



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1296

REVISED FISCAL NOTE

(replaces fiscal note dated April 2, 2019)

Drafting Number: LLS 19-0095 Date: April 9, 2019
Prime Sponsors: Rep. Jackson; Jaquez Lewis Bill Status: House Finance
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Bill Topic: PRESCRIPTION DRUG COST REDUCTION MEASURES

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Diversion, TABOR Refund, Local Government, Statutory Public Entity

This bill requires health insurers, pharmacy benefit management firms, and certain nonprofit organizations to report information related to prescription drug costs to the Department of Regulatory Agencies. The bill increases state revenue and expenditures beginning in FY 2019-20, may trigger a diversion from the General Fund in initial implementation years, and may impact local governments.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$121,763 to the Department of Regulatory Agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Health and Insurance Committee.

Table 1 State Fiscal Impacts Under HB 19-1296

Table with 4 columns: Category, Sub-category, FY 2019-20, FY 2020-21. Rows include Revenue (General Fund, Cash Funds, Total), Expenditures (Cash Funds, Centrally Appropriated, Total), Total FTE, Diversions, and TABOR Refund.

Summary of Legislation

This bill requires reporting on prescription drug costs in order to promote cost reduction. The specific requirements of the bill are outlined below.

Industry disclosure requirements. The Commissioner of Insurance (commissioner) in the Department of Regulatory Agencies (DORA) is required to receive the following reports related to prescription drug costs beginning in 2020.

- *Health insurers and pharmacy benefit management firms.* Health insurers or their pharmacy benefit management firms (PBMs) must annually report to the DOI, concurrent with the health insurer's rate filing, on the aggregate amount of all rebates and discounts that reduced the cost to acquire the prescription drug; the aggregate amount of administrative fees the PBM received from manufacturers and health insurers; the aggregate amount attributable to dispensing, service, and administrative fees; and an explanation of all other services provided by the health insurer or PBM, excluding proprietary and client-specific information. Failure to comply is an unfair or deceptive act.
- *Nonprofit organizations.* Certain nonprofit organizations are required to report to the commissioner by April 1 of each year on any payment, donation, subsidy, or thing of value exceeding \$1,000 in value received by the organization or its leadership from a prescription drug manufacturer, PBM, or health insurer and the percentage of the organization's total gross income that is attributable to those payments, donations, subsidies, or things of value. A fine up to \$1,000 may be levied on an organization that fails to comply.

Commissioner analysis and reporting requirements. The commissioner is required to post this information on the Division of Insurance's (DOI's) website, excluding any information that is proprietary. The commissioner or a third-party contractor is required to analyze the data received to determine the effect of prescription drug costs on health insurance premiums, and publish and present an annual report to the Governor and the General Assembly during DORA's SMART Act hearing by December 1, 2020, and each December thereafter. At least 30 days before the report is published, the commissioner must provide the report to health insurers, prescription drug manufacturers, and pharmacy benefit management firms and provide them an opportunity to object the release of specified information. The commissioner must follow a determination process that is outlined in the bill. In compiling the report, the commissioner may consult with the Departments of Corrections, Health Care Policy and Financing, and Human Services, and any other state agency that purchases or reimburses the cost of prescription drugs.

Rulemaking and filing fees. The commissioner may adopt rules as necessary to implement the requirements of the bill, including rules that specify the form and manner in which reports are submitted. The commissioner must also establish a filing fee to be paid by health insurers, manufacturers, and PBMs to cover DOI's costs to implement the bill. In adopting rules, the commissioner may consult with the Pharmacy Board, the Secretary of State's office, the Department of Health Care Policy and Financing, the Department of Corrections, the Department of Human Services, and the Department of Personnel and Administration.

Prohibition on retroactive payment reduction. PBMs are prohibited from retroactively reducing the payment provided on a clean claim submitted by a pharmacy unless the PBM determines, through an audit conducted in accordance with state law, that the claim was not a clean claim. Health insurers that contract with PBMs must ensure that the PBMs are complying with this prohibition and reporting requirements and are subject to penalties for failure to do so.

Cost sharing. Health insurers are required to reduce the cost sharing a covered person is required to pay for prescription drugs by an amount equal to the greater of 51 percent of the average aggregate rebates received by the insurer for all prescription drugs, including price protection rebates, or an amount that ensures cost sharing will not exceed 125 percent of the insurer's cost for the prescription drug.

Disciplinary actions. Any entity required to make notifications, submit reports, or pay filing fees under the bill is subject to discipline and, in some cases, penalties up to \$10,000 per day, for any failure to adhere to requirements, to be enforced by the Pharmacy Board. These cases may be appealed in district court.

State Revenue

This bill is anticipated to increase state cash fund revenue by up to \$136,000 in FY 2019-20, and up to \$67,000 in FY 2020-21, to the DOI Cash Fund. The bill may also increase General Fund revenue from civil penalties, estimated at up to \$20,000 per year, and court filing fees, minimally. These revenue sources are subject to TABOR; however, under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21.

Fee impact. 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 through rule by the DOI based on fund balance, program costs, and the number of health insurers, drug manufacturers, PBMs, and nonprofit organizations subject to the fee. There are approximately 500 health insurers regulated by DOI and approximately 30 in-state drug manufacturers, but it is unknown how many other drug manufacturers, PBMs, and nonprofit organizations will be subject to the fee as of this writing. Table 2 identifies the fee impact of this bill.

Table 2
Fee Impact Under HB 19-1296

Fiscal Year	Type of Fee	Estimated Fee	Number Affected	Total*
FY 2019-20	Filing fee	\$256	at least 530	\$136,000
FY 2020-21	Filing fee	\$126	at least 530	\$67,000

* Totals have been rounded.

