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Revised Fiscal Note

(replaces fiscal note dated March 14, 2023)

Drafting Number: LLS 23-0532 Date: March 16, 2023
Prime Sponsors: Sen. Moreno; Cutter Bill Status: Senate Appropriations
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Bill Topic: INCREASING ACCESS TO REPRODUCTIVE HEALTH CARE

- Summary of Fiscal Impact:
State Revenue (unchecked)
State Expenditure (checked)
State Diversion (checked)
TABOR Refund (unchecked)
Local Government (checked)
Statutory Public Entity (unchecked)

The bill makes multiple changes to reproductive health care coverage requirements, and creates a grant program to cover contraceptive costs for minors without insurance or whose use of insurance would jeopardize their privacy or access. It increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$1.0 million to multiple state agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the Senate Health and Human Services Committee. This analysis continues to be preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under SB 23-189

Table with 5 columns: Category, Sub-category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Approp., Total Expenditures, Total FTE), Diversions (General Fund, Cash Funds, Net Diversion), and Other Budget Impact (GF Reserve).

Summary of Legislation

The bill makes multiple changes to reproductive health care coverage requirements, as outlined below.

Women's preventive health. The bill adds the Women's Preventive Services Guidelines of the Health Resources and Services Administration in the U.S. Department of Health and Human Services (HHS) to the mandatory preventive health care services coverage for health benefit plans. These guidelines currently include, but are not limited to, breast and cervical cancer screenings, breastfeeding services and supplies, contraception, and annual preventive care visits.

HIV, sexually transmitted infections, and sterilization. The bill requires that existing mandatory preventive health care services that cover counseling, prevention, and screening for sexually transmitted infections also include related services for individuals on HIV prevention drugs.

Carriers are prohibited from imposing deductibles, copayments, coinsurance, annual or lifetime maximum benefits, or other cost sharing on coverage for the treatment of a sexually transmitted infection or sterilization services. Coverage for sterilization services must be provided regardless of the covered person's gender.

Medicaid is prohibited from requiring a covered person to undergo step therapy or to receive prior authorization before a health care provider may prescribe or dispense HIV treatment medication.

Abortion coverage. The bill requires large employer plans, as of January 1, 2025, to provide coverage for the total cost of abortion care without policy deductibles, copayments, or coinsurance. Individual and small group plans must provide this coverage if the federal HHS confirms the state's determination that the coverage is not subject to state defrayal pursuant to federal law. To the extent required by binding federal jurisprudence, employers are exempted from providing coverage if providing coverage conflicts with the employer's sincerely held religious beliefs.

The bill also requires Medicaid's nonemergency medical transportation services to cover expenses for transportation to abortion services that are currently precluded by the state's constitutional ban on public funding of abortion.

Family-planning related services. The bill expands the Reproductive Health Care Program in the Department of Health Care Policy and Financing to include family planning-related services, which includes, but is not limited to, tobacco cessation services, cervical cancer screenings, treatment of sexually transmitted infections, and any other medical diagnosis, treatment, or preventive service routinely provided in a family planning visit.

Minor contraception. Under current law, with the minor's consent, a physician may furnish contraceptive procedures, supplies, or information to the minor without notification to or the consent of the minor's parent or parents, legal guardian, or any other person having custody of or decision-making responsibility for the minor. The bill adds health care providers acting within the scope of their license, certificate, or registration to this scope of practice.

Provider reimbursement grant program. The Reproductive Privacy Affordability Grant Program is created in the Colorado Department of Public Health and Environment (CDPHE). Subject to available

appropriations, the program awards grants to licensed health care providers to cover contraceptive costs for minors without insurance or whose use of insurance would jeopardize their privacy or access. The State Board of Health must promulgate rules to implement the program. CDPHE must provide annual reporting to the legislative health committees.

Actuarial Analysis

An actuarial analysis of this bill proposal was conducted by an independent contractor, per the requirements of Senate Bill 22-040. The report may be obtained in its entirety on the Division of Insurance website at the following link: <https://doi.colorado.gov/sb-22-040-actuarial-review-of-health-benefit-coverage-legislative-proposals>.

