PREPARED BY: Sandy Sostad
DATE PREPARED: February 21, 2019
PHONE: 471-0054

LB 316

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)

	FY 2019-20		FY 2020-21	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	$3,729,500		$3,751,500	
CASH FUNDS	$2,042,170	$104,000	$2,061,552	$9,200
FEDERAL FUNDS	$1,690,000		$1,710,000	
OTHER FUNDS	$1,058,000		$1,098,000	
TOTAL FUNDS	$8,519,670	$104,000	$8,621,052	$9,200

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 316 is the Pharmacy Benefit Fairness and Transparency Act. The bill requires pharmacy benefit managers to apply to the Department of Insurance (DOI) for a certificate of authority to operate in the state as a third-party administrator. The application and annual renewal fee is $200. A pharmacy benefit manager is also required to pay a certification fee established by the DOI. The fee is to be set to allow the oversight activities by the department relative to the act to be self-supporting. The one-time fee shall not exceed $5,000. The DOI is to have access to records maintained by a pharmacy benefit manager for the purposes of examination, audit and inspection.

Department of Insurance Cash Fund Revenue: The number of pharmacy benefit managers in the state is unknown. The DOI estimates 20 pharmacy benefit managers will apply for a certificate of authority in FY2019-20, based upon the number registered in Kansas and Arkansas. Estimated revenue will be $4,000 of cash funds in FY20. It is assumed one new pharmacy benefit manager will apply each year thereafter, so cash fund revenue from certificate of authority fees and renewals is estimated to be $4,200 in FY19.

The bill provides for the DOI to set a certification fee of up to $5,000 to pay for oversight responsibilities. The department indicates it will set the fee at $5,000 in order to try to make the act self-supporting. Cash fund revenue from the one-time certification fee is estimated to be $100,000 in FY20 and $5,000 in FY21.

The DOI has the authority to charge pharmacy benefit managers for the cost of examinations. The department estimates about $10,000 annually in examination expenses which will be paid by the entities being examined

The Director of the DOI has the authority to revoke or suspend certificates of authority as specified in the bill and in lieu of suspension or revocation may impose an administrative penalty of $1,000 to $10,000. Failure to an annual report results in a penalty of $50 per day. Fines accrue to the Permanent School Fund, the interest from which, is allocated to public schools. Fine revenue is projected to be minimal pursuant to the bill.

DOI Expenditures: LB 316 requires the DOI to license and regulate pharmacy benefit managers. The amount of work required to regulate these entities is unknown and depends upon the number in the state and complaints relative to their operations. DOI projects the need for 1.0 Market Conduct Examiner or Consumer Affairs Investigator specialized in the field of pharmacy practices to investigate complaints and complete examinations of pharmacy benefit managers. The estimated increase in cash fund expenditures for one new employee to regulate pharmacy benefit managers is $69,670 in FY20 and $71,052 in FY21.

State Employee Health Insurance Plan: The bill provides that a pharmacy benefit manager cannot exclude a Nebraska pharmacy from participation in its specialty pharmacy network. The Department of Administrative Services (DAS) indicates pharmacies that dispense high-cost specialty medications are not under contract with the vendor of the drug contract for the state employee health insurance plan. The department estimates the requirement to include specialty pharmacies will increase the cost of premiums for prescription drug coverage by an estimated 10% to 50%, or $1.5 million to $7.5 million each year. This fiscal note assumes a 20% increase in premium costs or $3 million per year.

DAS also projects that the requirement in the bill prohibiting a pharmacy from collecting a copayment that exceeds the amount retained by the pharmacy for filing a prescription will increase the cost of the state health employee insurance plan by about $3.6 million per year.

The department indicates it could reduce some prescription drug costs of the state plan by shifting a higher burden of the cost to employees who use the mail-order program. DAS indicates that about $150,000 could be saved each fiscal year.

The state pays 79% of premiums for the health insurance plan and employees pay 21%. The state health insurance plan is self-insured, with 79% of the premium being paid by the state. The estimated fiscal impact of the bill for the state employee health insurance plan is $6.45 million in FY20 and FY21. The funding sources for the state health insurance plan are: general funds (51%); cash funds (25%); federal funds (20%); and, revolving funds (4%).

