil penalties. Penalty revenue is deposited into the General Fund and subject to TABOR.

Filing fees. The bill may increase revenue to the Judicial Department from an increase in civil case filings to appeal deceptive trade practice actions taken by the Division of Insurance in DORA. Revenue from filing fees is subject to TABOR.

State Diversions

This bill diverts \$10,000 from the General Fund in FY 2023-24 and \$250,000 in FY 2026-27. This revenue diversion occurs because the bill increases costs in the Department of Regulatory Agencies, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases costs in DORA by \$10,000 in FY 2023-24 and \$250,000 in FY 2026-27 and ongoing. These expenditures are shown in Table 2 and detailed below. The bill also increases workload for HCPF and the Judicial Department. These impacts are discussed below.

Table 2
Expenditures Under HB 23-1201

	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Contractor (DORA)	\$10,000	-	-	\$250,000
Total Costs	\$10,000	-	-	\$250,000

Department of Regulatory Agencies. DORA will hire a contractor to perform the data collection, storage, and analysis process necessary to conduct the audits required by the bill. This contractor will perform work required for both HCPF and DORA. The contractor will send results to the appropriate department. It is assumed that DORA will require 40 contractor hours in FY 2023-24 for technical assistance relating to rule promulgation and 1,000 hours in FY 2026-27 and ongoing to assist in audits.

Department of Health Care Policy and Financing. HCPF will have an increase in workload to promulgate rules, perform outreach with Managed Care Organizations (MCOs) that contract with a PBM, and to receive and respond to consumer complaints and audit findings. Since only two MCOs are affected by the bill, it is assumed that workload for enforcement actions regarding deceptive trade practices can be accomplished within existing resources.

Judicial Department. The trial courts in the Judicial Department may have an increase in cases filed from the addition of a new deceptive trade practice. It is assumed that health insurers will have a high level of compliance with the law and that any violation of the legislation will result in minimal number of new cases reviewed by the courts. Thus, no change in appropriations is required.

Effective Date

The bill was signed into law by the Governor on May 10, 2023, and takes effect on August 7, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires and includes an appropriation of \$10,000 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies.

State and Local Government Contacts

District Attorneys
Judicial

Health Care Policy and Financing
Law

Information Technology
Regulatory Agencies