State Diversion

This bill diverts \$77,000 in FY 2023-24 and \$37,000 each year thereafter from the General Fund. This revenue diversion occurs because the bill increases costs in the Division of Insurance in DORA, which are funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures in CDPHE and DORA by the amounts shown in Table 2. These impact, and impacts to other state agencies, are discussed below.

Table 2
Expenditures Under SB 23-189

	FY 2023-24	FY 2024-25	FY 2025-26
Department of Public Health and Environment			
Provider Reimbursement Grants	\$1,000,000	\$1,000,000	\$1,000,000
CDPHE Subtotal	\$1,000,000	\$1,000,000	\$1,000,000
Division of Insurance, DORA			
Personal Services	\$37,019	\$29,322	\$29,322
Operating Expenses	\$675	-	-
Capital Outlay Costs	\$6,670	-	-
Legal Services	\$23,263	-	-
Centrally Appropriated Costs ¹	\$8,974	\$7,153	\$7,153
FTE – Personal Services	0.5 FTE	0.4 FTE	0.4 FTE
FTE – Legal Services	0.1 FTE	-	-
DOI Subtotal	\$76,601	\$36,475	\$36,475
Total	\$1,076,601	\$36,475	\$36,475
Total FTE	0.6 FTE	0.4 FTE	0.4 FTE

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

Department of Public Health and Environment (CDPHE)

The fiscal note assumes that CDPHE requires an annual General Fund appropriation of \$1.0 million to administer and award grants under the Reproductive Privacy Affordability Grant Program. Administrative costs will be further detailed in a subsequent fiscal note.

Division of Insurance, DORA

The DOI requires 0.4 FTE Rate and Financial Analyst to review each rate and form filing subject to the bill's requirements to ensure compliance. In addition, in FY 2023-24 only, the DOI requires 0.1 FTE policy advisor and 220 hours of legal services to perform initial rulemaking, draft regulations and guidance for insurers, and to research and draft a letter to the federal HHS regarding state defrayal. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

Department of Health Care Policy and Financing (HCPF)

Programming and service costs. HCPF will update its technology systems to reflect the service expansion for its family planning benefit program for individuals without documentation within existing resources. Any increase in family planning-related service costs is not expected to require additional appropriations.

Non-Emergent Medical Transportation (NEMT) services. Currently, members who need transportation to covered services, including federally allowable abortion procedures, can utilize the NEMT benefit. To expand this benefit to non-covered services, HCPF will pursue a state plan amendment. Administrative workload to submit this amendment can be accomplished within existing resources; however, this process will require up to a year—see Technical Note.

Utilization management. There is no impact from the prohibition of utilization management for prescription drugs prescribed for the treatment or prevention of HIV, as this is current HCPF practice. However, this provision may increase future costs by limiting HCPF from establishing utilization management criteria in the future if more expensive drugs enter the market and are not proven to be safer or more effective than a less expensive HIV drug.

Department of Personnel and Administration

The bill's health care service requirements will impact the state's costs for employee health insurance. Per the actuarial analysis cited above, impacts to insurance costs may range from -0.01 to 0.07 percent overall. Costs will be borne by enrolled employees for the first plan year, and then become a premium cost shared by the state and employee in future years addressed through the Total Compensation analysis included in the annual budget process.

Department of Law

The fiscal note assumes compliance with state and federal restrictions related to abortion funding. If the state is required to defend its position, litigation costs will be sought through the budget process.

Judicial Department

Any impact to the trial courts is expected to be minimal, as the fiscal note assumes that most enforcement activity will be handled administratively by DORA.

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.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Similar to the state impact above, costs for local governments for employee insurance may increase. The exact impact will vary by jurisdiction depending on the types of coverage currently offered and the percent of premiums paid by local governments as an employer.

Technical Note

HCPF will not be able to provide the NEMT services required under the bill without first seeking federal approval. Bill deadlines for this benefit could be extended and made conditional upon federal approval to accommodate this issue.

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 \$1,067,627, including:

- \$1,000,000 from the General Fund to the Department of Public Health and Environment; and
- \$67,627 from the Division of Insurance Cash Fund to the Department of Regulatory Agencies with 0.5 FTE, of which \$23,263 is reappropriated to the Department of Law with an additional 0.1 FTE.

State and Local Government Contacts

Information Technology
Law
Regulatory Agencies

Judicial
Personnel

Health Care Policy and Financing
Public Health and Environment