University of Nebraska Health Insurance Plan: The University indicates that its pharmacy benefit manager estimates the requirement to include all pharmacies in its specialty pharmacy network will increase the costs of the prescription drug plan for University employees by about $2 million in FY20 and $2.1 million in FY21. The funding sources for the University health insurance plan are: general funds (22%); cash funds (18%); federal funds (20%); and, revolving funds (40%).

Department of Health and Human Services (HHS): HHS indicates the bill may have a fiscal impact for the Medicaid and Long-Term Care division of the department. The bill may limit the ability to selectively contract for prescription drugs since a pharmacy benefit manager will not be able to exclude any pharmacy from its specialty pharmacy network. An increase in drug prices may occur as a result. HHS is not able to project the magnitude of the increase in drug prices, but indicates that a 1% increase would have a fiscal impact of $865,917 ($392,087 General, $473,830 Federal).

The estimated total fiscal impact of bill for the Department of Insurance and the health insurance plans provided to state and University employees is shown on the table below.

		FY 2019-20		
Funds	State Employee Ins. Plan	University of Nebraska Ins. Plan	Dept. of Insurance	Total Fiscal Impact
General	3,289,500	440,000		3,729,500
Cash	1,612,500	360,000	69,670	2,042,170
Federal	1,290,000	400,000		1,690,000
Other	258,000	800,000		1,058,000
Total	$6,450,000	$2,000,000	$69,670	$8,519,670

		FY 2020-21		
Funds	State Employee Ins. Plan	University of Nebraska Ins. Plan	Dept. of Insurance	Total Fiscal Impact
General	3,289,500	462,000		3,751,500
Cash	1,612,500	378,000	71,052	2,061,552
Federal	1,290,000	420,000		1,710,000
Other	258,000	840,000		1,098,000
Total	$6,450,000	$2,100,000	$71,052	$8,621,052

Other Political Subdivisions: It is assumed the bill will also have a fiscal impact for other political subdivisions which offer health insurance to their employees. The additional costs are not able to be determined.

Technical Note: Based upon the estimated cost of the bill and estimated revenue from the certificate of authority fee and one-time certification fee, it does not appear that revenues will be sufficient to make the act self-supporting as intended per Section 3 of the bill.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 316 AM:	AGENCY/POLT. SUB: Department of Administrative Services	
REVIEWED BY: Neil Sullivan	DATE: 2/13/2019	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Department of Administrative Services assessment of fiscal impact fromLB 316.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 316 AM:	AGENCY/POLT. SUB: University of Nebraska	
REVIEWED BY: Neil Sullivan	DATE: 2/13/2019	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the University of Nebraska assessment of fiscal impact from LB 316.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 316 AM:	AGENCY/POLT. SUB: Department of Health and Human Services	
REVIEWED BY: Neil Sullivan	DATE: 2/28/2019	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Department of Health and Human Services assessment of fiscal impact from LB 316.		

Please complete **ALL** (5) blanks in the first three lines. **2019**

LB(1) 316 **FISCAL NOTE**

State Agency OR Political Subdivision Name: (2) Nebraska Department of Insurance

Prepared by: (3) Matt Holman Date Prepared: (4) 1/28/2019 Phone: (5) 402-471-4503

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2019-20		FY 2020-21	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS	$69,670	$114,000	$71,052	$19,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS		$114,000		$19,000

Explanation of Estimate:

Legislative Bill 316 would adopt the Pharmacy Benefit Fairness and Transparency Act. It places new duties on the Nebraska Department of Insurance to license and regulate Pharmacy Benefit Managers (PBMs). Section 3 of the legislation requires PBMs in Nebraska to be licensed both as a Third-Party Administrator (TPA) and, in addition to the fees established for TPAs ($200 admission fee and annual renewal fee), pay a certification fee not to exceed $5,000 to make the regulation of PBMs self-sustaining. A certification fee is a one-time fee and the Department will charge the maximum $5,000 in attempt to make the oversight activities of PBMs self-supporting.

Prior information from the Kansas Department of Insurance indicates 38 registered PBMs in Kansas. Information from Arkansas, which recently passed similar legislation indicates there are 14 licensed or pending PBMs in Arkansas. Based on this information, the Department estimates 20 PBMs would become licensed in NE under LB 316. Combined, the TPA and PBM fees will generate an estimated $104,000 in revenue for the Department of Insurance Cash Fund in the first year, and $9,000 in fees thereafter, presuming one new PBM paying the certification fee annually on top of the annual TPA fees.

