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Revised Fiscal Note

(replaces fiscal note dated March 27, 2023)

Drafting Number:	LLS 23-0428	Date:	April 14, 2023
Prime Sponsors:	Rep. Mabrey; Jodeh Sen. Roberts	Bill Status:	Senate Appropriations
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Bill Topic: EPINEPHRINE AUTO-INJECTORS

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Diversion	<input type="checkbox"/> Statutory Public Entity

The bill caps the amount an insurance carrier may require a covered person to pay for an epinephrine auto-injector at \$60, and creates an epinephrine auto-injector affordability program in the Department of Regulatory Agencies. It increases state expenditures, requires a state diversion, and may increase state revenue and local workload beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$77,632 to the Department of Regulatory Agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Health and Human Services Committee.

**Table 1
State Fiscal Impacts Under HB 23-1002**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	Cash Funds	\$77,632	\$83,218
	Centrally Appropriated	\$17,394	\$19,773
	Total Expenditures	\$95,026	\$102,991
	Total FTE	1.0 FTE	1.1 FTE
Diversions	General Fund	(\$95,026)	(\$102,991)
	Cash Fund	\$95,026	\$102,991
	Net Diversion	\$0	\$0
Other Budget Impacts		-	-

Summary of Legislation

Epinephrine auto-injector affordability program. Beginning January 1, 2024, the bill creates an epinephrine auto-injector affordability program in the Department of Regulatory Agencies (DORA) to provide low-cost epinephrine auto-injectors to eligible individuals in the state. The bill outlines the individuals eligible to participate in the program and requires the Division of Insurance (DOI) within DORA to create an application form for the program. This form is to be made available and promoted on both the DOI and the Department of Health Care Policy and Financing's (HCPF) websites, and each department can seek gifts, grants, and donations for this purpose.

Manufacturers of epinephrine auto-injectors must make injectors available to individuals in the program and are required to reimburse pharmacies for the amount that the pharmacy paid the manufacturer for the number of injectors dispensed through the program. Manufacturers are required to develop a process for a pharmacy to submit a reimbursement claim and non-compliant manufacturers are subject to fines. Failure to comply also constitutes a deceptive trade practice.

Manufacturers can be determined by DORA to meet the requirements of the affordability program if the manufacturer has an affordability program in place or provides auto-injectors at a price of \$60 for a 2-pack of injectors. These manufacturers must apply and be approved by DORA.

Cost of an epinephrine auto-injector. The bill requires that insurance carriers providing coverage for epinephrine auto-injectors must cap the total cost to the covered person at \$60 for a 2-pack of the injectors. Additionally, pharmacies dispensing injectors through the affordability program are permitted to collect a copayment of no more than \$60 for a 2-pack of injectors to cover their processing and dispensing costs. DORA may also use enforcement powers to ensure compliance and promulgate rules as necessary.

State Revenue

State revenue may increase from civil penalties, filing fees, and gift, grants, and donations beginning in FY 2023-24.

Civil penalties. The bill specifies that a manufacturer that fails to comply with the bill's requirements is subject to a fine of \$10,000 for each month of noncompliance. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to \$20,000 for each violation and additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of cases that may be pursued by the Attorney General and district attorneys, as well as the wide range in potential penalty amounts, the fiscal note cannot estimate the potential impact of these civil penalties.

Filing fees. The bill may increase revenue to the Judicial Department from an increase in civil case filings. Revenue from filing fees is subject to TABOR.

Gifts, grants, and donations. The bill may increase revenue from gifts, grants, and donations to DORA or HCPF, which are exempt from TABOR revenue limits. However, no specific sources have been identified at this time.

State Diversions

This bill diverts \$95,026 from the General Fund in FY 2023-24 and \$102,991 in FY 2024-25. This revenue diversion occurs because the bill increases costs in the DOI in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases expenditures in DORA by \$95,026 in FY 2023-24 and \$102,991 in FY 2024-25, paid from the DOI Cash Fund. Expenditures are shown in Table 2 and detailed below. The bill also increases workload for HCPF, the Department of Law, the Judicial Department, the Office of Information Technology, and state pharmacies.

**Table 2
 Expenditures Under HB 23-1002**

	FY 2023-24	FY 2024-25
Department of Regulatory Agencies		
Personal Services	\$68,112	\$81,733
Operating Expenses	\$1,350	\$1,485
Capital Outlay Costs	\$6,670	-
Translation Services	\$1,500	-
Centrally Appropriated Costs ¹	\$17,394	\$19,773
Total Cost	\$95,026	\$102,991
Total FTE	1.0 FTE	1.1 FTE

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

Division of Insurance, DORA. The DOI will require program staff and translation services, as described below.

- **Program staff.** The DOI requires 1.1 FTE to review forms and rates to ensure compliance, handle inquires and complaints, develop new regulations and enforcement mechanisms, develop and promote a new application form and promotional materials for the program, and develop and review application form for manufacturers. Staff costs are prorated for a September 1 start date, and include standard capital outlay and operating expenses.

The fiscal note assumes inquiries will continue for at least the first three years of implementation as affected parties become aware of the program. These functions and FTE estimates are based on similar affordability programs within the DOI. As such, staffing needs are expected to end in FY 2026-27.

- **Translation.** The DOI will require a one-time cost to contract for translation services to make the application available in at least three languages. These costs may be greater depending on the language needs of different counties; any additional resources will be requested through the budget process.

Department of Health Care Policy and Financing. Workload will increase in HCPF to update its website and promote the program. No change in appropriations is required.

Department of Law. The Department of Law may experience a minimal increase in workload to provide rulemaking support to the DOI and legal support to the DOI and HCPF for the development and publication of the application.

Workload will also minimally increase to the extent that deceptive trade practice complaints are filed. The department will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

Judicial Department. The trial courts in the Judicial Department may have an increase in cases filed under the Colorado Consumer Protection Act from the addition of a new deceptive trade practice. It is assumed that entities will abide by the law and that any violation of the legislation will result in minimal number of new cases. The fiscal note assumes that this can be accomplished within existing resources and that no change in appropriations is required.

Office of Information Technology. Workload in the Office of Information Technology will minimally increase to facilitate the posting of an application form on agency websites.

State pharmacies. State-operated pharmacies in the departments of Corrections, Higher Education, and Human Services may experience increased workload to process reimbursement of auto-injectors with manufacturers. No change in appropriations is required.

Local Government

Similar to the state, to the extent district attorneys receive deceptive trade practice complaints related to the new deceptive trade practice under the bill, workload will increase to investigate complaints and seek relief when appropriate. It is assumed most such cases will be handled at the state level by the Attorney General.

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 \$77,632 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies, and 1.0 FTE.

State and Local Government Contacts

Corrections
Human Services
Law

Health Care Policy and Financing
Information Technology
Public Health and Environment

Higher Education
Judicial
Regulatory Agencies