



**Legislative
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Nonpartisan Services for Colorado's Legislature

HB 19-1168

**FINAL
FISCAL NOTE**

Drafting Number:	LLS 19-0513	Date:	August 15, 2019
Prime Sponsors:	Rep. McCluskie; Rich Sen. Donovan; Rankin	Bill Status:	Signed into Law
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Bill Topic: STATE INNOVATION WAIVER REINSURANCE PROGRAM

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Transfer and Diversion	<input checked="" type="checkbox"/> Statutory Public Entity

The bill requires the Commissioner of Insurance to seek federal approval to establish a reinsurance program as a state enterprise to lower health insurance premiums. The bill requires one-time funding to seek the federal waiver. Conditional upon federal approval, the bill increases state revenue and expenditures, and triggers General Fund transfers and diversions, through FY 2021-22.

Appropriation Summary: For FY 2019-20, the bill requires and includes an appropriation of \$785,904 to the Department of Regulatory Agencies. Expenditures from the Reinsurance Program Cash Fund are conditional upon federal approval of the program and the fund is continuously appropriated.

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

**Table 1
State Fiscal Impacts Under HB 19-1168**

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	Reinsurance Cash Fund	-	\$40,000,000	\$40,000,000
	Total	-	\$40,000,000	\$40,000,000
Expenditures	Cash Funds	\$38,810,904	\$77,065,122	\$39,040,122
	Federal Funds	\$71,527,500	\$143,055,000	\$71,527,500
	Centrally Appropriated	\$50,296	\$67,062	\$67,062
	Total	\$110,388,700	\$220,187,184	\$110,634,684
	Total FTE	3.0 FTE	4.0 FTE	4.0 FTE
Transfers and Diversions	General Fund	(\$15,836,200)	(\$49,632,184)	(\$9,632,184)
	Reinsurance Cash Fund	\$15,000,000	\$48,550,000	\$8,550,000
	DOI Cash Fund	\$836,200	\$1,082,184	\$1,082,184
	Total	\$0	\$0	\$0
TABOR Refund		-	-	-

Summary of Legislation

The bill requires the Commissioner of Insurance in the Department of Regulatory Agencies (DORA) to seek a State Innovation Waiver under the federal Affordable Care Act to create a jointly funded reinsurance program in Colorado. If federal approval is granted, the reinsurance program will be in effect for calendar year 2020 and 2021 health plans sold on the individual health insurance market.

The commissioner will set the payment parameters of the reinsurance program. These include the attachment point, above which claims are eligible for reinsurance payments; the coinsurance rate; and the reinsurance cap, above which claims are no longer eligible for reinsurance payments. The bill directs the commissioner to set the parameters of the program so that claims costs are reduced as follows:

- between 30 and 35 percent in geographic rating areas five and nine (Mesa County and western Colorado);
- between 20 and 25 percent in geographic rating areas four, six, seven, and eight (Larimer, Weld, and Pueblo counties, the eastern plains, and southern Colorado); and
- between 15 and 20 percent in geographic rating areas one, two, and three (Boulder, El Paso, and Teller counties, and the Denver metro area).

The reinsurance program is created as a state enterprise that, subject to approval by the General Assembly and Governor, may issue revenue bonds. The establishes special fee assessments on hospitals and General Fund transfers and diversions to finance the state share of the program. Hospital fee assessments may be up to \$40.0 million per calendar year, but combined with other fees on hospitals, may not exceed 6 percent of total patient revenue. Revenue to the reinsurance program is exempt from the state's TABOR limit. Hospitals are prohibited from passing the special fee on to consumers in any manner. Procedures will be created to exempt certain hospitals from the special fees based on parameters included in the bill. If the federal government suspends the Health Insurance Provider Fee, created under the Affordable Care Act, the commissioner must assess a fee of 2.2 percent of premiums collected by carriers or at a rate imposed by the federal government. If funding is inadequate to achieve the target claims cost reductions, new payment parameters will be established within the available funding amount.

