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**SB 20-215**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated June 3, 2020)

**Drafting Number:** LLS 20-1144      **Date:** June 4, 2020  
**Prime Sponsors:** Sen. Moreno; Donovan      **Bill Status:** Senate Appropriations  
Rep. Kennedy; McCluskie      **Fiscal Analyst:** Max Nardo | 303-866-4776  
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**Bill Topic:**      **HEALTH INSURANCE AFFORDABILITY ENTERPRISE**

**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	<input type="checkbox"/> Statutory Public Entity

The bill creates the Health Insurance Affordability Enterprise and extends and refinances the Reinsurance Program. The enterprise is funded with a newly established TABOR exempt health insurance fee and annual General Fund transfer. The bill increases state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** No appropriation is required; all expenditures are paid from the newly created Health Insurance Affordability Cash Fund, which is continuously appropriated

**Fiscal Note Status:** The fiscal note is revised to correct an error and update information received after the fiscal note was published.

**Table 1**  
**State Fiscal Impacts Under SB 20-215**  
(in millions)

		FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-34
<b>Revenue</b>	Cash Funds	-	-	\$64.7	\$95.2	\$140.9
	<b>Total</b>	-	-	<b>\$64.7</b>	<b>\$95.2</b>	<b>\$140.9</b>
<b>Expenditures</b>	Cash Funds	-	-	\$64.7	\$95.2	\$151.0
	Federal Funds	-	-	\$82.5	\$165.0	\$165.0
	<b>Total</b>	-	-	<b>\$147.2</b>	<b>\$260.2</b>	<b>\$316.0</b>
	<b>Total FTE</b>	-	-	-	<b>4.0 FTE</b>	<b>4.0 FTE</b>
<b>Transfers / Diversions</b>	General Fund	\$15.0	\$40.0	-	-	(\$10.1)
	Cash Funds	(\$15.0)	(\$40.0)	-	-	\$10.1
	<b>Total</b>	<b>\$0</b>	<b>\$0</b>	-	-	<b>\$0</b>
<b>TABOR Refund</b>		-	-	-	-	-

## **Summary of Legislation**

The bill creates the Health Insurance Affordability Enterprise within the Division of Insurance (DOI) in the Department of Regulatory Agencies. The bill provides for the extension and refinancing of the Reinsurance Program, which will be financed by a newly created health insurance fee.

**Health Insurance Affordability Enterprise.** The enterprise is created in the DOI to collect the Health Insurance Affordability Fee and distribute the money for specified purposes related to health insurance enrollment and affordability. It is governed by a board of nine voting members, which, among other duties, will make recommendations for the distribution of funds for approval by the Commissioner of Insurance. It is designated as an enterprise for TABOR purposes, and financed with fees described below and a diversion of premium taxes from the General Fund. The enterprise will allocate its revenue to do the following:

- provide funding for the Reinsurance Program;
- provide payments to carriers to reduce individual market premiums for individuals receiving federal tax credits;
- subsidize individual health coverage plans purchased by low-income individuals not otherwise eligible for federal premium subsidies or public insurance;
- pay the administrative expenses of the enterprise, capped at 3.0 percent of revenue collected; and
- pay for consumer enrollment, outreach, and education regarding health care coverage.

**Health Insurance Affordability Fee.** Beginning in 2021 the enterprise will assess a fee on health insurance carriers by July 15 of each year. The fee is 1.0 percent of premiums collected for nonprofit carriers and 2.5 percent for-profit carriers, and based on premiums collected on health benefits plans in the preceding calendar year. Revenue is deposited into the newly created Health Insurance Affordability Cash Fund, which is continuously appropriated for the purposes of the enterprise. Revenue is not subject to TABOR provided that the program meets the requirements for enterprise status, which includes receiving under 10 percent of annual revenue from all Colorado state and local governments combined.

**Hospital fees.** For 2022 and 2023, the enterprise will assess fees on hospitals totaling \$20.0 million per year. However, if the fee would, in combination with other state hospital fees, exceed 6.0 percent of net patient revenue, a limit established in federal regulation, the fee must be reduced to avoid any reduction in collection of the Healthcare Affordability and Sustainability Fee. Hospitals are prohibited from passing the fee to consumers in any way.

**Reinsurance Program extension.** The bill incorporates the Reinsurance Program enterprise within the Health Insurance Affordability Enterprise and authorizes the commissioner to seek an extension of up to five years from the federal government through a State Innovation Waiver. The commissioner is directed to set reinsurance payment parameters for the 2021 benefit year at amounts to achieve the claims reductions achieved in the 2020 benefit year. The bill substantially refinances the Reinsurance Program by eliminating \$55.0 million in General Fund transfers to the program, creating an ongoing diversion of tax revenue from the General Fund to the program, and eliminating hospital fees for benefit year 2020 and 2021.

**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 allows insurance carriers to charge lower premiums to consumers.

Colorado's Reinsurance Program was established by House Bill 19-1168 for an initial period of two years beginning in 2020. The program uses state and federal funds to cover a portion of claims for high cost individuals insured through the individual market, thereby reducing premiums charged by carriers. As of May 2020, about 181,000 individuals receive health insurance coverage through Colorado's individual market, with an average premium of \$611 per month.

