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Fiscal Note

Drafting Number: LLS 23-0473 **Date:** March 20, 2023
Prime Sponsors: Sen. Moreno; Cutter **Bill Status:** Senate Health & Human Services
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Bill Topic: **PROTECTIONS FOR PEOPLE WITH AN EATING DISORDER**

Summary of Fiscal Impact:

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

The bill creates prohibitions and requirements related to health care services for individuals with disordered eating. The bill increases state expenditures beginning in FY 2023-24, and may increase state revenue beginning in FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires appropriations of \$838,254 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 23-176

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$838,254	\$326,581
	Centrally Appropriated	\$33,023	\$36,200
	Total Expenditures	\$871,277	\$362,781
	Total FTE	2.1 FTE	2.2 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$125,738	\$48,987

Summary of Legislation

The bill creates prohibitions and requirements related to health care services for individuals with disordered eating, including:

- prohibiting Medicaid, starting July 1, 2023, and health insurance plans, starting January 1, 2024, from using body mass index, ideal body weight, or any achieved weight standard to determine medical need or the level of care for individuals with disordered eating;
- prohibiting retail establishments from selling dietary supplements or over-the-counter diet pills to individuals under 18-years-old without prescriptions, with violators subject to fines of up to \$2,000, starting July 1, 2024;
- requiring the Behavioral Health Administration (BHA) to create rules around the use of forced feeding tubes for individuals with disordered eating; and
- requiring the BHA to assign a designation to all disordered eating treatment and recovery facilities based on the level of care the facility provides, by July 2024.

State Revenue

Beginning in FY 2024-25, state General Fund revenue may increase from fines, which are subject to TABOR, paid by retail establishments found to be in violation of the bill. The fiscal note assumes retailers will generally follow the law and any revenue from fines will be minimal.

State Expenditures

The bill increases state expenditures in the Behavioral Health Administration and Department of Revenue by \$870,000 in FY 2023-24 and \$360,000 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-176

	FY 2023-24	FY 2024-25
Behavioral Health Administration		
Personal Services	\$125,553	\$118,073
Operating Expenses	\$2,700	\$2,430
Capital Outlay Costs	\$20,010	-
IT Services	\$670,551	\$167,638
Centrally Appropriated Costs ¹	\$32,687	\$30,884
FTE – Personal Services	1.9 FTE	1.8 FTE
BHA Subtotal	\$851,501	\$319,025

**Table 2
 Expenditures Under SB 23-176 (Cont.)**

	FY 2023-24	FY 2024-25
Department of Revenue		
Personal Services	\$3,579	\$21,479
Legal Services	\$15,861	\$15,861
Investigation Costs	-	\$1,100
Centrally Appropriated Costs ¹	\$336	\$5,316
FTE – Personal Services	0.1 FTE	0.3 FTE
FTE – Legal Services	0.1 FTE	0.1 FTE
DOR Subtotal	\$19,776	\$43,756
Total	\$871,277	\$362,781
Total FTE	2.1 FTE	2.2 FTE

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

Behavioral Health Administration. The bill increases costs for additional staff and IT services beginning in FY 2023-24.

- **Staffing costs.** Beginning in FY 2023-24, the BHA requires 1.9 FTE to develop a designation system for disordered eating treatment and recovery facilities, and ensure all facilities hold an appropriate designation by July 1, 2024. This includes performing outreach, issuing designations, monitoring, data management, and enforcement activities. Staff must also develop rules around forced feeding tubes and provide trainings for service providers to ensure programmatic alignment with BHA standards. Beginning in FY 2024-25, data entry and management needs are assumed to decrease, reducing to 1.8 FTE in subsequent years.
- **IT services.** The BHA will have costs to incorporate designations of disordered eating facilities and management tools into LADDERS, the state’s Behavioral Health Licensing System. This update requires initial software development costs, estimated to require a 6-month build out by a software delivery team, as well as ongoing costs for system maintenance. This work is conducted by the Office of Information Technology with reappropriated funds.

Department of Revenue. The bill increases costs for additional staff and legal services beginning in FY 2023-24 and for investigations of retailers beginning in FY 2024-25.

- **Staffing costs.** The DOR requires 0.3 FTE for educational outreach and trainings for retailers before the new regulation on dietary supplements and diet pills begins in FY 2024-25. Once the regulation begins, staff will enforce the regulation by performing 100 compliance checks annually on retailers. Staffing costs for FY 2023-24 are prorated for a May 1 start date.

The DOR also requires staff for rulemaking support and administrative action taken against noncompliant retailers, which can be absorbed with existing resources.

- **Legal services.** In FY 2023-24, the DOR requires 150 hours, or 0.1 FTE, of legal services from the Department of Law for general counsel and rulemaking assistance. Legal services will continue on an ongoing basis for providing legal representation when noncompliant retailers challenge findings or providing counsel as new products enter the market.
- **Investigation costs.** Beginning in FY 2024-25, the DOR will require funding related to investigating compliance among retailers. For compliance checks of brick-and-mortar retailers, the DOR will require minor operative services to assist investigators for 30 hours at a rate of \$20 per hour. For compliance checks of online retailers, investigators will require funding for purchasing goods and a PO box for product delivery, estimated to cost \$500 annually. These estimates are based on similar investigations for underage tobacco sales.

Department of Health Care Policy and Financing. Any impact from the prohibition on using certain metrics to determine medical necessity is anticipated to have a minimal effect on the number of Medicaid members with disordered eating from being admitted and discharged from residential facilities, or the length of time members stay in such facilities. Any changes in utilization will be addressed through the annual budget process.

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.

Technical Note

The fiscal note assumes that the DOR will carry out the regulation on retailers using similar systems that exist for liquor and tobacco retailers; however, the bill does not specify a regulatory framework, such as licensing requirements or enforcement mechanisms.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except the requirement for health benefit plans takes effect on January 1, 2024, and the requirement on retail establishments takes effect July 1, 2024.

State Appropriations

For FY 2023-24, the bill requires the following General Fund appropriations:

- \$818,814 to the Behavioral Health Administration, and 1.9 FTE; and
- \$19,440 to the Department of Revenue, and 0.1 FTE, of which \$15,861 is reappropriated to the Department of Law with an additional 0.1 FTE.

State and Local Government Contacts

Behavioral Health Administration
Health Care Policy and Financing
Human Services
Law
Regulatory Agencies

Corrections
Higher Education
Information Technology
Public Health and Environment
Revenue