



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 18, 2021)

Drafting Number: LLS 21-0292 Date: May 20, 2021
Prime Sponsors: Rep. Roberts Bill Status: House Appropriations
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Bill Topic: PRESCRIPTION INSULIN PRICING AND ACCESS

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [] Local Government
[X] State Diversion [] Statutory Public Entity

The bill creates the Insulin Affordability Program in the Department of Regulatory Agencies, and specifies how an individual can obtain an emergency supply of insulin. It increases state expenditures beginning in FY 2021-22.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Health and Insurance Committee.

Summary of Legislation

The bill creates the Insulin Affordability Program in the Department of Regulatory Agencies (DORA). Beginning January 1, 2022, the program allows eligible individuals to receive a 12-month prescription for insulin for no more than a \$50 copay for a 30-day supply and an emergency 30-day supply of insulin once per 12-month period for no more than a \$35 copay. The bill sets the copayment limit that a pharmacy may collect to process and dispense the insulin and specifies how a pharmacy may submit a request for reimbursement or replacement of the insulin from the manufacturer under the program. Manufacturers are required to develop a process for a pharmacy to submit a claim, and a manufacturer that fails to comply with a reimbursement is subject to a fine.

The Division of Insurance is required to develop and make available applications for the 12-month prescription and the emergency 30-day supply. The bill also directs DORA and the Department of Health Care Policy and Financing (HCPF) to promote the program to Coloradans and include the applications on their websites, and it allows each department to seek gifts, grants, and donations for this purpose.

The bill clarifies that the existing statutory maximum of \$100 that a covered person is required to pay for insulin through a health coverage plan applies to all covered prescription insulin drugs for the person's entire 30-day supply, regardless of the number of prescriptions that person may have.

Background

House Bill 19-1216 required an insurance carrier providing coverage for prescription insulin drugs to cap the total amount that a covered person is required to pay at an amount not to exceed \$100 per 30-day supply of insulin, regardless of the amount or type of insulin needed to fill the covered person's prescription, and permitted the Insurance Commissioner and the Attorney General to enforce the policy.

State Revenue

The bill potentially increases revenue from to the Division of Insurance Cash Fund from gifts, grants, and donations to DORA or HCPF; however, no sources have been identified at this time. Gifts, grants, and donations are exempt from TABOR revenue limits.

The bill may increase state revenue from fines if insulin manufacturers fail to comply with the bill's requirements. The fiscal note assumes that manufacturers will generally follow the law, and any fine revenue will be minimal.

State Expenditures

In FY 2021-22, the bill increases state workload in DORA, HCPF, state-operated pharmacies, and potentially the Department of Law, as detailed below.

Department of Regulatory Agencies. Workload will increase in DORA to amend regulations, develop application forms, and to promote the program. This workload can be accomplished within existing appropriations.

Department of Health Care Policy and Financing. Workload will increase in HCPF to update its website and promote the program beginning in FY 2021-22. No change in appropriations is required.

State pharmacies. Workload may increase for state-operated pharmacies in the Department of Corrections, the Department of Higher Education, and the Department of Human Services if the program results in additional prescriptions and to file applications and claims for reimbursement or replacement of insulin supplies. No change in appropriations is required.

Department of Law. A similar policy adopted in Minnesota has resulted in ongoing litigation against the state. If similar litigation were to occur in Colorado regarding this bill, expenditures will increase in the Department of Law. If legal services are required, the increase in expenditures will be addressed through the annual budget process.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Federal ARPA funds. This bill potentially increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. The Insulin Affordability Program in the bill is created effective January 1, 2021.

Departmental Difference

The Department of Law estimates an increase in expenditures of \$191,412 and 1.0 FTE in FY 2021-22 and \$287,118 and 1.5 FTE in FY 2022-23, assuming that the bill will be litigated, and that the litigation will be significant and complex due to the cost and pricing of insulin. The fiscal note assumes that if litigation results from the bill, existing legal services appropriations should be used first, and then any additional costs should be addressed through the annual budget process once the timing and scope of any litigation is known.

State and Local Government Contacts

Corrections
Human Services
Personnel

Health Care Policy and Financing
Information Technology
Regulatory Agencies

Higher Education
Law