HB 20-1160

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 20-0010	**Date:**	October 13, 2020
Prime Sponsors:	Rep. Jackson; Roberts Sen. Ginal; Donovan	**Bill Status:**	Deemed Lost
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Bill Topic: **DRUG PRICE TRANSPARENCY INSURANCE PREMIUM REDUCTIONS**

Summary of Fiscal Impact:

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

The bill would have required health insurers and drug manufacturers to report information to the state regarding the cost of prescription drugs, and directed the Division of Insurance to analyze the information and report on the effect of prescription drug costs on health insurance premiums. The bill would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill would have required an appropriation of $273,119 to the Department of Regulatory 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 20-1160

		FY 2020-21	FY 2021-22
Revenue	Cash Funds	$341,074	$314,249
	Total	**$341,074**	**$314,249**
Expenditures	Cash Funds	$273,119	$240,554
	Centrally Appropriated	$67,955	$73,695
	Total	**$341,074**	**$314,249**
	Total FTE	**2.6 FTE**	**3.0 FTE**
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill requires health insurers, drug manufacturers, pharmacy benefit management firms (PBMs), and nonprofit organizations focusing on pharmaceutical treatment to report information relating to the cost of prescription drugs to the Commissioner of Insurance (commissioner) in the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA). The commissioner is authorized to adopt rules to implement the bill, including fees paid by insurers, manufacturers, and PBMs to cover the costs of implementing the bill. In addition, penalties are established for health insurers, drug manufacturers, and pharmacists for failure to comply with various provisions of the bill.

Health insurers. Beginning in 2021, health insurers must report the following information to the commissioner relating to all covered prescription drugs dispensed at a pharmacy and paid for by the health insurer during the preceding calendar year:

- the top fifty drugs purchased, both by volume and by annual spending;
- the fifty drugs that accounted for the highest increase in total annual spending compared to the prior year;
- the fifty drugs that caused the greatest increase in premiums;
- the fifty drugs that the insurer paid for most frequently and for which the insurer received a rebate from manufacturers;
- the fifty drugs for which the insurer received the highest rebate, both in absolute terms and as a percentage of the price of the drug;
- a written certification that the insurer accounted for all rebates in determining premiums, and a description of how this was calculated; and
- a list of all PBMs the health insurer uses, which must be updated within ten days of any change.

Beginning January 1, 2021, health insurers and PBMs that receive a manufacturer's notice of price increases or new specialty drugs must annually report to the commissioner on information specified in the bill for each drug. This information includes rebates received from manufacturers, administrative fees, dispensing fees, as well as the average wholesale price for specified categories of prescription drugs delineated by market sector. Health insurers using PBMs must require PBM compliance with this requirement and must periodically audit to verify compliance.

Beginning January 1, 2022, DOI regulated health insurers must reduce premiums for each plan by an amount equal to the estimated rebates received for prescription drugs for that plan in the previous year.

Drug manufacturers. For prescription drugs with a price of more than $50 per course of therapy, manufacturers are required to report information on drug price increases beyond specified thresholds to the commissioner and purchasers registered with DOI. Beginning January 1, 2021, manufacturers that introduce new specialty drugs to the commercial market must notify the commissioner and registered purchasers within three days after the release fo the drug. In addition, for each drug reported on as described above, manufacturers must report additional specified information to the commissioner relating to the price history of the drug within 15 days after the end of each calendar quarter that starts during or after 2021. The DOI may impose a fee on purchasers registering with the division to offset the cost on registering and maintaining a list of purchasers.

Nonprofit organizations. A nonprofit organization whose mission focuses on pharmaceutical treatment for Coloradans and has received payments or donations exceeding $1,000 in value from a drug manufacturer, PBM, health insurer, or trade association of one of these industries, must report to the commissioner specified information concerning these payments or donations. Fines of up to $10,000 are established for failure to comply.

Division of Insurance. The DOI must publish to its website the information received pursuant to this bill, excluding information that is demonstrated to be proprietary. The commissioner must analyze the data to determine the overall effect of prescription drug costs on premiums and issue a report as part of the DOI's annual *Health Cost Report*, and publish the report by December 1, 2021, and each year thereafter. Among other things, the report must include a description of the rebate practices of health insurers, and any recommendations for legislative changes to contain the costs of prescription drugs. If any reporting entity demonstrates that reported information is proprietary, the commissioner much review the information and exclude it from the report. The reporting entity bears the burden of proof to demonstrate that any information is proprietary.

State Revenue

The bill increases state cash fund revenue by an estimated $341,074 in FY 2020-21 and $314,249 in FY 2021-22 and future years. The bill may also increase General Fund revenue from civil penalties and court filing fees, minimally. This revenue is subject to TABOR.

