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Revised Fiscal Note

(replaces fiscal note dated March 31, 2022)

Drafting Number: LLS 22-0947 Date: April 12, 2022
Prime Sponsors: Sen. Rodriguez; Smallwood Bill Status: Senate Finance
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Bill Topic: TELEPHARMACY CRITERIA REMOVE LOCATION RESTRICTION

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

This bill removes geographic restrictions on, and further defines, telepharmacy outlets, and requires the State Board of Pharmacy to adopt rules. This bill increases state revenue and expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$505,819 to the Department of Regulatory Agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill as amended by the Senate Business, Labor and Technology Committee.

Table 1
State Fiscal Impacts Under SB 22-173

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), and Other Budget Impacts (Tabor Refund).

Summary of Legislation

Under current law, a telepharmacy outlet must be located more than 20 miles from any pharmacy or telepharmacy outlet. The bill removes this geographic restriction, and requires that a telepharmacy be located in an area of need, as defined under the bill. The State Board of Pharmacy is required to adopt rules for telepharmacy outlets, limited to:

- applications;
- structures and equipment;
- staffing, training, and consultant pharmacist visitations;
- inventory record-keeping and storage requirements;
- operational policies and procedures; and
- the number of telepharmacy outlets that may be operated by a central pharmacy.

Assumptions

The fiscal note assumes that the removal of geographic restrictions and the addition of facilities licensed by the Department of Public Health and Environment as falling within an area of need, will result in 3,165 currently registered pharmacies moving from a Prescription Drug Outlet (PDO) license to an Other Outlet license, and that:

- each facility will require an annual protocol review and 790 facilities will require protocol revisions;
- 617 complaints will be received;
- 204 cases will require investigation;
- 51 cases will result in disciplinary action; and
- 5 cases will be referred to the Attorney General.

State Revenue

This bill will increase state revenue by \$1,354,620 to the Division of Professions and Occupations Cash Fund in FY 2022-23 from fees to cover the costs of the bill for two fiscal years.

Fee impact on telepharmacy outlets. 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 Department of Regulatory Agencies (DORA) based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee. As shown in Table 2, the fiscal note assumes that 800 pharmacies currently registered as a Prescription Drug Outlet (PDO) will instead register as an Other Outlet under the bill, and will pay the increased initial licensing fee in FY 2022-23.

**Table 2
Fee Impact on Specialized Prescription Drug Outlets**

Type of Fee	Current Fee	Estimated Fee	Fee Increase	Number Affected	Total Fee Impact
Other Outlet License	\$160	\$428	\$268	3,165	\$1,354,620
FY 2022-23 Total					\$1,354,620

State Expenditures

The bill increases state expenditures in the Division of Professions and Occupations (DPO) in the DORA by \$632,398 in FY 2022-23 and \$720,214 in FY 2023-24 from the Division of Professions and Occupations Cash Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under SB22-173**

	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$383,823	\$485,239
Operating Expenses	\$5,940	\$7,560
Capital Outlay Costs	\$37,200	-
Legal Services	\$78,856	\$73,928
Centrally Appropriated Costs ¹	\$126,579	\$153,487
FTE – Personal Services	4.4 FTE	5.5 FTE
FTE – Legal Services	0.4 FTE	0.4 FTE
Total Cost	\$632,398	\$720,214
Total FTE	4.8 FTE	5.9 FTE

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

Registration. Beginning in FY 2022-23, the DPO requires 0.5 FTE to process registrations, verify information, update licensing databases, communicate with applicants, and issue registrations.

Oversight. Beginning in FY 2022-23, the DPO requires 1.9 FTE of a pharmacist to conduct pharmaceutical compliance, performance and drug accountability audits, investigate complaints and possible fraud, and participate in enforcement activities as necessary. Costs are adjusted for a September 1 start date in the first year and standard operating and capital outlay costs are included.

Enforcement. Beginning in FY 2022-23, the DPO will require 2.9 FTE of a criminal investigator to identify individuals involved in an investigation, interview witnesses, obtain relevant documents and verify the authenticity of those documents, examine books or records, collect evidence, prepare subpoenas, and write investigation reports. Costs are adjusted for an October 1 start date in the first year, as it is assumed that some level of monitoring will need to take place prior to the need for an investigation. Standard operating and capital outlay costs are included.

Settlement. Beginning in FY 2022-23, the DPO will require 0.3 FTE to draft stipulations and final agency orders, and facilitate settlement of the referred matters. Costs are adjusted for a November 1 start date, as it is assumed that settlements will begin taking place after monitoring and enforcement actions have occurred.

Legal services. In FY 2022-23, the DPO will require 750 hours of legal services from the Department of Law for rule making and adjudication at a blended rate of \$98.57 per hour and 0.4 FTE. This fiscal note assumes that 50 hours will be required to assist with promulgation of rules in the first year, and that each case referred to the Attorney General will require 150 hours of staff time for enforcement and complaint resolution.

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 3.

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 March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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

In FY 2022-23, the bill requires an appropriation of \$505,819 from the Division of Professions and Occupations Cash Fund the Department of Regulatory Agencies, and 4.4 FTE. Of this amount, \$78,856 is reappropriated to the Department of Law with 0.4 FTE.

State and Local Government Contacts

Information Technology

Law

Regulatory Agencies