HB 20-1349

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 20-0075	**Date:**	October 15, 2020
Prime Sponsors:	Rep. Roberts; Kennedy Sen. Donovan	**Bill Status:**	Deemed Lost
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Bill Topic: **COLORADO AFFORDABLE HEALTH CARE OPTION**

Summary of Fiscal Impact:

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

The bill would have directed the Commissioner of Insurance to design a health insurance plan that must be offered by private insurance carriers in the individual market beginning January 1, 2022, and would have set reimbursement rates to hospitals under this plan. It would have increased state expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill would have required an appropriation of $808,949 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 20-1349

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	$30,909	$132,375
	Cash Funds	$808,949	$540,149
	Federal Funds	($30,909)	($30,909)
	Centrally Appropriated	$138,346	$131,047
	Total	**$947,295**	**$772,662**
	Total FTE	**4.5 FTE**	**5.5 FTE**
Diversions	General Fund	($947,295)	($652,810)
	Cash Funds	$947,295	$652,810
	Total	**$0**	**$0**
TABOR Refund		-	-

Summary of Legislation

The bill directs the Commissioner of Insurance in the Department of Regulatory Agencies (DORA) to design a health insurance plan (the "Colorado Option" plan) to be offered by private health insurance carriers in the individual market beginning in 2022. It requires most hospitals to participate at reimbursement rates established in the bill, which may be adjusted by the commissioner. An advisory board is created to guide the development and implementation of the program.

Insurance carrier participation. Beginning January 1, 2022, health insurance carriers must offer the Colorado Option plan in each county where the carrier offers an individual health benefit plan. The commissioner must ensure that there are at least two carriers offering the Colorado Option plan in each county, and is empowered to require carriers to offer the plan in specific counties in order to accomplish this. In making these determinations, the commissioner must consider alternative coverage available and the number of covered individuals the carrier has in each county. Through the rate filing process, the commissioner must deny any rate in the individual, small group, or large group markets that reflects a cost shift from the Colorado Option plan to other plans offered in the state.

Colorado Option plan structure. The commissioner must adopt rules to develop and operate the plan. Among other requirements specified in the bill, the plan must meet following criteria:

- be offered to Colorado residents for purchase in the individual market, on and off the exchange;
- include the essential health benefits package;
- provide at least bronze and silver levels of coverage;
- reimburse hospitals for inpatient and outpatient services using a formula established based on Medicare rates;
- require that a minimum of 85 percent of the money collected as premiums be spent on patient care, not including insurance producers' commissions; and
- require each carrier to reduce Colorado Option plan premiums by the full amount of estimated rebates that the carrier received for prescription drugs in the previous year.

Should the state seek federal pass-through funding from a federal waiver submitted as part of this plan, the state shall recommend that at least 80 percent of the funding received be dedicated to increasing affordability for individuals and families with incomes up to 400 percent of the federal poverty level.

Hospital participation. Hospitals are required to participate in the Colorado Option plan, except those exempted by the bill or by the commissioner. The commissioner must promulgate rules establishing a formula setting rates for insurance carriers to reimburse hospitals. The formula must be based on a percentage of Medicare reimbursement rates, and structured to lower premiums and out-of-pocket costs for consumers and increase access to health care in rural areas. For the 2022 and 2023 plan years, the base reimbursement rate is set at 155 percent of the hospital's Medicare reimbursement rate. The base reimbursement rate must be adjusted as follows:

- a critical access hospital or a independent hospital must receive a 20 percentage point increase to the base reimbursement rate, and the increase must be 40 percentage points if it is both independent and a critical access hospital;

- a hospital with a combined percentage of Medicare and Medicaid patients exceeding the state average must receive up to a 30 percentage point increase; and
- a hospital that is efficient in managing the underlying cost of care, as specified in the bill, must receive up to a 40 percentage point increase.

The commissioner may exempt a hospital from the rates established or change the reimbursement rate for a hospital that demonstrates that the reimbursement rate will have a significant adverse effect on its financial sustainability. The commissioner must consult with health care employee membership organizations and may alter reimbursement rates as needed to ensure adequate wages and staffing for these employees to provide quality care.

