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Revised Fiscal Note

(replaces fiscal note dated March 25, 2023)

Drafting Number: LLS 23-0532 Date: April 1, 2023
Prime Sponsors: Sen. Moreno; Cutter Bill Status: House Third Reading
Rep. Michaelson Jenet; Garcia Fiscal Analyst: Erin Reynolds | 303-866-4146
erin.reynolds@coleg.gov

Bill Topic: INCREASING ACCESS TO REPRODUCTIVE HEALTH CARE

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

The bill makes multiple changes to reproductive health care coverage requirements, and creates a grant program to cover contraceptive costs for minors without insurance or whose use of insurance would jeopardize their privacy or access. It increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$267,627 to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflect the revised bill.

Table 1
State Fiscal Impacts Under SB 23-189

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Approp., Total Expenditures, Total FTE), Diversions (General Fund, Cash Funds, Net Diversion), and Other Budget Impact (GF Reserve).

Summary of Legislation

The bill makes multiple changes to reproductive health care coverage requirements, as outlined below.

Women’s preventive health. The bill adds U.S. Department of Health and Human Services (HHS) developed preventive care and screening recommendations to the mandatory preventive health care services coverage for health benefit plans.

HIV, sexually transmitted infections, and sterilization. Where counseling, prevention, and screening for sexually transmitted infections are covered services, a health benefit plan must also include these services for individuals on HIV prevention drugs.

Carriers are prohibited from imposing deductibles, copayments, coinsurance, annual or lifetime maximum benefits, or other cost sharing on coverage for the treatment of a sexually transmitted infection or sterilization services. Coverage for sterilization services must be provided regardless of the covered person's gender. These provisions apply to health plans issued on or after January 1, 2025, and do not apply to a high deductible health plan, unless allowed by federal law.

Before July 1, 2027, carriers and Medicaid are prohibited from requiring a covered person to undergo step therapy or to receive prior authorization before a provider may prescribe or dispense any drug approved by the FDA and used for the treatment or prevention of HIV. For a carrier, this pertains to drugs on the carrier’s prescription drug formulary as of March 1, 2023.

The Division of Insurance must contract for a study that includes qualitative patient and provider experience information and an actuarial review to consider the predicted cost and health impacts of removing step therapy or prior authorization before a health care provider may prescribe or dispense HIV treatment medication.

Abortion coverage. The bill requires large employer plans, as of January 1, 2025, to provide coverage for the total cost of abortion services without policy deductibles, copayments, or coinsurance. Exceptions are made where the coverage is in conflict with an employer’s sincerely held beliefs or the employer is a public entity prohibited by the state constitution from using public funds for this purpose. Individual and small group plans must provide this coverage if the federal HHS confirms the state's determination that the coverage is not subject to state defrayal pursuant to federal law. These provisions do not apply to a high deductible health plan, unless allowed by federal law.

Family-planning related services. The bill expands the Reproductive Health Care Program in the Department of Health Care Policy and Financing to include family planning-related services, which includes, but is not limited to, tobacco cessation services, cervical cancer screenings, treatment of sexually transmitted infections, and any other medical diagnosis, treatment, or preventive service routinely provided in a family planning visit.

Minor contraception. Under current law, with the minor's consent, a physician may furnish contraceptive procedures, supplies, or information to the minor without notification to or the consent of the minor's parent or parents, legal guardian, or any other person having custody of or

decision-making responsibility for the minor. The bill adds health care providers acting within the scope of their license, certificate, or registration to this scope of practice.

Family Planning Access Collaborative. The Family Planning Access Collaborative is created in the Colorado Department of Public Health and Environment (CDPHE) to examine issues related to access to family planning services, gaps in coverage, and the confidentiality of services. The collaborative must be convened by September 1, 2023, and publish recommendations by December 15, 2023. The General Assembly must appropriate \$200,000 in FY 2023-24 for the collaborative, which is also authorized to accept gifts, grants, and donations.

Actuarial Analysis

An actuarial analysis of this bill proposal was conducted by an independent contractor, per the requirements of Senate Bill 22-040. The report may be obtained in its entirety on the Division of Insurance website at the following link: <https://doi.colorado.gov/sb-22-040-actuarial-review-of-health-benefit-coverage-legislative-proposals>.

State Revenue

The CDPHE is authorized to accept gifts, grants, and donations. As of writing, no source of funding has been identified. This revenue is not subject to TABOR.

