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FISCAL NOTE

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Prime Sponsors: Sen. Ginal Bill Status: Senate HHS
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Bill Topic: DRUG PRODUCTION COSTS TRANSPARENCY ANALYSIS REPORT

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

The bill directs the Department of Health Care Policy and Financing to collect and analyze data on high-cost prescription drugs purchased by the state government. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$250,000 to the Department of Health Care Policy and Financing.

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

Table 1
State Fiscal Impacts Under SB 20-107

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

Summary of Legislation

The bill requires the Department of Health Care Policy and Financing (HCPF) to gather data from state agencies and drug manufacturers on high-cost prescription drugs, and to analyze and report on this information to the General Assembly.

Data collection. Beginning in FY 2020-21, the departments of Corrections, Human Services, Personnel and Administration, and HCPF must jointly compile a list of the wholesale acquisition costs of the twenty highest-cost prescription drugs, both by course of therapy and total volume, purchased by the departments in the preceding fiscal year. HCPF must also collect data from the Division of Insurance in the Department of Regulatory Agencies, the all-payer health claims database, and any other relevant sources. HCPF may contract with a third party to collect this data and conduct the analysis, and is not required to adhere to the state procurement code in doing so.

Analysis and reporting. Beginning in FY 2020-21, the annual process of completing the report will take place according to the following timetable:

- by December 1, state agencies will compile the list of high-cost drugs and report to HCPF;
- by February 1, HCPF must request information on specified cost components from the manufacturer of each listed drug;
- within 120 days of receiving the request, but no later than June 1, manufacturers must provide the requested data to HCPF or the designated contractor;
- upon receiving information from manufacturers, HCPF or the designated contractor must analyze the information for each listed drug to determine the basis for the cost; and
- by the ensuing December 1, HCPF or the designated contractor must provide a final cost transparency report to selected committees of the General Assembly.

HCPF is authorized to promulgate rules as necessary to implement the bill. HCPF and any contractor used are required to maintain confidentiality of all proprietary information obtained from manufacturers, and proprietary information is exempt from state open records requests. The bill creates a civil penalty of up to \$10,000 per day for drug manufacturers that fail to report the information requested by HCPF. HCPF is required to report manufacturer violations of reporting requirements to the Attorney General.

State Revenue

To the extent that drug manufacturers fail to comply with reporting requirements, civil penalties may be assessed. The fiscal note assumes a high level of compliance, and that any additional fine revenue will be minimal. Fine revenue is deposited into the General Fund and is subject to state revenue limits established in TABOR.

State Expenditures

The bill increases state expenditures in HCPF by \$250,000 in FY 2020-21 and \$150,000 in FY 2021-22 and future years, and increases workload in other state agencies.

Department of Health Care Policy and Financing. The fiscal note assumes HCPF will hire a contractor to collect and analyze prescription drug costs and prepare the annual report. The contractor will compile the list of drugs; work with manufacturers to obtain information; review, validate, and standardize data; analyze the data; and write the report. The cost estimate is based on the need for 1,250 contractor hours at a rate of \$200 per hour in the first year, and 750 hours

in subsequent years. First-year costs are higher to account for the establishment of data collection procedures and report templates. Further, it is assumed that for drugs that appear on the list repeatedly, a reduced workload is required as some of the data will be unchanged. It is assumed that HCPF will manage and oversee the contract within existing appropriations.

Department of Law and Judicial Department. The bill creates a civil penalty for drug manufacturers that fail to comply with the bill's reporting requirements. To the extent that drug manufacturers violate these requirements, workload will increase for the Attorney General and the Department of Law to address complaints and file motions with courts. It is assumed that this enforcement workload will be prioritized by the Department of Law within its existing appropriations, and that the department will seek additional appropriations through the annual budget process if necessary. Likewise, any impact on the trial courts is assumed to be minimal.

Other state agencies. The Departments of Corrections, Human Services, Personnel and Administration, and Regulatory Agencies are required to submit data to HCPF for analysis. The fiscal note assumes that this workload is minimal and can be accomplished within existing appropriations.

Effective Date

The bill takes effect July 1, 2020.

State Appropriations

For FY 2020-21, the bill requires a General Fund appropriation of \$250,000 to the Department of Health Care Policy and Financing.

Departmental Difference

HCPF estimates that \$250,000 in funding will be needed in FY 2021-22 and future years, rather than the \$150,000 that the fiscal note includes. The fiscal note assumes that after the initial report, subsequent reports will require reduced workload because certain costs for data collection and the initial establishment of procedures are more one-time in nature, and that for drugs that appear on the list repeatedly, some costs will be unchanged. HCPF assumes there will be new workload after the publication of the initial report including responding to questions, design changes, and ongoing communication with drug manufacturers.

State and Local Government Contacts

Health Care Policy and Financing
Information Technology
Regulatory Agencies

Human Services
Judicial
Personnel

Corrections
Law