Fee impact. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by DOI based on cash fund balance, program costs, and the number of health insurers, drug manufacturers, and PBMS subject to the fee. There are approximately 500 health insurers regulated by DOI and approximately 30 in-state drug manufacturers, but it is unknown how many other drug manufacturers, PBMs, and nonprofit organizations will be subject to the fee as of this writing. The table below identifies the fee impact of this bill.

Table 2
Fee Impact under HB 20-1160

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total*
FY 2020-21	Filing Fee	$644	at least 530	**$341,074**
FY 2020-21	Filing Fee	$593	at least 530	**$314,249**

** Totals have been rounded*

Court filing fees. To the extent that cases are appealed to the district court, the bill may increase state revenue from filing fees, which are deposited into various cash funds in the Judicial Department. For informational purposes, the district court filing fee is $235.

State Diversions

Typically, a General Fund diversion occurs when the DOI's costs increase, as the division is funded with insurance premium tax revenue that would otherwise be credited to the General Fund. However, it is expected that this bill will be funded from filing fees deposited directly into the DOI Cash Fund, so it is unlikely that such a diversion will take place. However, if the fees are not in place through rule in time to cover implementation costs, or are otherwise insufficient to cover the costs under the bill, diversion from the General Fund to the DOI Cash Fund may occur.

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State Expenditures

The bill increases state expenditures by $341,074 and 2.6 FTE in FY 2020-21, and $314,249 and 3.0 FTE in FY2021-22 and future years. These costs are shown in Table 3 and described below.

Table 3
Expenditures Under HB 20-1160

	FY 2020-21	FY 2021-22
Department of Regulatory Agencies		
Personal Services	$189,288	$231,904
Operating Expenses	$3,375	$4,050
Capital Outlay Costs	$18,600	-
Computer Programming	$44,800	$4,600
Legal Services	$17,056	-
Centrally Appropriated Costs*	$67,955	$73,695
FTE – Personal Services	2.5 FTE	3.0 FTE
FTE – Legal Services	0.1 FTE	-
Total Cost	**$341,074**	**$314,249**
Total FTE	**2.6 FTE**	**3.0 FTE**

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

Department of Regulatory Agencies. DORA will incur costs for staffing, computer programming, and legal services to implement the bill, as discussed below.

Staffing. DORA will require three additional ongoing staff members to implement the bill; a statistical analyst and rate/financial analyst hired immediately upon the bill's effective date, and an actuary prorated for a half year in the first year. Initial workload includes establishing data collection processes and interfaces with reporting entities and promulgating rules. Beginning January 1, 2021, staff are required to collect, manage, and publish data, review confidentiality assertions, collect fees to finance the program, analyze drug price and rebate data, the effect on premiums, and draft an annual report.

Computer programming. DORA will work with the Office of Information Technology to develop a framework for data collection and publishing. This system is estimated to require 400 hours of computer programming at a rate of $112 per hour, and 40 hours in subsequent years to maintain.
Legal services. Legal services from the Department of Law will be required to assist with drafting rules, making determinations of confidentiality, and potentially enforcement actions. The fiscal note assumes this will require 160 hours of legal services at a rate of $106.60 per hour.

Drug purchases by state agencies. To the extent the bill reduces prescription drug costs, the Departments of Corrections, Health Care Policy and Financing, and Human Services may see a reduction in prescription drug-related expenditures. Any such impact will be addressed through the annual budget process.

Judicial Department. Failure to comply with the provisions of the bill makes an entity subject to penalties imposed by the commissioner and Pharmacy Board, which may be appealed to district court and the court of appeals. The fiscal note assumes that most businesses will comply with the law and that the number of appeals will be minimal.

Rule consultation with certain state agencies. The bill encourages the DOI to consult with the Pharmacy Board, the Secretary of State, Attorney General, and the Departments of Health Care Policy and Financing, Corrections, and Human Services when adopting rules for the program. Any related workload impact to these agencies is not expected to require an appropriation.

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 $67,955 in FY 2020-21 and $73,695 in FY 2021-22.

TABOR refunds. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years.

Effective Date

The bill was deemed lost on June 16, 2020

State Appropriations

For FY 2020-21, the bill requires an appropriation of $273,119 and 2.6 FTE to the Department of Regulatory Agencies from the Division of Insurance Cash Fund. Of this amount, $44,800 is reappropriated to the Office of Information Technology, and $17,056 is reappropriated to Department of Law.

State and Local Government Contacts

Judicial	Colorado Health Benefit Exchange	Information Technology
Law	Health Care Policy and Financing	Higher Education
Personnel	Public Health And Environment	Regulatory Agencies