Hospitals are required to provide quarterly reports to the commissioner, as outlined in the bill. The Division of Insurance is required to report on the reinsurance program each year as part of DORA's SMART Act hearing. The program is scheduled to repeal on September 1, 2023.

Background

Reinsurance. Reinsurance is a type of insurance available to insurance carriers to transfer a portion of their risk to one or more other carriers, thereby reducing the risk of having to pay high-cost claims. By covering a portion of costs for high-cost claims, reinsurance can allow insurance carriers to charge lower premiums to consumers.

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. To apply for a waiver, the state must show that the waiver provides access to quality health care that will be at least as comprehensive and affordable as it would be absent the waiver; that coverage is provided to a comparable number of residents as would be provided absent the waiver; and that the changes under the waiver do not increase the federal deficit.

Federal health insurance subsidies. In 2018, Coloradans received about \$636 million in federal advance premium tax credits to purchase health insurance through Connect for Health Colorado, the state's health insurance exchange. These subsidies 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 and 400 percent of the federal poverty level.

Colorado's individual market. As of January 2019, an estimated 251,000 individuals receive health insurance coverage through Colorado's individual market. About half of this population receives federal tax credits to pay a portion of their premiums.

State Revenue, Transfers, and Diversions Related to Reinsurance Program Payments

The bill increases fee revenue to the Reinsurance Program Cash Fund by \$40.0 million in each FY 2020-21 and FY 2021-22. The bill also transfers and diverts \$15 million in FY 2019-20, \$48.6 million in FY 2020-21, and \$8.6 million in FY 2021-22 from the General Fund to the Reinsurance Program Cash Fund.

In total, these actions will result in an estimated \$152.1 million in available funds for the Reinsurance Program Cash Fund. These details are shown in Table 2 and described below.

Table 2
State Share of Reinsurance Payments Under HB 19-1168

	FY 2019-20	FY 2020-21	FY 2021-22
Fee Revenue			
Hospital Fee Assessment	-	\$40,000,000	\$40,000,000
Subtotal (Fee Revenue)	-	\$40,000,000	\$40,000,000
General Fund Transfers and Diversions			
Triggered by Passage of HB 19-1245	\$15,000,000	\$40,000,000	-
Incremental Premium Tax Revenue	-	\$8,550,000	\$8,550,000
Subtotal (Transfers and Diversions)	\$15,000,000	\$48,550,000	\$8,550,000
Total	\$15,000,000	\$88,550,000	\$48,550,000

Hospital fee revenue. Conditional upon the federal waiver being approved, the bill will increase state cash fund revenue by about \$40.0 million in each FY 2020-21 and 2021-22 from fee assessments on hospitals. Fees may be assessed in an amount up to \$40.0 million per calendar year, but may not exceed 6 percent of total patient revenue when combined with other fees on hospitals. The fiscal note assumes that the full \$40.0 million will be collected in each calendar year. Fee revenue is deposited into the Reinsurance Program Cash Fund, and is not subject to state revenue limits under TABOR.

General fund transfers. Conditional upon the passage of House Bill 19-1245, which modifies the vendor fee, the bill transfers \$15.0 million in FY 2019-20 and \$40.0 million in FY 2020-21 from the General Fund to the Reinsurance Program Cash Fund. HB 19-1245 was signed into law; therefore, these transfers will take place.

Insurance premium tax diversions. The bill diverts revenue to the Reinsurance Program Cash Fund that would otherwise be credited to the General Fund in an amount equal to an incremental increase in year-over-year insurance premium tax collections. Based on the March 2019 LCS forecast, these transfers will be \$8.6 million in each FY 2020-21 and FY 2021-22.

Insurance carrier fee revenue. If the federal government suspends the Health Insurance Provider Fee, created by the Affordable Care Act, the commissioner must assess a fee of 2.2 percent of premiums collected by insurance carriers. The fiscal note does not include an estimate reflecting this scenario.

