



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1065

FISCAL NOTE

Drafting Number: LLS 20-0296
Prime Sponsors: Rep. Kennedy; Herod
Sen. Pettersen; Priola

Date: January 15, 2020
Bill Status: House Health & Insurance
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Bill Topic: HARM REDUCTION SUBSTANCE USE DISORDERS

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill requires health insurers to reimburse hospitals for prescribing opiate antagonists to covered individuals; creates immunity for individuals who administer an expired antagonist; allows pharmacists to sell non-prescribed clean syringes or needles to individuals without a prescription; allows local public health agencies to operate clean syringe programs without county approval and allows hospitals to operate a clean syringe program; and increases appropriations to the Harm Reduction Grant Program Cash Fund. The bill increases state and local expenditures, and minimally decreases state revenue, on an ongoing basis.

Appropriation Summary: For FY 2020-21, this bill requires an appropriation of \$250,000 to the Department of Public Health and Environment. In addition, the bill continuously appropriates any money in the Harm Reduction Grant Program to the department beginning in FY 2020-21.

Fiscal Note Status: This fiscal note reflects the introduced bill, which was recommended by the Opioid and Other Substance Use Disorders Study Committee.

Table 1
State Fiscal Impacts Under HB 20-1065

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditure (General Fund), Transfer, and TABOR Refund.

## **Summary of Legislation**

This bill makes changes to insurance reimbursements, clarifies civil and criminal immunity for administering expired opiate antagonists, allows pharmacists to sell clean syringes and needles, changes requirements for local clean syringe programs, and increases appropriations to the Harm Reduction Grant Program, as described below.

**Insurance reimbursements.** This bill requires health insurers to reimburse hospitals for providing opiate antagonists to covered individuals at discharge.

**Immunity for administering an expired opiate antagonists.** The bill clarifies that the existing immunity from criminal and civil penalties for persons who furnish or administer an opiate antagonist in good faith to a person experiencing or at risk of an opiate-related drug overdose also applies to *expired* opiate antagonists.

**Selling of clean syringes.** The bill allows pharmacists to sell nonprescription syringes and needles to anyone without being in violation of Colorado's drug paraphernalia law.

**Clean syringe programs.** Under current law, a county or district public health agency must get approval from the county or district board of public health and engage in stakeholder meetings in order to operate or contract with a nonprofit to operate a clean syringe exchange program. This bill removes these requirements, but allows counties in a district to opt out of a clean syringe exchange program at any time. It also allows a licensed hospital to operate a clean syringe program.

**Harm Reduction Grant Program.** Finally, the bill requires the General Assembly to appropriate \$250,000 per year above the FY 2019-20 appropriation to the Harm Reduction Grant Program Cash Fund, which will result in total appropriations to the cash fund of \$2.1 million. In addition, the bill specifies that money in the cash fund is continually appropriated to the Colorado Department of Public Health and Environment (CDPHE).

## **Comparable Crime Analysis**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

**Prior conviction data on drug paraphernalia.** This bill allows pharmacists to sell clean syringes or needles without being in violation of Colorado's drug paraphernalia laws. Under these laws, possession of drug paraphernalia is a drug petty offense with a penalty of a fine of no more than \$100 and the manufacture, sale, or delivery of drug paraphernalia is a level 2 drug misdemeanor, which carries a sentence of a \$50 fine to 364 days in jail and a \$750 fine. From FY 2015-16 to FY 2017-18, 2,467 individuals have been convicted and sentenced for possessing drug paraphernalia and 5 individuals have been convicted and sentenced for the manufacture, sale, or delivery of drug paraphernalia. Of the persons convicted of both offenses, 1,683 were male, 785 were female, and 4 did not have a gender identified. Demographically, 2,164 were White, 143 were Black/African American, 122 were Hispanic, 10 were Asian, 4 were American Indian, 26 were classified as "Other," and 3 did not have a race identified. In addition, of those convicted, one individual was sentenced to jail for the manufacturing, sale, or delivery of drug paraphernalia.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **Background and Assumptions**

**Harm Reduction Grant Program.** In 2019, the General Assembly passed Senate Bill 19-008 which created the Harm Reduction Grant Program in the CDPHE and appropriated \$1.8 million for FY 2019-20. Based on the fiscal note for SB 19-008, it is assumed that the current appropriation amount of \$1.8 million will continue in FY 2020-21 and future fiscal years.