Section 3 provides that the Director of Insurance can examine a PBM under the Insurers Examination Act, which will allow the Department to charge the PBM under an examination for the costs of the examination. It is estimated that the Department will charge regulated PBMs, in total, $10,000 in examination costs annually.

In addition to the ability to suspend or revoke a PBM's licenses under Section 3, Section 5 of the legislation prohibits PBMs from charring or collecting from a covered person a copayment that exceeds the amount retained by the network pharmacy from all payment sources for filling the prescription or providing the service. Section 5 also prohibits the exclusion of Nebraska pharmacies from participation in specialty pharmacy networks. These prohibitions are new oversight requirements of the Department.

A market conduct examiner or consumer affairs investigator specialized in the field of pharmacy practices will be needed by the Department to investigate complaints and complete examinations of PBMs. The examiner will also otherwise assist the Department in the implementation of LB 316 and the regulation of PBMs.

The amount of revenue into the Department of Insurance Cash Fund from LB 316 will not self-sustain the appropriation for an additional employee. Without additional revenue, LB 316 will not be self-sustaining in FY 2021 and beyond which will have a long term impact on the cash fund.

Finally, LB 316 provides that violation of the Pharmacy Benefit Fairness and Transparency Act by a PBM will be an unfair trade practice in the business of insurance. If a PBM is found to have committed such violations flagrantly and in conscious disregard or if the violations are committed with such frequency to indicate a general business practice, the PBM may be fined by the Department after a notice and hearing. The number of possible fines annually is unknown, but is not anticipated to be significant.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS 19-20	20-21	2019-20 EXPENDITURES	2020-21 EXPENDITURES
Market Conduct Examiner II	1.0	1.0	$43,668	$44,541
Benefits..			$15,284	$15,590
Operating..			$8,678	$8,840
Travel..			$2,040	$2,081
Capital outlay...................................				
Aid...				
Capital improvements........................				
TOTAL..			$69,670	$71,052

Please complete ALL (5) blanks in the first three lines. **2019**

LB(1) 316 **FISCAL NOTE**

State Agency OR Political Subdivision Name: (2) Department of Administrative Services (DAS) - Employee Wellness & Benefits

Prepared by: (3) Jennifer Norris **Date Prepared:** (4) 1/18/2019 **Phone:** (5) 402/471-4147

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2019-20		FY 2020-21	
	EXPENDITURES	**REVENUE**	**EXPENDITURES**	**REVENUE**
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

Explanation of Estimate:

Legislative Bill 316 would adopt the Pharmacy Benefit Fairness and Transparency Act. This bill may impact the State of Nebraska Employee Wellness & Benefits in various ways.

Section 5(1) prohibits the charging of or the collection of a copayment that exceeds the amount retained by the pharmacy from all payment sources. Pharmacy prescriptions with copayments are 96.5% of the State of Nebraska Benefit's prescriptions. Current total employee prescription cost share for the last year was $3.7 million. Rebate payments are used to offset total employee cost shares. This may cause additional charges to the State of Nebraska of over $3.6 million in claims funded by the State.

Currently, the State of Nebraska Employee Wellness & Benefits contracts with a third-party vendor (TPV) to handle pharmacy contacts. This TPV contracts with pharmacies for the lowest cost options. Specialty Pharmacy refers to pharmacies that dispense specialty medications. These are defined as high-cost, high complexity and/or high touch. These pharmacies are not under contract with our TPV. Not all Specialty Pharmacies may give the lowest cost option. The State of Nebraska has no data on the cost of specialty drugs from Specialty Pharmacies in Nebraska that are currently excluded. Total Specialty spent last year was $15 million. This number will likely be higher without the use of negotiated discounts, member management and the support an in-network pharmacy contract can provide. Therefore, the estimated financial impact for paying higher prices, less management and support on specialty drugs could be anywhere from 10% to 50% more or $1.5million ($15 million x 10% = $1.5 million) to $7.5 million more ($15 million x 50% = $7.5 million).

