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Fiscal Note

Drafting Number: LLS 23-0232
Prime Sponsors: Rep. Jodeh; Sirota
Date: February 22, 2023
Bill Status: House Health & Insurance
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Bill Topic: PRIOR AUTHORIZATION FOR STEP-THERAPY EXCEPTION

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 type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill establishes an exemption process from Medicaid step-therapy requirements. The bill increases state expenditure on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$11.8 million 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 HB 23-1183

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$2,766,722	\$2,766,722
	Cash Funds	\$681,264	\$681,264
	Federal Funds	\$8,347,935	\$8,347,935
	Total Expenditures	\$11,795,921	\$11,795,921
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$415,008	\$415,008

Summary of Legislation

The bill requires the Department of Health Care Policy and Financing (HCPF) to exempt prescriptions for serious or complex medical conditions from any requirement to try an alternative drug (step-therapy requirement) if the prescribing provider attests that:

- the alternative drug is likely to cause a negative reaction,
- the alternative drug is unlikely to work based on patient characteristics or history, or
- the patient is stable on the prescribed drug and can provide supporting clinical documentation.

The bill requires HCPF to either provide a response to or request additional information on exemption requests within 24 hours. If providers do not respond to requests for additional information within 72 hours, the exemption request is denied. HCPF must establish an appeals process and inform denied recipients of the right to appeal, and respond to appeals within 24 hours. If HCPF does not meet the bill's requirements or timelines, the step-therapy exemption is granted.

Finally, HCPF must make prior authorization requirements for coverage of prescription drugs and a description of the step-therapy exemption process available on its website. The department must also provide, upon written request, all specific clinical review criteria and other clinical information relating to a recipient's particular condition or disease.

Background

Preferred drug list. HCPF maintains a preferred drug list to increase rebate collections from drug manufacturers in exchange for placement on the list. Drugs that are on the preferred list are not subject to prior authorization requirements, which results in a shift in utilization to the preferred drugs and allows the state to maximize the supplemental rebates it collects from drug manufacturers. When providers prescribe a drug that is not on the preferred list, step-therapy requirements frequently require Medicaid members to fail on a drug on the preferred list before Medicaid covers the non-preferred drug.

Continuation of therapy allowance. HCPF exempts certain drug classes from step-therapy requirements when the HCPF clinical review, with input from the Pharmacy and Therapeutics Committee and the Drug Utilization Review Board, determines that movement between drugs in the class is detrimental to patient health. This is referred to as a continuation of therapy allowance. It is frequently granted to conditions that often require multiple drug trials before a patient is stable, including serious mental health conditions, multiple sclerosis, and seizure disorder.

State Expenditures

The bill increases state expenditures in the Department of Health Care Policy and Financing (HCPF) by \$11.8 million per year beginning in FY 2023-24. Costs are shared between General Fund, the Healthcare Affordability and Sustainability Fee Cash Fund, and federal funds. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HB 23-1183

	FY 2023-24	FY 2024-25
Department of Health Care Policy and Financing		
Pharmacy Costs	\$11,395,921	\$11,395,921
Contractor Costs	\$400,000	\$400,000
Total Cost	\$11,795,921	\$11,795,921

Department of Health Care Policy and Financing

Pharmacy costs will increase as a result of HCPF covering more non-preferred drugs through continuation of therapy allowances. Additionally, costs will increase as a result of HCPF reviewing exemption applications. These costs are detailed below.

Pharmacy costs. At least 500,000 people join Medicaid annually. (Medicaid churn is a separate calculation from Medicaid growth rates, which show the net effect of people joining and leaving Medicaid). The fiscal note assumes that the new-to-Medicaid population will be the population to benefit from a continuation of therapy allowance for a non-preferred drug.

To calculate this impact, the fiscal note assumes:

- most prescription medications treat serious or complex medical conditions;
- that an additional 0.87 percent of the new-to-Medicaid population will utilize non-preferred drugs, based on state utilization data that show non-preferred drug utilization among drugs that currently have a continuation of therapy allowance is approximately 0.87 percent higher than drugs that do not have the allowance, which equates to an additional 38,000 non-preferred drugs claims annually; and
- that the average claim cost difference of a non-preferred drug is \$301 per year.

This estimate is likely conservative as it assumes that:

- both non-preferred and preferred drugs receive the same supplemental rebate rate, though the actual supplemental rebate will likely be less for non-preferred drugs; and
- drug classes that currently have a continuation of therapy allowance are directly comparable to drug classes that would receive an allowance under the bill, though the allowance is currently granted to drug classes that treat more unstable conditions.

To extent that pharmacy costs differ from this estimate, these costs will be addressed through the annual budget process as more utilization and cost data become available.

Contractor costs. HCPF currently uses a contractor to conduct prior authorization reviews. Review of additional exemption requests increases the cost of this contract by \$400,000 annually.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$11,795,921 to the Department of Health Care Policy and Financing, including \$2,766,722 from the General Fund, \$681,264 from the Healthcare Affordability and Sustainability Fee Cash Fund, and \$8,347,935 from federal funds.

State and Local Government Contacts

Health Care Policy and Financing