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Fiscal Note

Drafting Number:	LLS 23-0428	Date:	January 26, 2023
Prime Sponsors:	Rep. Mabrey; Jodeh Sen. Roberts	Bill Status:	House Health & Insurance
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Bill Topic: EPINEPHRINE AUTO-INJECTORS

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" 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

The bill caps the amount an insurance carrier may require a covered person to pay for an epinephrine auto-injector at \$60, and creates an epinephrine auto-injector affordability program in the Department of Regulatory Agencies. It increases state expenditures, requires a state diversion, and may increase state revenue beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$58,291 to the Department of Regulatory Agencies.

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

**Table 1
State Fiscal Impacts Under HB 23-1002**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	Cash Funds	\$58,291	\$60,090
	Centrally Appropriated	\$12,317	\$14,340
	Total Expenditures	\$70,608	\$74,430
	Total FTE	0.7 FTE	0.8 FTE
Transfers/Diversions	General Fund	(\$70,608)	(\$74,430)
	Cash Fund	\$70,608	\$74,430
	Net Diversion	\$0	\$0
Other Budget Impacts		-	-

Summary of Legislation

Epinephrine auto-injector affordability program. Beginning January 1, 2024, the bill creates an epinephrine auto-injector affordability program in the Department of Regulatory Agencies (DORA) to provide low-cost epinephrine auto-injectors to eligible individuals in the state. The bill outlines the individuals eligible to participate in the program and requires the Division of Insurance (DOI) within DORA to create an application form for the program. This form is to be made available and promoted on both the DOI and the Department of Health Care Policy and Financing's (HCPF) websites, and each department can seek gifts, grants, and donations for this purpose.

Manufacturers of epinephrine auto-injectors must make injectors available to individuals in the program and are required to either reimburse pharmacies for the difference between the wholesale acquisition cost and the amount paid by program participants, or provide the same number of injectors to the pharmacy. Manufacturers are required to develop a process for a pharmacy to submit a reimbursement claim and non-compliant manufacturers are subject to fines.

Cost of an epinephrine auto-injector. The bill requires that insurance carriers providing coverage for epinephrine auto-injectors must cap the total cost to the covered person at \$60 for a 2-pack of the injectors. Additionally, pharmacies dispensing injectors through the affordability program are permitted to collect a copayment of no more than \$60 for a 2-pack of injectors to cover their processing and dispensing costs. DORA may also use enforcement powers to ensure compliance and promulgate rules as necessary.

State Revenue

The bill may increase revenue from gifts, grants, and donations to DORA or HCPF, which are exempt from TABOR revenue limits. However, no specific sources have been identified at this time. State revenue may also increase from fines, which are subject to TABOR, when 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 Diversions

This bill diverts \$70,608 from the General Fund in FY 2023-24 and \$74,430 in FY 2024-25. This revenue diversion occurs because the bill increases costs in the DOI in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases expenditures in DORA by \$70,608 in FY 2023-24 and \$74,430 in FY 2024-25, paid from the DOI Cash Fund. Expenditures are shown in Table 2 and detailed below. The bill also increases workload in HCPF, state pharmacies, and the Department of Law.

**Table 2
Expenditures Under HB 23-1002**

	FY 2023-24	FY 2024-25
Department of Regulatory Agencies		
Personal Services	\$49,176	\$59,010
Operating Expenses	\$945	\$1,080
Capital Outlay Costs	\$6,670	-
Translation Services	\$1,500	-
Centrally Appropriated Costs ¹	\$12,317	\$14,340
Total Cost	\$70,608	\$74,430
Total FTE	0.7 FTE	0.8 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Division of Insurance, DORA. The DOI will require program staff and translation services, as described below.

- **Program staff.** The DOI will hire 0.8 FTE to review application forms and rates to ensure compliance, handle inquiries and complaints about the program, develop new regulations and enforcement mechanisms, and develop and promote a new application form and promotional materials for the program. Staff costs are prorated for a September 1 start date, and include standard capital outlay and operating expenses.

The fiscal note assumes inquiries will continue for at least the first three years of implementation as affected parties become aware of the program. These functions and FTE estimates are based on similar affordability programs within the DOI. As such, staffing needs are expected to end in FY 2026-27.

- **Translation.** The DOI will require a one-time cost to contract for translation services to make the application available in at least three languages. These costs may be greater depending on the language needs of different counties; any additional resources will be requested through the budget process.

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

Department of Law. The Department of Law may experience a minimal increase in workload to provide rulemaking support to the DOI and legal support to the DOI and HCPF for the development and publication of the application. The fiscal note assumes manufacturer compliance; however, if legal services are required, this will be addressed through the annual budget process.

Office of Information Technology. Workload in the Office of Information Technology will minimally increase to facilitate the posting of an application form on agency websites.

State pharmacies. State-operated pharmacies in the departments of Corrections, Higher Education, and Human Services may experience increased workload to process reimbursement or replacements of auto-injectors with manufacturers. No change in appropriations is required.

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 2023-24, the bill requires an appropriation of \$58,291 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies, and 0.7 FTE.

State and Local Government Contacts

Corrections	Health Care Policy and Financing	Higher Education
Human Services	Information Technology	Law
Public Health and Environment	Regulatory Agencies	