Fine revenue. The bill may increase state fine revenue from penalties beginning in FY 2019-20. It is assumed any fine revenue is deposited into the General Fund. The Pharmacy Board has discretion on imposing a fine up to \$10,000 per day. Assuming a high level of compliance by health insurers, drug manufacturers, PBMs, and nonprofit organizations, it is estimated that fine revenue generated will be less than \$20,000 per year.

Court filing fees. To the extent that cases are appealed to the district court, the bill may increase state revenue from filing fees, which are deposited into various cash funds in the Judicial Department. For informational purposes, the district court filing fee is \$235.

State Diversions

Typically, a General Fund diversion occurs when the DOI's costs increase, as the division is funded with insurance premium tax revenue that would otherwise be credited to the General Fund. However, it is expected that this bill will be funded from filing fees deposited directly into the DOI Cash Fund, so it is unlikely that such a diversion will take place. However, if the fees are not in place through rule by January 2020, or are otherwise insufficient to cover the costs under the bill, a diversion from the General Fund to the DOI Cash Fund may occur.

State Expenditures

The bill will increase state cash fund expenditures from the DOI Cash Fund by \$136,190 and 0.9 FTE in FY 2019-20, and \$66,860 and 0.7 FTE in FY 2020-21. The bill's cost sharing and reporting requirements may increase the premium costs for the state employee health insurance. To the extent the bill is effective in reducing prescription drug costs, state agencies that purchase prescription drugs may see a cost savings. The bill also creates a minimal workload increase for the Judicial Department and for state agencies consulted about the bill's implementation. These impacts are shown in Table 3 and discussed below.

Table 3
Expenditures Under HB 19-1296

	FY 2019-20	FY 2020-21
Department of Regulatory Agencies		
Personal Services	\$68,190	\$52,040
Operating Expenses and Capital Outlay Costs	\$5,558	\$665
Computer Programming and Maintenance	\$48,015	\$3,024
Centrally Appropriated Costs*	\$14,427	\$11,131
Total Cost	\$136,190	\$66,860
Total FTE	0.9 FTE	0.7 FTE

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

Division of Insurance — DORA. Initially, the bill requires the DOI to perform rulemaking and to collect, analyze, and report on a large amount of data relating to prescription drug pricing. In FY 2019-20, the fiscal note estimates that the following staff levels are required: a Statistical Analyst II (0.2 FTE), a Rate/Financial Analyst IV (0.5 FTE), and an Actuary II (0.2 FTE).

- *Computer programming and maintenance.* The Office of Information Technology, in consultation with DOI, will develop a database to automate the collection and posting of required price increase notices and to maintain updated purchaser information. This will require 291 hours of programming at a rate of \$165 per hour. These funds will be reappropriated to OIT.

- *Enforcement.* Workload will increase for the division to conduct enforcement actions as needed to ensure implementation and compliance with this legislation, including enforcement of rebates. The fiscal impact of these actions will depend on many factors, in particular the number of violations reported to or identified by the DOI and, in the case of rebates, the ability for the DOI to collect necessary information. Any costs associated with enforcement are expected to be incurred by those regulated under the bill through filing fees. If additional resources are required, these will be addressed through the annual budget process.

State employee insurance. The bill's cost sharing and reporting requirements may increase health insurance costs which may increase health insurance premiums paid by state agencies for state employee group health insurance. Because state employee health insurance contributions are based upon prevailing market rates, with costs shared between the employer and employee, this bill is not expected to impact the state's share of employee health insurance premiums until FY 2020-21. Because insurance rates are influenced by a number of variables, this impact will be addressed through the total compensation analysis included in the annual budget process.

Drug purchases by state agencies. To the extent the bill reduces prescription drug costs, the Departments of Corrections, Health Care Policy and Financing, and Human Services may see a reduction in prescription drug-related expenditures. Any such impact will be addressed through the annual budget process.

Judicial Department. Failure to comply with the provisions of the bill makes an entity subject to penalties imposed by the commissioner, which may be appealed to district court and the court of appeals. The fiscal note assumes that most businesses will comply with the law and that the number of appeals will be minimal.

Rule consultation with certain state agencies. The bill encourages the DOI to consult with the Pharmacy Board, the Secretary of State, the Department of Health Care Policy and Financing, the Department of Corrections, the Department of Human Services, and the Department of Personnel and Administration when adopting rules for the program. Any related workload impact to these agencies is not expected to require an appropriation.

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 estimated to be \$14,427 in FY 2019-20 and \$11,131 in FY 2020-21.

Local Government

The bill's cost sharing and reporting requirements may contribute to higher premiums paid by local governments that offer health insurance to their employees. In addition, the bill may minimally increase revenue and expenditures for the Denver County Court, which is managed and funded by the City and County of Denver, to hear civil appeals under the bill.

Effective Date

The bill takes effect on July 1, 2019, except that the conforming amendments in Sections 7 and 8 only take effect if House Bill 19-1172, concerning Title 12 Recodification, becomes law, in which case those sections take effect October 1, 2019.

State Appropriations

For FY 2019-20, the bill requires an appropriation of \$121,763 from the Division of Insurance Cash Fund to the Division of Insurance in the Department of Regulatory Agencies and an allocation of 0.9 FTE. Of this amount, \$48,015 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Corrections
Higher Education
Judicial
Regulatory Agencies

Counties
Human Services
Law
State

Health Care Policy and Financing
Information Technology
Personnel