



## Legislative Council Staff

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# Fiscal Note

**Drafting Number:** LLS 22-0243  
**Prime Sponsors:** Rep. Will  
Sen. Jaquez Lewis

**Date:** February 25, 2022  
**Bill Status:** House Health & Insurance  
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**Bill Topic:** **PHARMACY BENEFIT MANAGER PROHIBITED PRACTICES**

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill requires pharmacy benefit managers to reimburse pharmacies at certain rates, and also creates the 340B Prescription Drug Program Anti-Discrimination Act. The bill increases state expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2022-23, the bill requires an appropriation of \$17,109 to the Department of Regulatory Agencies.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under HB 22-1122**

		<b>Budget Year FY 2022-23</b>	<b>Out Year FY 2023-24</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	Cash Funds	\$17,109	\$20,530
	Centrally Appropriated	\$6,164	\$6,797
	<b>Total Expenditures</b>	<b>\$23,273</b>	<b>\$27,327</b>
	<b>Total FTE</b>	<b>0.3 FTE</b>	<b>0.3 FTE</b>
<b>Diversion</b>	General Fund	(\$23,273)	(\$27,327)
	Cash Funds	\$23,273	\$27,327
	<b>Net Diversion</b>	<b>\$0</b>	<b>\$0</b>

## Summary of Legislation

For all contracts between a pharmacy benefit manager (PBM) and a pharmacy entered into or renewed on or after January 1, 2023, the bill prohibits a PBM or their representative from reimbursing a pharmacy for a prescription drug in an amount that is less than:

- the national average drug acquisition (NADA) cost at the time the drug is administered or dispensed, plus a professional dispensing fee; or
- the wholesale acquisition cost of the drug, plus a professional dispensing fee, if the NADA is not available.

The bill also creates the 340B Prescription Drug Program Anti-Discrimination Act, which, among its provisions, prohibits a third party that reimburses a 340B covered entity for 340B drugs from imposing fees, charge backs, or other adjustments on covered entities or contract pharmacies based on their participation in the 340B drug pricing program, or requiring a claim for a drug to include a modifier to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the Medicaid program.

A PBM or any other third party that makes payment for the 340B drugs for an eligible patient must not discriminate against a 340B covered entity in a manner that prevents or interferes with the patient's choice to receive the drugs from that entity. Violation of the 340B Prescription Drug Program Anti-Discrimination Act by a third party is an unfair or deceptive act or practice. The Commissioner of Insurance may adopt rules to enforce the bill.

## Background

The 340B Prescription Drug Program is named for Section 340B of the federal Public Health Service Act, passed in 1992. To have their drugs covered by Medicaid and Medicare Part B, pharmaceutical manufacturers enter into a pricing agreement with the Secretary of Health and Human Services to provide discounts on covered outpatient drugs purchased by covered entities that serve vulnerable patients.

## Assumptions

The fiscal note assumes that the bill will generate 200 complaints per fiscal year and that each complaint will require 3 hours of Division of Insurance (DOI) staff time for:

- taking complaint information;
- corresponding with and gathering information from the involved carrier;
- conducting an investigation; and
- determining whether the carrier is in compliance with the statute.

The fiscal note also assumes the DOI will receive 200 inquiries per fiscal year, each requiring 15 minutes of staff time. If additional information becomes available to clarify these assumptions, the fiscal note will be revised to reflect the new information.

## State Diversion

The bill diverts \$23,273 from the General Fund to the Division of Insurance Cash Fund in FY 2022-23, and \$27,327 in FY 2023-24. This revenue diversion occurs because the bill increases costs in the DOI, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

## State Expenditures

The bill increases state expenditures in the DOI in Department of Regulatory Agencies by \$23,273 in FY 2022-23, and \$27,327 in FY 2023-24 from the Division of Insurance Cash Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2**  
**Expenditures Under HB 22-1122**

	FY 2022-23	FY 2023-24
<b>Department of Regulatory Agencies</b>		
Personal Services	\$17,109	\$20,530
Centrally Appropriated Costs <sup>1</sup>	\$6,164	\$6,797
<b>Total Cost</b>	<b>\$23,273</b>	<b>\$27,327</b>
<b>Total FTE</b>	<b>0.3 FTE</b>	<b>0.3 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Regulatory Agencies.** Beginning in FY 2022-23, based on the assumptions listed above, the DOI requires 0.3 FTE to address complaints and inquiries generated by the bill. The DOI will also experience a workload increase for rulemaking, which can be accomplished within existing appropriations and budgeted legal services hours.

**Health Care Policy and Financing.** It is assumed that any changes to rates under Child Health Plan Plus (CHP+) program will be addressed through the annual budget process.

**State employee insurance.** The bill may result in increased costs for prescription drugs leading to higher insurance premiums, which will be shared by state agencies and employees after the first plan year. In addition, changes to prescription drug costs will need to be adopted by the Division of Workers' Compensation and charged to the workers' compensation claims of each agency through the Workers' Compensation actuarial process. Any increase in costs will be addressed through the annual budget process.

**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 shown in Table 2.

## Local Government

Similar to state employee insurance, to the extent that the costs increase for local government insurance plans, cost increases will be shared by local governments and employees.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State Appropriations

For FY 2022-23, the bill requires an appropriation of \$17,109 to the Department of Regulatory Agencies from Division of Insurance Cash fund, and 0.3 FTE.

## State and Local Government Contacts

Health Care Policy and Financing

Law

Public Health and Environment

Information Technology

Personnel

Regulatory Agencies