A hospital that refuses to participate is subject to a fine of up to $10,000 per day for the first thirty days and up to $40,000 per day thereafter. In addition, the Colorado Department of Public Health and Environment may suspend, revoke, or impose conditions on the hospital's license.

Expansion to small group market. Beginning in 2023, the commissioner may adopt rules to expand the Colorado Option plan to the small group market for the 2024 plan year, with any changes to the plan deemed necessary. In order to do this, a vote of the majority of the advisory board is required.

Advisory board. The Colorado Option Advisory Board is created to make recommendations to develop, implement, and operate the plan. The board consists of nine voting members: the executive director of Connect for Health Colorado, four members appointed by the Governor, and four members appointed by the General Assembly, with backgrounds and qualifications as specified in the bill. The board also includes eight non-voting ex officio members. The board must meet at least quarterly, hold public meetings, and allow public testimony. The board may override a decision of the commissioner concerning the implementation of the Colorado Option plan with the votes of seven of the nine voting members.

Reports. The commissioner must evaluate the Colorado Option plan and report to the General Assembly by July 1, 2024, and by each July 1 thereafter. On the same timetable, the Department of Health Care Policy and Financing (HCPF) must report on the impact of the Colorado Option plan on hospital sustainability, the health care workforce, and health care wages.

Background

Colorado's individual and small group markets. As of January 2019, an estimated 204,000 individuals received health insurance coverage in Colorado's individual market. Another 274,000 individuals receive coverage in the small group market, which includes plans for employers that have no more than fifty employees. About 375,000 Coloradans are estimated to be uninsured.

Federal premium subsidies. In 2019, Coloradans received about $749 million in federal advance premium tax credits to purchase health insurance through Connect for Health Colorado, the state's health insurance exchange. These subsidies, established in the federal Affordable Care Act, are based on household income, premium amount paid, and the cost of a benchmark health plan. Subsidies are available to persons with income between 133 an 400 percent of the federal poverty level. Adults with income up to 133 percent of the federal poverty level are eligible for Medicaid. Children, the elderly, and persons with disabilities are also eligible for Medicaid at various income levels.

State innovation waivers. Section 1332 of the federal Affordable Care Act allows states to apply for a waiver of various requirements of the federal law to pursue innovative strategies for providing residents with access to high-quality, affordable health care. These waivers allow states to receive federal "pass-through" funds based on estimated savings to the federal budget from reduced advance premium tax credits or other federal spending.

State Revenue

State revenue may increase from fines of up to $40,000 per day on hospitals that refuse to participate in the Colorado Option plan. The fiscal note assumes a high level of compliance and that any fine revenue will be minimal. Fine revenue is deposited into the General Fund and is subject to state revenue limits under TABOR.

State Diversion

The bill diverts an estimated $947,295 from the General Fund to the Division of Insurance (DOI) Cash Fund in DORA in FY 2020-21 and $652,810 in FY 2021-22 and future years. This revenue diversion occurs because the bill increases costs in the DOI, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures by $947,295 and 4.5 FTE in FY 2020-21 and $772,622 and 5.5 FTE in FY 2021-22 in DORA and HCPF. DORA's expenditures are paid from the DOI Cash Fund, while HCPF expenditures are paid from the General Fund and federal funds. The bill also impacts workload in the Department of Public Health and Environment. These impacts are shown in Table 2 and described below.

Table 2
Expenditures Under HB 20-1349

Cost Components	FY 2020-21	FY 2021-22
Department of Regulatory Agencies		
Personal Services	$314,199	$314,199
Operating Expenses	$4,590	$4,590
Capital Outlay Costs	$18,600	-
Legal Services	$213,200	$213,200
Actuarial Consultant	$150,000	-
Health Care Consultant	$100,200	-
Advisory Board Meeting Costs	$8,160	$8,160
Centrally Appropriated Costs*	$138,346	$112,810
FTE – Personal Services	3.4 FTE	3.4 FTE
FTE – Legal Services	1.1 FTE	1.1 FTE
DORA (Subtotal)	**$947,295**	**$652,959**

Table 2
Expenditures Under HB 20-1349 (Cont.)

