



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Final Fiscal Note

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

**Date:** August 17, 2022  
**Bill Status:** Signed into Law  
**Fiscal Analyst:** Annie Scott | 303-866-5851  
Annie.Scott@state.co.us

**Bill Topic:** **PHARMACY BENEFIT MANAGER PROHIBITED PRACTICES**

**Summary of Fiscal Impact:**

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

This bill creates the 340B Prescription Drug Program Anti-Discrimination Act. The bill increases state diversions and expenditures on an ongoing basis.

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

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

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

		Budget Year FY 2022-23	Out Year FY 2023-24
<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>
<b>Other Budget Impacts</b>		-	-

## Summary of Legislation

The bill creates the 340B Prescription Drug Program Anti-Discrimination Act. The act prohibits a third party that reimburses a 340B covered entity or contract pharmacy for 340B drugs from imposing fees, charge backs, or other adjustments on 340B 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 pharmacy benefits manager, or any other third party that makes payments for 340B drugs for an eligible patient, must not discriminate against a 340B covered entity or contract pharmacy 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. In order for drugs to be covered by Medicaid and Medicare Part B, pharmaceutical manufacturers enter into a pricing agreement with the U.S. 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 three 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.

## State Diversion

The bill diverts \$23,273 from the General Fund to the DOI Cash Fund in FY 2022-23, and \$27,327 in FY 2023-24 and ongoing. 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 and ongoing from the DOI 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. Costs are prorated for a September 1, 2022, start date in the first year.

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.

## Effective Date

The bill was signed into law by the Governor on June 2, 2022, and it took effect on August 9, 2022.

## State Appropriations

For FY 2022-23, the bill requires and includes 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	Information Technology	Law
Personnel	Public Health and Environment	Regulatory Agencies

---

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes).