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Final Fiscal Note

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Prime Sponsors: Rep. Jodeh; Ortiz Bill Status: Signed into Law
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Bill Topic: ENFORCE LAWS AGAINST PHARMACY BENEFIT MANAGERS

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [] Local Government
[X] State Diversion [] 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 and includes an appropriation of \$206,647 to the Department of Regulatory Agencies.

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

Table 1
State Fiscal Impacts Under HB 23-1227

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Diversions (General Fund, Cash Funds, Net Diversion), and Other Budget Impacts (TABOR Refund).

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 that is commensurate with the fees in other states. 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.

State Revenue

To cover the regulatory expenditures discussed below DOI will collect revenue from fees paid by PBMs. Given the requirement that the fee remain commensurate with the fees in other state, this fiscal note estimates that the fee will not exceed \$2,000. Thus, the bill will increase state cash fund revenue by \$132,000 per year starting in FY 2023-24. This revenue is deposited into the DOI Cash Fund.

Fee impact on PBMs. 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, the actual number of entities subject to the fee, and the fees in other states. Table 2 below identifies the fee impact of this bill

Table 2
Fee Impact on Pharmacy Benefit Managers

Fiscal Year	Type of Fee	Estimated Fee	Number Affected	Total Fee Impact
FY 2023-24	PBM Registration Fee	\$2,000	66	\$132,000
FY 2024-25	PBM Registration Fee	\$2,000	66	\$132,000

State Diversions

This bill diverts \$119,351 from the General Fund in FY 2023-24 and \$145,609 in FY 2024-25 and future fiscal years. Given the bill's requirement that DOI not raise fees beyond what is commensurate in other states, increased revenue is not expected to cover all costs. As a result, the DOI will use available funds in the DOI Cash Fund for the remaining costs, resulting in a diversion from the General Fund of premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures in DORA by about \$250,000 in FY 2023-24 and \$280,000 in FY 2024-25 and future fiscal years, 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 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 \$206,647 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
Personnel and Administration
Public Health and Environment

Regulatory Agencies
Information Technology

Law
Judicial