**Clean syringe programs.** The CDPHE supports 15 syringe exchange programs across 8 counties through contracts with local public health agencies and community-based organizations. The department does not manage local programs.

**Criminal justice impact.** Since it is unknown how many of those convicted for the above offenses were pharmacists who sold a non-prescribed syringe or needle, the fiscal note assumes that most pharmacists adhere to current law and, therefore, any change in criminal convictions will be minimal. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note.

## **State Revenue**

Starting in FY 2020-21, Judicial Department revenue from civil filings fees and criminal fees and fines may decrease by a minimal amount due to changes in opiate antagonist immunity-related provisions. The fiscal note assumes that any decrease in revenue will be minimal.

## **State Expenditures**

This bill will increase General Fund expenditures in the CDPHE by \$250,000 per year starting in FY 2020-21. Conversely, the bill will minimally decrease state expenditures and workload for the Judicial Department and the Department of Regulatory Agencies (DORA) starting in FY 2020-21, as described below.

**Department of Public Health and Environment.** Starting in FY 2020-21, expenditures in the CDPHE will increase by \$250,000 to provide additional funding to the Harm Reduction Grant Program, as required by the bill. This funding must be appropriated to the Harm Reduction Grant Program Cash Fund, and will be expended by the CDPHE under the continuous spending authority granted by the bill. Workload in the CDPHE will also increase to administer additional grants. Further, workload will increase to provide additional support to local public health agencies and community-based organizations to the extent more syringe service programs begin operating. The fiscal note assumes that this workload can be accomplished within the existing Harm Reduction Grant appropriation and by the STI/HIV division appropriation.

**Judicial Department.** Starting in FY 2020-21, workload and expenditures in the Judicial Department will decrease by a minimal amount due to changes in opiate antagonist immunity-related provisions. No change in appropriation is required.

**Department of Regulatory Agencies.** Starting in FY 2020-21, workload for the State Board of Pharmacy in DORA will decrease by a minimal amount due to fewer disciplinary hearings as a result of the bill allowing pharmacists to sell nonprescription syringes and needles without committing a criminal offense. In addition, workload to the Division of Insurance in DORA will increase to monitor

and enforce insurance carrier payments to hospitals related to opiate antagonists to covered individuals upon discharge. The fiscal note assumes that any change in workload will be minimal and no change in appropriations is required.

**TABOR refunds.** The bill is expected to decrease state General Fund obligations for TABOR refunds by a minimal amount in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the measure will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

## Local Government

Starting in FY 2020-21, workload for local county and district boards of public health will decrease as a result of no longer having to approve clean syringe exchange programs. However, to the extent that local public health agencies operate new clean syringe programs that previously were not approved by boards of health, expenditures for those local health agencies will increase. Local government expenditures may also increase if locally run hospitals choose to operate a clean syringe program.

**Local criminal justice impacts.** Expenditures and workload to district attorney offices, and county jails will decrease to the extent that the expanded immunity provisions concerning opiate antagonists reduce criminal prosecutions. These decreases are expected to be minimal.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State Appropriations

For FY 2020-21, the bill requires a General Fund appropriation of \$250,000 to the Harm Reduction Grant Program Cash Fund within the Department of Public Health and Environment, assuming the General Assembly continues the FY 2019-20 appropriation of \$1.8 million to the fund through the annual budget process.

## State and Local Government Contacts

Counties	Health Care Policy and Financing
Judicial	Information Technology
Personnel	Public Health and Environment
Regulatory Agencies	