Excluding the State of Nebraska Consumer Focus Health Plan, the State of Nebraska Pharmacy Plans' TPV handles our mail-order program. It is a contracted program where the individual is charged two (2) times the retail copay for three (3) times the quantity of prescription. The State could increase the mail order copay to three (3) times retail to match the retail copay. This would only increase the member's costs for mail order. The financial impact to the State is difficult to quantify, however is likely minimal. The minimal effect to the State of Nebraska is less than 1% on the pharmacy claims or less than $150,000. Member's cost for a 90 day supply would increase 50% (3 copays instead of 2 copays for a 90 day supply).

The State of Nebraska Employees' Health Insurance Plans are self-insured. Any increase in costs is linked directly to an increase in premiums paid by the State and the employees. Currently the State pays 79% of the premium cost of each plan. Employees are liable for 21% of the premium costs of each plan.

The table below summarizes the estimated impact by fund type of any increase in premium costs. The allocation by fund type is based on a four year [2015-2018] average of benefits paid.

Fund Type	Percentage
General Fund	51%
Cash Fund	25%
Federal Fund	20%
Revolving Fund	4%
Total	**100%**

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS 19-20	20-21	2019-20 EXPENDITURES	2020-21 EXPENDITURES
Benefits………………………………...……				
Operating…………………………...……….				
Travel………………………………………..				
Capital outlay…………………...…………..				
Aid…………………………………………...				
Capital improvements……………………...				
TOTAL……………………………….....				

Please complete ALL (5) blanks in the first three lines. **2019**

LB (1) 316 FISCAL NOTE

State Agency OR Political Subdivision Name: (2) University of Nebraska

Prepared by: (3) Michael Justus **Date Prepared:** (4) January 18, 2019 **Phone:** (5) 402-472-7109

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2019-20		FY 2020-21	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	440,000		462,000	
CASH FUNDS	360,000		378,000	
FEDERAL FUNDS	400,000		420,000	
OTHER FUNDS	800,000		840,000	
TOTAL FUNDS	2,000,000		2,100,000	

Explanation of Estimate:

The Pharmacy Benefit Fairness and Transparency Act indicates that a pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in its specialty pharmacy network. Our pharmacy benefit manager estimates the change to our Plan would increase costs by about $2 million in the first year.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS 19-20	NUMBER OF POSITIONS 20-21	2019-20 EXPENDITURES	2020-21 EXPENDITURES
Benefits				
Operating			2,000,000	2,100,000
Travel				
Capital outlay				
Aid				
Capital improvements				
TOTAL			2,000,000	2,100,000

LB(1) 316 - Revised FISCAL NOTE 2019

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) Mike Michalski Date Prepared 2-28-19 Phone: (5) 471-6719

	FY 2019-2020		FY 2020-2021	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

This bill introduces the Pharmacy Benefit Fairness and Transparency Act

This bill would allow any willing provider to participate in the managed care plans' specialty pharmacy network. By precluding the Nebraska Medicaid and Long-Term Care (MLTC) health plans and PBMs from selectively contracting, this bill could have the unintended consequence of increasing drug prices by limiting the ability to negotiate lower prices based on increased utilization within a smaller network, rather than lower utilization across a larger marketplace.

The selective contracting provision is also anticipated to limit ability of the health plans to use quality factors in negotiations with providers. This would impact costs and patient care experience, impacting MLTC efforts to improve the health of populations across the state. MLTC anticipates potential increased expenditures due to increased drug prices. MLTC is unable to determine the magnitude of increases but higher drug unit costs are a reasonable expectation, resulting in additional appropriation needs. MLTC anticipates potential increased expenditures due to increased drug prices. MLTC is unable to determine the magnitude of increases but higher drug unit costs are a reasonable expectation, resulting in additional appropriation needs. If specialty drug unit cost were to increase one percent, the Department of Health and Human Services could have a total fund increased cost of $865,917. If the FMAP rate is assumed at 54.72%, the General Fund impact would be $392,087 and the Federal Fund increase would be $473,830.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS 19-20	NUMBER OF POSITIONS 20-21	2019-2020 EXPENDITURES	2020-2021 EXPENDITURES

Benefits	
Operating	
Travel	
Capital Outlay	
Aid	
Capital Improvements	
TOTAL	