State Diversion

This bill diverts about \$77,000 in FY 2023-24, \$136,000 in FY 2024-25, and \$86,000 in FY 2025-26 from the General Fund. This revenue diversion occurs because the bill increases costs in the Division of Insurance in DORA, which are funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures in CDPHE and DORA by the amounts shown in Table 2. These impact, and impacts to other state agencies, are discussed below.

Table 2
Expenditures Under SB 23-189

| | FY 2023-24 | FY 2024-25 | FY 2025-26 |
|--|------------------|------------|------------|
| Department of Public Health and Environment | | | |
| Personal Services | \$21,167 | - | - |
| Family Planning Access Collaborative | \$178,834 | - | - |
| Centrally Appropriated Costs ¹ | \$5,287 | - | - |
| FTE – Personal Services | 0.3 FTE | - | - |
| CDPHE Subtotal | \$205,287 | - | - |

**Table 2
 Expenditures Under SB 23-189 (Cont.)**

| Division of Insurance, DORA | | | |
|---|------------------|------------------|-----------------|
| Personal Services | \$37,019 | \$29,322 | \$29,322 |
| Operating Expenses | \$675 | - | - |
| Capital Outlay Costs | \$6,670 | - | - |
| Legal Services | \$23,263 | - | - |
| Actuarial Analysis | - | \$100,000 | \$50,000 |
| Centrally Appropriated Costs ¹ | \$8,974 | \$7,153 | \$7,153 |
| FTE – Personal Services | 0.5 FTE | 0.4 FTE | 0.4 FTE |
| FTE – Legal Services | 0.1 FTE | - | - |
| DOI Subtotal | \$76,601 | \$136,475 | \$86,475 |
| Total | \$281,888 | \$136,475 | \$86,475 |
| Total FTE | 0.9 FTE | 0.4 FTE | 0.4 FTE |

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

Department of Public Health and Environment

The CDPHE will have costs of \$200,000 in FY 2023-24 only to convene the Family Planning Access Collaborative, examine the required issues specified in the bill, and make recommendations. This includes 0.3 FTE to contract with a facilitator to manage the collaborative, interact with stakeholders and develop recommendations.

Division of Insurance, DORA

The DOI requires 0.4 FTE Rate and Financial Analyst to review each rate and form filing subject to the bill's requirements to ensure compliance. In addition, in FY 2023-24 only, the DOI requires 0.1 FTE policy advisor and 220 hours of legal services to perform initial rulemaking, draft regulations and guidance for insurers, and to research and draft a letter to the federal HHS regarding state defrayal. Legal services are provided by the Department of Law at a rate of \$105.74 per hour. Over the course of FY 2024-25 and FY 2025-26, the division requires \$150,000 for an actuarial contractor to perform the HIV treatment prior authorization analysis.

Department of Health Care Policy and Financing

HCPF will update its technology systems to reflect the service expansion for its family planning benefit program for individuals without documentation within existing resources. Any increase in family planning-related service costs is not expected to require additional appropriations.

Department of Personnel and Administration

The bill's health care service requirements will impact the state's costs for employee health insurance. Per the actuarial analysis cited above, impacts to insurance costs may range from -0.01 to 0.07 percent overall. Costs will be borne by enrolled employees for the first plan year, and then become a premium cost shared by the state and employee in future years addressed through the Total Compensation analysis included in the annual budget process.

Department of Law

The fiscal note assumes compliance with state and federal restrictions related to abortion funding. If the state is required to defend its position, litigation costs will be sought through the budget process.

Judicial Department

Any impact to the trial courts is expected to be minimal, as the fiscal note assumes that most enforcement activity will be handled administratively by DORA.

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.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Similar to the state impact above, costs for local governments for employee insurance may increase. The exact impact will vary by jurisdiction depending on the types of coverage currently offered and the percent of premiums paid by local governments as an employer.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires and includes the following appropriations:

- \$200,000 from the General Fund to the Department of Public Health and Environment, and 0.3 FTE; and
- \$67,627 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies with 0.5 FTE, of which \$23,263 is reappropriated to the Department of Law with an additional 0.1 FTE.

State and Local Government Contacts

Information Technology
Law
Regulatory Agencies

Judicial
Personnel

Health Care Policy and Financing
Public Health and Environment