**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. The state was granted such a waiver in 2019 to initially institute the Reinsurance Program. To obtain 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 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 and 400 percent of the federal poverty level. Because Colorado's Reinsurance Program lowers individual market premiums, the need for federal subsidies are correspondingly reduced. Some of the federal savings achieved by this are given back to Colorado and used to finance the program.

**State Revenue**

The bill increases state revenue by the amounts shown in Table 2 and described below. Provided that the enterprise qualifies for enterprise status, this revenue is not subject to TABOR.

**Table 2**  
**Health Insurance Affordability Enterprise Revenue Under SB 20-215**  
(in millions)

	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
Health Insurance Fee	-	-	\$104.7	\$115.2	\$120.9
Hospital Fees	-	-	(\$40.0)	(\$20.0)	\$20.0
<b>Total</b>	-	-	<b>\$64.7</b>	<b>\$95.2</b>	<b>\$140.9</b>

**Health Insurance Affordability Fee.** FY 2021-22 revenue is based on actual enrollment in DOI-regulated health benefit plans for 2019 and projected enrollment for 2020, which is 874,418 insured persons at an weighted average monthly premium of \$534. Revenue in subsequent years is estimated assuming revenue increases of 10 and 5 percent, respectively, to account for an expected rebound in policies following depressed enrollment in 2020.

**Hospital Fees.** The bill eliminates \$40.0 million fees for FY 2021-22 and FY 2022-23 that were established in HB 19-1168 and establishes \$20.0 million fees for FY 2022-23 and 2023-24.

**State Transfers and Diversions**

The bill eliminates two General Fund transfers and diverts General Fund revenue to the enterprise as shown in Table 3 and described below.

**Table 3**  
**General Fund Transfers and Diversions Under SB 20-215**  
(in millions)

	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Reinsurance Transfers	(\$15.0)	(\$40.0)	-	-	-
Premium Tax Diversion	-	-	-	-	\$10.1
<b>Total</b>	<b>(\$15.0)</b>	<b>(\$40.0)</b>	<b>-</b>	<b>-</b>	<b>\$10.1</b>

**Reinsurance Transfers.** HB 19-1168 established General Fund transfers to the Reinsurance Program; these transfers are eliminated.

**Insurance Premium Taxes.** This revenue stream will eventually be a source of funding for the enterprise, but the fiscal note estimates this will not take place until FY 2023-24. Current law provides for a diversion of insurance premium tax revenue from the General Fund to the Reinsurance Program Cash Fund in FY 2020-21 and FY 2021-22 only. These transfers are calculated based on incremental growth in this revenue stream from a baseline of 2019. The bill extends these transfers in perpetuity, and modifies the formula to be the amount collected in any subsequent year minus the amount collected in 2019, up to 10.0 percent of revenue collected by the enterprise. Due to a decrease in insurance premium tax collections beginning in 2020, collections are not anticipated to exceed baseline 2019 collections of \$317.8 million until 2023. This revenue stream increases with population and insurance premiums paid, which has historically been approximately 2.0 to 5.0 percent per year.

**State Expenditures**

The bill increases state expenditures by the amounts shown in Table 4. These expenditures are discussed below.

**Table 4**  
**Expenditures Under SB 20-215**  
(in millions)

	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
<b>Enterprise Expenditures</b>					
Reinsurance Program - State Funds	-	-	\$42.5	\$85.0	\$85.0
Reinsurance Program - Federal Funds	-	-	\$82.5	\$165.0	\$165.0
Administrative Costs	-	-	\$1.9	\$2.9	\$4.5
Other Enterprise Expenditures	-	-	\$20.3	\$7.3	\$61.5
<b>Total Cost</b>	-	-	<b>\$147.2</b>	<b>\$260.2</b>	<b>\$316.0</b>
<b>Total FTE</b>	-	-	-	<b>4.0 FTE</b>	<b>4.0 FTE</b>

**Reinsurance Program.** The Reinsurance Program is expected to cost about \$250 million per year, with approximately two-thirds (\$165 million) being federally funded and one-third (\$85 million) being state funded through the enterprise. These costs are prorated for a half year for FY 2021-22 as the program is currently authorized through the end of 2021, the midway point of the fiscal year. Costs include an extension of the program's existing 4.0 FTE. The actual cost of the program is the amount of money needed to achieve claims cost reduction targets established in the Reinsurance Program; this amount is sensitive to enrollment and other individual market conditions, which are currently experiencing a high degree of volatility.

**Administrative costs.** These costs include implementation and administration of the Reinsurance Program, costs to implement the enterprise fee and hospital assessments, and analysis to determine enterprise expenditures. The costs shown on Table 4 are 3.0 percent of revenue, the amount allowable under the bill; actual expenditures will be determined by the DOI.

**Other Enterprise Expenditures.** The amounts shown on Table 4 represent estimated funds remaining after reinsurance and administrative costs are paid. This remaining revenue will be used for expenditures that are distributed at the discretion of the commissioner following recommendations from the enterprise board, within parameters established in the bill.

**Effective Date**

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

**State Appropriations**

No appropriation is required; all expenditures are paid from the continuously appropriated Health Insurance Affordability Cash Fund.

**State and Local Government Contacts**

Regulatory Agencies