Bill 3

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0160	**Date:**	September 26, 2022
Prime Sponsors:		**Bill Status:**	Bill Request
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Bill Topic: **MEDICAID PREAUTHORIZATION EXEMPTION**

Summary of Fiscal Impact:

☐ State Revenue
☒ State Expenditure
☐ State Transfer
☐ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill prohibits the Department of Health Care Policy and Financing from requiring certain utilization management practices for prescription drugs used to treat serious mental health disorders provided under a contract with a health maintenance organization. The bill increases state expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of $55,287,135 to the Department of Health Care Policy and Financing.

Fiscal Note Status: The fiscal note reflects the draft bill requested by the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. This fiscal note is preliminary and will be updated as more information becomes available.

Table 1
State Fiscal Impacts Under Bill 3

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-	-
Expenditures[1]	General Fund	$13,241,612	$14,502,050	$15,880,822
	Cash Funds	$3,308,232	$3,624,346	$3,970,665
	Federal Funds	$38,737,291	$42,433,937	$46,481,703
	Centrally Appropriated	$20,764	$22,852	$22,852
	Total Expenditures	**$55,307,899**	**$60,583,185**	**$66,356,042**
	Total FTE	**0.9 FTE**	**1.0 FTE**	**1.0 FTE**
Transfers		-	-	-
Other Budget Impacts	General Fund Reserve	$1,986,242	$2,175,307	$2,382,123

[1] Expenditures shown in Table 1 are at the high-end of the estimated cost range.

Summary of Legislation

The bill prohibits the Department of Health Care Policy and Financing (HCPF) from requiring prior authorization, fail first, or step therapy requirements for any prescription drug indicated to treat a serious mental health disorder. The bill applies to drugs provided under a contract between HCPF and a health maintenance organization.

Background

Prior authorization requirements are currently part of HCPF's utilization management system used to ensure that Medicaid clients have the proper care and services for medically necessary treatments without overusing resources. Medicaid clients and providers can appeal or request reconsiderations for any denied prescription drug.

The Medicaid Drug Rebate Program requires that prescription drug manufacturers enter into a Medicaid drug rebate agreement with the U.S. Department of Health & Human Services for states to claim federal funding on the use of the drug manufacturer's products. The rebates collected under the program are shared by the federal government and states based on each state's federal medical assistance percentage. In addition to the federal drug rebate program, certain states have negotiated supplemental rebate agreements with drug manufactures under which manufacturers provide supplemental rebates to ensure that their drugs are placed on the state's preferred drug list. Drugs that are on the preferred drug list are not subject to prior authorization requirements, resulting in a shift in utilization to these preferred drugs. This arrangement allows states to maximize supplemental rebates collected from drug manufacturers.

Assumptions

The fiscal note assumes that:

- the provisions of the bill are not applicable to the Children's Health Plan Plus program; and
- about 180 drugs, including those used to treat depression, anxiety, bi-polar disorder, schizophrenia, schizoaffective disorder, and substance use disorder, are affected by the bill.

State Expenditures

The bill increases state expenditures in HCPF by an estimated $55.3 million in FY 2023-24, $60.6 million in FY 2024-25, and $66.4 million in FY 2025-26, with costs paid from the General Fund, the Healthcare Affordability and Sustainability Cash Fund, and federal funds. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under Bill 3

	FY 2023-24	FY 2024-25	FY 2025-26
Department of Health Care Policy and Financing			
Personal Services	$115,648	$126,161	$126,161
Operating Expenses	$1,350	$1,350	$1,350
Capital Outlay Costs	$6,670	-	-
Technology Costs	$18,000	$18,000	$18,000
Prescription Drug Costs (up to)	$55,145,467	$60,414,822	$66,187,679
Centrally Appropriated Costs[1]	$20,764	$22,852	$22,852
Total Cost	**$55,307,899**	**$60,583,185**	**$66,356,042**
Total FTE	**0.9 FTE**	**1.0 FTE**	**1.0 FTE**

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

Health Care Policy and Financing. Expenditures in HCPF include staff, technology, increased prescription drug costs, and legal services beginning in FY 2023-24, as described below.

- **Staff.** Beginning in FY 2023-24, HCPF requires a total of 1.0 FTE Pharmacist II to assist with the rule promulgation process regarding the definition of "serious mental health disorder" and the creation of an organizational framework for determining the seriousness of a member's disorder, ensure that members presenting with a diagnosis of serious mental health disorder meet the criteria established by Diagnostic and Statistical Manual of Mental Disorders and established rules, and process prior authorization requirement appeals. Costs are adjusted for the General Fund pay date shift in the first year, and standard operating and capital outlay costs are included. The fiscal note assumes that HCPF will not experience any immediate staff cost savings due to a removal of prior authorization requirements for certain drugs, as this work is primarily performed by the pharmacy benefit management contractor at a flat fee rate.

- **Technology costs.** Beginning in FY 2023-24, updates to the Pharmacy Benefit Management System are required to eliminate prior authorization requirements for affected prescription drugs. These costs are estimated to be $18,000 annually.

- **Prescription drug costs.** There are two cost drivers for prescription drug costs under the bill, which are each assumed to grow by 9.5 percent per year based on current acute care growth rate trends. These prescription drug costs incorporate about a 70 percent federal match based on a blended percentage which takes in to account the Federal Medical Assistance Percentages for members cover under the expansion.

    - **Increased drug costs.** The fiscal note assumes that Medicaid members will increase utilization of affected drugs, including a shift to higher-cost and brand name drugs to treat serious mental health disorders, by about 45 percent based on relevant studies focused on adding or removing prior authorization and other utilization management strategies for prescription drugs. This is expected to increase costs for these drugs up to a total expenditure of $38.5 million in FY 2023-24. Any cost savings related to the removal of fail first practices under the bill cannot be calculated, as it is unknown how many different drugs a member may need to try prior to finding the "right" drug.

- **Loss of supplemental rebates.** It is assumed that the elimination of the utilization management practices in the bill, specifically the prior authorization requirement, will result in the loss of supplemental rebates, as these rebates are provided based on the use of drugs on the preferred drug list, and it is assumed that there will no longer be preferred drugs under the bill. This shift is estimated to increase costs by about $16.6 million in FY 2023-24.

- **Legal services.** Legal services costs for HCPF will increase to complete the rulemaking required to further clarify the definition of "serious mental health disorder." Additional resources will be addressed through the annual budget process if needed.

- **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, which will decrease the amount of General Fund available for other purposes.

Technical Note

Under the bill, "serious mental health disorder" is defined as a disorder outlined in the Diagnostic and Statistical Manual of Mental Health Disorders that results in a serious functional impairment that substantially interferes with or limits one or more major life activities. Medicaid members and providers may have varying interpretations of this definition, leading to uncertainty around which drugs will be affected by the bill, and resulting in higher or lower costs relative to this fiscal note estimate.

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 $55,287,135 to Department of Health Care Policy and Financing, which includes $13,241,612 General Fund, $3,308,232 from the Healthcare Affordability and Sustainability Cash Fund, and $38,737,291 federal funds, and 0.9 FTE.

State and Local Government Contacts

Counties	Health Care Policy and Financing	Human Services
Information Technology	Municipalities	Personnel
Regulatory Agencies		