State Diversions Related to Program Administration in DORA

The bill diverts up to \$836,200 from the General Fund in FY 2019-20 and up to \$1,082,184 in FY 2020-21 and FY 2021-22 for program administration in DORA. This revenue diversion occurs because the bill increases costs in the Division of Insurance in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases expenditures in DORA by \$110.4 million and 3.0 FTE in FY 2019-20, \$220.2 million and 4.0 FTE in FY 2020-21, and \$110.6 million and 4.0 FTE in FY 2021-22. The majority of these costs are conditional upon federal approval of the state waiver. These costs, which are paid from cash funds and federal funds, are summarized in Table 3 and described below.

**Table 3
Expenditures Under HB 19-1168**

	FY 2019-20	FY 2020-21	FY 2021-22
Reinsurance Program Payments*			
Reinsurance Payments – Cash Funds	\$38,025,000	\$76,050,000	\$38,025,000
Reinsurance Payments – Federal Funds	\$71,527,500	\$143,055,000	\$71,527,500
Subtotal (Reinsurance Payments)	\$109,552,500	\$219,105,000	\$109,552,500
Program Administration in DORA			
Personal Services and Operating Expenses	\$274,104	\$339,122	\$339,122
Contractor and Consultant Services	\$511,800	\$676,000	\$676,000
Centrally Appropriated Costs**	\$50,296	\$67,062	\$67,062
FTE – Personal Services	3.0 FTE	4.0 FTE	4.0 FTE
Subtotal (Administration)	\$836,200	\$1,082,184	\$1,082,184
Total Cost	\$110,388,700	\$220,187,184	\$110,634,684
Total FTE	3.0 FTE	4.0 FTE	4.0 FTE

* Reinsurance payments are displayed as they will align with the calendar years that the payments will reimburse insurers for; actual payments will be made by August 15 of the following year.

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

Reinsurance payments. The bill requires the reinsurance program to be sized such that claims paid by insurance carriers for plans sold on the individual market are reduced by amounts specified in the bill and detailed in the Summary of Legislation section, subject to available funding. Achieving these reductions would require about a 21 percent statewide reduction for calendar years 2020 and 2021. Based on actuarial analyses commissioned by DORA in April 2019, this would require reinsurance program expenditures of \$294 million per year, 65 percent (\$191 million) of which will be federally funded, necessitating \$103 million in state funding each year. The fiscal note estimates that \$76.1 million in state funds will be available per year, as discussed in the revenue section, which is about 75 percent of the identified need. This level of state funding is anticipated to generate a proportional federal match of \$143.1 million per year, which combined will be sufficient to achieve 75 percent of the claims costs reduction targets specified in the bill. The estimates shown are prorated to reflect a half year of implementation in FY 2019-20 and FY 2021-22.

Reinsurance program administration. To create the reinsurance program beginning in calendar year 2020, DORA will need to apply for a federal waiver and develop payment parameters. This will require 3.0 FTE in FY 2019-20, and 4.0 FTE in FY 2019-20 and FY 2021-22. DORA will also require contractor support for claims processing, insurance carrier audits, and in the ongoing evaluation of payment parameters; this will require 1,560 contractor hours at a rate of \$325 per hour (\$507,000) in FY 2019-20, and 2,080 hours at \$325 per hour (\$676,000) in FY 2020-21 and

FY 2021-22. DORA will require \$4,800 for a healthcare consultant to assist with the waiver application in FY 2019-20. Ongoing administration may be financed with the Reinsurance Program Cash Fund, but it is unknown when these funds will become available for this purpose; therefore, the fiscal note identifies these costs as paid from the Division of Insurance Cash Fund.

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 \$50,296 in FY 2019-20 and \$67,062 in FY 2020-21 and FY 2021-22.

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. A reduction in premiums will result in a decrease in revenue to Connect for Health Colorado. This may be partially offset by an increase in demand for health insurance policies.

Effective Date

The bill was signed into law by the Governor and took effect on May 17, 2019.

State Appropriations

For FY 2019-20, the bill requires and includes an appropriation from the Division of Insurance Cash Fund of \$785,904 to the Department of Regulatory Agencies, and an allocation of 3.0 FTE.

State and Local Government Contacts

Colorado Health Benefit Exchange
Information Technology
Personnel
State Auditor

Health Care Policy and Financing
Law
Regulatory Agencies