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Fiscal Note

Drafting Number:	LLS 23-0629	Date:	March 13, 2023
Prime Sponsors:	Rep. Jodeh; Ortiz Sen. Will	Bill Status:	House Health & Insurance
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Bill Topic: ENFORCE LAWS AGAINST PHARMACY BENEFIT MANAGERS

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 allows the Commissioner of Insurance to enforce existing state laws regulating pharmacy benefit managers and impose penalties, and establishes a fee-based registration program for these entities. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$206,647 to the Department of Regulatory Agencies.

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

**Table 1
State Fiscal Impacts Under HB 23-1227**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	\$270,000	\$270,000
	Total Revenue	\$270,000	\$270,000
Expenditures	Cash Funds	\$206,647	\$223,964
	Centrally Appropriated	\$44,704	\$53,645
	Total Expenditures	\$251,351	\$277,609
	Total FTE	2.5 FTE	3.0 FTE
Diversions		-	-
Other Budget Impacts	TABOR Refund	\$277,500	\$277,500

Summary of Legislation

The bill makes pharmacy benefit manager (PBM) requirements enforceable by the Commissioner of Insurance in the Division of Insurance (DOI), Department of Regulatory Agencies (DORA). It requires all PBMs to register with the commissioner and pay a registration fee, and requires health insurers to pay a fee when filing their list of PBMs with the commissioner. These fees, credited to the DOI Cash Fund, must fund the division's costs to enforce PBM requirements and prohibitions.

Assumptions

As of April 2022, there are 66 PBMs in the United States, according to the National Association of Insurance Commissioners. It is assumed that all are operational in Colorado.

There are about 15 health insurers who would be subject to the fee.

State Revenue

To cover the regulatory expenditures discussed below, the bill will increase state cash fund revenue by \$270,000 per year starting in FY 2023-24. This revenue is from fees paid by PBMs and health insurers and is deposited into the DOI Cash Fund.

Fee impact on PBMs and health insurers. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the DOI based on cash fund balance, program costs, and the actual number of entities subject to the fee. Table 2 below identifies the fee impact of this bill

Table 2
Fee Impact on Pharmacy Benefit Managers and Health Insurers

Fiscal Year	Type of Fee	Estimated Fee	Number Affected	Total Fee Impact
	PBM Registration Fee	\$4,000	66	\$264,000
FY 2023-24	Insurer PBM Fee	\$400	15	\$6,000
		FY 2023-24 Total	81	\$270,000
	PBM Registration and Health	\$4,000	66	\$264,000
FY 2024-25	Insurer PBM Fee	\$400	15	\$6,000
		FY 2024-25 Total	81	\$270,000

State Diversions

To the extent that the DOI is required to cover initial costs before fee revenue accrues, it will use the DOI Cash Fund, which represents a diversion as the DOI is funded with premium tax revenue that would otherwise be credited to the General Fund. The fiscal note assumes that revenue will accrue in time to fund the division's costs.

State Expenditures

The bill increases state expenditures in DORA by about \$250,000 in FY 2023-24 and \$280,000 in FY 2024-25, paid from the DOI Cash Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 23-1227

	FY 2023-24	FY 2024-25
Department of Regulatory Agencies		
Personal Services	\$183,262	\$219,914
Operating Expenses	\$3,375	\$4,050
Capital Outlay Costs	\$20,010	-
Centrally Appropriated Costs ¹	\$44,704	\$53,645
Total Cost	\$251,351	\$277,609
Total FTE	2.5 FTE	3.0 FTE

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

Department of Regulatory Agencies. DORA requires 3.0 FTE to implement and manage the PBM registration and investigate PBM actions to ensure compliance with several sections of existing law. This work will involve annual rulemaking and fee setting to maintain the PBM registry, reviewing the audit practices of PBMs, and close review of PBM contracts, which is expected to be a complicated process as PBMs are involved in multiple contracts. DORA does not currently review PBM practices at this level. Standard operating and capital outlay costs are included for these new staff, and first-year costs are prorated to account for the bill's effective date.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$251,351 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and 2.5 FTE.

State and Local Government Contacts

Health Care Policy and Financing
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Regulatory Agencies
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