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Final Fiscal Note

Drafting Number: LLS 23-0473 Date: July 7, 2023
Prime Sponsors: Sen. Moreno; Cutter Bill Status: Signed into Law
Rep. deGruy Kennedy Fiscal Analyst: Shukria Maktabi | 303-866-4720
shukria.maktabi@coleg.gov

Bill Topic: PROTECTIONS FOR PEOPLE WITH AN EATING DISORDER

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

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

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

The bill prohibits 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 certain types of disordered eating. The bill also prohibits retail establishments from selling over-the-counter diet pills to individuals under 18-years-old without prescriptions beginning July 1, 2024, with rules to be created by the Department of Regulatory Agencies (DORA) and failure to comply constituting a deceptive trade practice under the Colorado Consumer Protection Act.

State Revenue

The bill may increase state revenue from civil penalties and filing fees beginning in FY 2024-25.

Civil penalties. 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. 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.

State Expenditures

The bill increases state workload for DORA and the Department of Health Care Policy and Financing in FY 2023-24 and may increase state workload for the Department of Law and the Judicial Department beginning in FY 2024-25, as discussed below.

Department of Regulatory Agencies. Workload in the Division of Insurance and the State Board of Pharmacy, both located within DORA, will increase by a minimal amount starting in FY 2023-24. Specifically, these divisions will need to update rules, conduct outreach with health insurance carriers and retail establishments, and respond to consumer inquiries and complaints. It is assumed that this work can be accomplished within existing appropriations.

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.

Department of Law. Workload in the Department of Law will 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 online marketplaces 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.

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

This bill was signed into law by the Governor and took effect on May 30, 2023.

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