HB 23-1201

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0773	**Date:**	February 28, 2023
Prime Sponsors:	Rep. Daugherty; Soper	**Bill Status:**	House Health & Insurance
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Bill Topic: **RX DRUG BENEFITS CONTRACT TERM REQUIREMENTS**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill limits the amount that carriers or pharmacy benefit managers (PBMs) may charge beneficiaries of employer-sponsored plans for prescription drugs to no more than the amount paid by the plan to contracted pharmacies, and specifies enforcement mechanisms. The bill increases state expenditures and may minimally impact local workload and state revenue on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires a net change in appropriations of $10,150 to the Department of Health Care Policy and Financing.

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

Table 1
State Fiscal Impacts Under HB 23-1201

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Revenue		-	-	-	-
Expenditures	General Fund	$40,937	$30,787	$30,787	$281,444
	Federal Funds	($30,787)	($30,787)	($30,787)	($30,787)
	Total Expenditures	**$10,150**	**$0**	**$0**	**$250,657**
Transfers		-	-	-	-
Other Budget	GF Reserve	$6,140	$4,618	$4,618	$42,217

Summary of Legislation

The bill limits the amount that health insurance carriers or pharmacy benefit managers (PBMs) may charge beneficiaries of employer-sponsored plans for prescription drugs to no more than the amount paid by the plan or PBM to a contracted pharmacy. The bill applies to contracts issued or renewed on or after January 1, 2025. The bill grants audit authority to the Department of Regulatory Agencies (DORA) and the Department of Health Care Policy and Financing (HCPF). Failure to comply is a deceptive trade practice under the Consumer Protection Act for self-funded plans, and a deceptive trade practice in the business of insurance for fully insured plans.

Background

Self-funded insurance plans are regulated under federal law. The bill applies the Colorado Consumer Protection Act to violations of the bill for these plans, which is enforced by the Attorney General. Fully insured plans are regulated by the Division of Insurance (DOI) in the Department of Regulatory Agencies. The bill applies consumer protections under the authority of the DOI and Commissioner of Insurance to these plans for violations.

State Revenue

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. Under the bill, the Attorney General may bring such actions against self-funded insurance plans. Similarly, the Commissioner of Insurance may also pursue deceptive trade practice actions against fully insured plans that violate provisions of the bill. Given the uncertainty about the number of cases that may be pursued by the Attorney General or the Commissioner of Insurance, 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

On net, the bill increases costs to the Department of Health Care Policy and Financing (HCPF) by $10,000 in FY 2023-24 and $251,000 in FY 2026-27 and ongoing. Additionally, the bill shifts state expenditures in HCPF from federal funds to General Fund. These expenditures are shown in Table 2 and detailed below.

The bill also increases workload for the DOI in DORA, the Department of Law, and the Judicial Department. These impacts are discussed below.

Table 2
Expenditures Under HB 23-1201

	Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Department of Health Care Policy and Financing				
Contractor	$10,150	-	-	$250,657
Personal Services (GF Only)	$30,787	$30,787	$30,787	$30,787
Personal Services (GF and FF)	($30,787)	($30,787)	($30,787)	($30,787)
Total Costs	**$10,150**	**$0**	**$0**	**$250,657**
General Fund	*$40,937*	*$30,787*	*$30,787*	*$281,444*
Federal Funds	*($30,787)*	*($30,787)*	*($30,787)*	*($30,787)*

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

Department of Health Care Policy and Financing (HCPF)

Contractor. HCPF will be required to hire a contractor to perform the data collection, storage, and analysis process necessary to conduct the audits required by the bill. This contractor will perform work required for both HCPF and DORA. This is assumed to be the most cost efficient option as HCPF already contracts with a vendor capable of performing the work. The contractor will send results to the appropriate department. It is assumed that HCPF will require 50 contractor hours in FY 2023-24 for technical assistance relating to rule promulgation and 1,130 hours in FY 2026-27 and ongoing to assist in audits. The contractor rate is $203 and the fiscal note assumes a 3 percent annual increase.

Staffing. HCPF will have additional work to interface with the contractor, conduct the audit, and coordinate with the Department of Law and DOI, as necessary. It is assumed that this work can be performed by existing staff who perform similar contract oversight. However, because this work is not eligible for a federal match, HCPF will no longer be able to draw down federal funding for this staff's time, for which HCPF typically receives a 50 percent match. It is estimated that 1,560 hours, or the equivalent of about 0.8 FTE, will be spent on this work annually, resulting in $61,573 in costs shifted from being paid with 50 percent General Fund and 50 percent federal funds to being paid with 100 percent General Fund annually beginning in FY 2023-24. It is assumed that using existing staff and foregoing the federal match is more cost efficient than hiring new staff.

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. By shifting personal service costs from federal funds to General Fund, the fund sources for these centrally appropriated costs, including employee insurance and supplemental retirement payments, will also shift accordingly. This will result in about $7,000 in centrally appropriated costs moving from General Fund to federal funds, which will be adjusted through the annual budget process.

Department of Regulatory Agencies

The DOI in the Department of Regulatory Agencies will have an increase in workload to promulgate rules, perform outreach with regulated insurance plans, and to receive and respond to consumer complaints and audit findings. Assuming a high level of compliance by state-regulated insurance plans, it is assumed that workload for enforcement actions regarding deceptive trade practices can be accomplished within existing resources.

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 health insurers will have a high level of compliance with the law and that any violation of the legislation will result in minimal number of new cases. Thus, no change in appropriations is required.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. It applies to contracts issued or renewed on or after January 1, 2025.

State Appropriations

For FY 2023-24, the bill requires a General Fund appropriation of $10,150 to the Department of Health Care Policy and Financing for contract services. In addition, the bill requires a refinancing of personal services appropriations, including an increase of $30,787 General Fund and a reduction of $30,787 federal funds.

State and Local Government Contacts

District Attorneys	Health Care Policy and Financing	Information Technology
Judicial	Law	Regulatory Agencies