SB 23-033

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 23-0160	**Date:**	May 15, 2023
Prime Sponsors:	Sen. Rodriguez; Fields Rep. Amabile	**Bill Status:**	Deemed Lost
		Fiscal Analyst:	Erin Reynolds | 303-866-4146 erin.reynolds@coleg.gov

Bill Topic: **MEDICAID PREAUTHORIZATION EXEMPTION**

Summary of Fiscal Impact:

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

The bill would have prohibited the Department of Health Care Policy and Financing from requiring certain utilization management practices for prescription drugs used to treat serious mental health disorders provided under a contract with a health maintenance organization. The bill would have increased state expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of $10.6 million to the Department of Health Care Policy and Financing.

Fiscal Note Status: The fiscal note reflects the introduced bill, which was recommended by the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems.

The bill was deemed lost in the Senate Appropriations Committee on May 9, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 23-033

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-	-
Expenditures	General Fund	$2,544,771	$2,787,384	$3,053,178
	Cash Funds	$637,751	$698,691	$765,453
	Federal Funds	$7,459,760	$8,172,018	$8,952,335
	Total Expenditures	**$10,642,282**	**$11,658,093**	**$12,770,966**
Transfers		-	-	-
Other Budget Impacts	General Fund Reserve	$381,716	$418,108	$457,977

Summary of Legislation

The bill prohibits the Department of Health Care Policy and Financing (HCPF) from requiring prior authorization, fail first, or step therapy requirements for any prescription drug indicated to treat a serious mental health disorder. The bill applies to drugs provided under a contract between HCPF and a health maintenance organization. Serious mental health disorder is defined to include schizophrenia, schizo-affective disorder, bipolar disorder, or major depressive disorder.

Background and Assumptions

Prior authorization requirements (PARs) are currently part of HCPF's utilization management system used to ensure that Medicaid clients have the proper care and services for medically necessary treatments without overusing resources. In FY 2021-22, HCPF denied approximately $10.7 million in claims for drugs that treat the disorders defined in the bill.

The Medicaid Drug Rebate Program requires that prescription drug manufacturers enter into a Medicaid drug rebate agreement with the U.S. Department of Health & Human Services for states to claim federal funding on the use of the drug manufacturer's products. The rebates collected under the program are shared by the federal government and states based on each state's federal medical assistance percentage. The federal rebate percentage for acute care pharmaceuticals represents about 57 percent of Medicaid's costs.

In addition to the federal drug rebate program, Colorado has negotiated supplemental rebate agreements with drug manufactures under which manufacturers provide supplemental rebates to ensure that their drugs are placed on the state's preferred drug list. Drugs that are on the preferred drug list are not subject to prior authorization requirements, resulting in a shift in utilization to these preferred drugs. This arrangement allows states to maximize supplemental rebates collected from drug manufacturers. The fiscal note assumes that HCPF will forego supplemental rebates for drugs that treat the disorders defined in the bill, which currently equates to about 20 percent cost savings.

Finally, managed care organizations will have an increase in prescription drug costs, impacting the rates paid by Medicaid to these entities.

State Expenditures

The bill increases state expenditures in HCPF by an estimated $10.6 million in FY 2023-24, $11.7 million in FY 2024-25, and $12.8 million in FY 2025-26, with costs paid from the General Fund, the Healthcare Affordability and Sustainability Cash Fund, and federal funds. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-033

	FY 2023-24	FY 2024-25	FY 2025-26
Department of Health Care Policy and Financing			
Prescription Drug Costs	$8,830,425	$9,674,205	$10,598,610
Foregone Supplemental Rebates	$1,800,357	$1,972,388	$2,160,856
Information System Updates	$11,500	$11,500	$11,500
Total	**$10,642,282**	**$11,658,093**	**$12,770,966**
General Fund	*$2,544,771*	*$2,787,384*	*$3,053,178*
Cash Funds	*$637,751*	*$698,691*	*$765,453*
Federal Funds	*$7,459,760*	*$8,172,018*	*$8,952,335*

Health Care Policy and Financing. Expenditures in HCPF include increased prescription drug costs and foregone supplemental rebates, as well as information system updates beginning in FY 2023-24, as described below. The prescription drug costs are assumed to grow by 9.5 percent per year based on current acute care growth rate trends, and these drugs receive about a 70 percent federal funding match.

- **Prescription drug costs.** The fiscal note assumes that Medicaid members will increase utilization of affected drugs by about 45 percent, including a shift to higher-cost and brand name drugs to treat serious mental health disorders, based on relevant studies focused on adding or removing prior authorization and other utilization management strategies for prescription drugs. This is expected to increase costs for these drugs as shown in Table 2. Any cost savings related to the removal of fail first practices under the bill cannot be calculated, as data correlating denied claims and hospitalizations is unavailable.

- **Loss of supplemental rebates.** It is assumed that the elimination of the utilization management practices in the bill, specifically the prior authorization requirement, will result in the loss of supplemental rebates, as these rebates are provided based on the use of drugs on the preferred drug list, and it is assumed that there will no longer be preferred drugs under the bill. This shift is estimated to increase costs by the amounts shown in Table 2.

- **Information system updates.** Beginning in FY 2023-24, updates to the Pharmacy Benefit Management System are required to eliminate prior authorization requirements for affected prescription drugs. These costs are estimated to be $11,500 annually and receive a 50 percent federal match.

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, which will decrease the amount of General Fund available for other purposes.

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 an appropriation of $10,642,282 to Department of Health Care Policy and Financing, which includes $2,544,771 General Fund, $637,751 from the Healthcare Affordability and Sustainability Cash Fund, and $7,459,760 federal funds.

State and Local Government Contacts

Counties	Health Care Policy and Financing	Human Services
Information Technology	Municipalities	Personnel
Regulatory Agencies		