Cost Components	FY 2020-21	FY 2021-22
Department of Health Care Policy and Financing		
Personal Services	-	$93,916
Operating Expenses and Capital Outlay Costs	-	$1,350
Capital Outlay	-	$6,200
Centrally Appropriated Costs*	-	$18,237
FTE – Personal Services	-	1.0 FTE
HCPF (Subtotal)	**-**	**$119,703**
Total	**$947,295**	**$772,662**
Total FTE	**4.5 FTE**	**5.5 FTE**

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

Department of Regulatory Agencies. Beginning July 1, 2020, DORA will require 3.4 FTE consisting of program managers, an actuary, and a rate analyst. This group will conduct the planning, analysis, and daily implementation of the program. For FY 2020-21 only, an actuarial consultant is required for 375 hours at a rate of $400 per hour, and a health care consultant for 334 hours at a rate of $300 per hour, to develop the benefit design and assist with the federal waiver. The program will require an estimated 2,000 hours of ongoing legal services from the Department of Law at a rate of $106.60 per hour. Advisory committee costs of travel, reimbursement, and per diem are estimated to be $2,040 per meeting for four meetings each year.

Federal pass-through funding. If Colorado is granted a State Innovation Waiver, the state may receive federal funds based on savings to the federal budget attributable to this bill. To the extent that the Colorado Option program decreases federal advance premium tax credits, a portion of this could be returned to the state as federal pass-through funds. The bill specifies that 80 percent of any such funding must be spent increasing affordability for individuals and families with incomes up to 400 percent of the federal poverty level. An initial estimate performed by a DOI contractor in February 2020 estimated that the state could receive federal pass-through funding of up to $42.7 million.

Department of Health Care Policy and Financing. Beginning July 1, 2020, HCPF will shift existing staff to consult with the commissioner and the advisory board in developing the plan. This will require a $30,909 increase in General Fund and equivalent decrease in federal funds to shift this position to being fully state funded. Beginning July 1, 2021, HCPF will require one additional data analyst to evaluate hospital sustainability, the health care workforce, and wages. In addition, HCPF will require $100,000 in FY 2023-24 for a contractor to assist with the report on hospital sustainability and the health care workforce.

Department of Public Health and Environment. The Health Facilities and Emergency Medical Services Division in the department, which licenses health facilities across the state and ensures that the facilities are in compliance with statute and applicable rules and regulations, will be required to enforce hospital compliance under the bill. As the DOI will notify the department of hospitals that are out of compliance and it is assumed that hospitals will comply with the law, this enforcement workload is expected to be minimal. Additional appropriations may be requested

through the annual budget process, if necessary. In addition, the Prevention Services Division in the department, which administers programs that improve access to care for underinsured Coloradans, may experience a change in utilization. If a funding adjustment is needed, this will be addressed through the annual budget process.

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 estimated to be $138,346 in FY 2020-21 and $131,047 in FY 2021-22.

TABOR refunds. The bill may increase state General Fund obligations for TABOR refunds from fines, which would correspondingly impact TABOR refunds, where applicable.

Statutory Public Entity

Connect for Health Colorado. The state's health insurance exchange is funded primarily through a health insurance carrier fee charged on plans purchased through the marketplace. The fee is set at 3.5 percent of premiums for 2019. To the extent that the bill decreases some premiums and increases the number of policies purchased, this will have an offsetting impact on revenue to the exchange; the net impact of these effects is not estimated. In addition, the exchange will incur one-time costs to update marketing materials, technology, data collection, and reporting practices.

Effective Date

The bill was deemed lost on June 16, 2020.

State Appropriations

For FY 2020-21, the bill requires the following appropriations:

- for the Department of Regulatory Agencies: $808,949 from the Division of Insurance Cash Fund, and 3.4 FTE. Of this amount, $213,200 is reappropriated to the Department of Law, which requires an additional 1.1 FTE; and
- for the Department of Health Care Policy and Financing: $30,909 General Fund, and an equivalent reduction in federal funds.

State and Local Government Contacts

Health Care Policy and Financing
Public Health and Environment
Colorado Health Benefit Exchange
Regulatory Agencies
Higher Education
Information Technology
Governor