

PREPARED BY: Nikki Swope
 DATE PREPARED: January 20, 2022
 PHONE: 402-471-0042

LB 767

Revision: 00

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2022-23		FY 2023-24	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below	See below	See below	See below

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

LB 767 establishes the Pharmacy Benefit Manager (PBM) Licensure and Regulation Act. The bill places restrictions and requirements on pharmacy benefit managers.

The State of Nebraska's health plans are self-funded and currently provide a pharmacy benefit management service to its members. There is no fiscal impact.

The University of Nebraska estimates that the total costs of the University health plan will increase by \$807,755 in FY2022-23 (\$290,792 GF, \$185,784 CF, \$32,310 FF, \$298,869 in other funds) and \$1,615,510 in FY 2023-24 (\$581,584 GF, \$371,567 CF, \$64,620 FF, \$597,739 in other funds) due to the additional requirements of participation in the specialty pharmacy network.

The Nebraska Department of Insurance reports that the amount of work to regulate PBMs is unknown but currently there are 20 PBMs are licensed by the Department. The Department estimates that the TBA and PBM fees would generate \$10,000 in revenue for the Department's cash fund in FY 2022-23 and \$5,000 in fees in FY 2023-24.

The bill also provides requirements for the Department to provide oversight, respond to complaints, and request corrective actions in events of the PBM's violating new provisions that are outlined in the bill. An additional staff attorney, a .5 FTE financial examiner and an additional market conduct examiner will be needed by the Department to investigate and complete corresponding examinations of PBMs. The costs of the additional 2.5 FTE, benefits, operating, and travel costs is \$172,930 in FY 2022-23 and \$176,277 in FY 2023-24.

There is no basis to disagree with these estimates.

The Department of Administrative Services has not yet provided a response to the Legislative Fiscal Office. Once a response is received from the Department, an updated fiscal note will be posted.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 767	AM:	AGENCY/POLT. SUB: University of Nebraska
REVIEWED BY: Neil Sullivan	DATE: 1/21/2022	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the University of Nebraska assessment of fiscal impact from LB 767.		

CONTINUED

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 767	AM:	AGENCY/POLT. SUB: Department of Insurance
REVIEWED BY: Neil Sullivan	DATE: 1/21/2022	PHONE: (402) 471-4179
COMMENTS: The Department of Insurance assessment of fiscal impact from LB 767 appears reasonable.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 767	AM:	AGENCY/POLT. SUB: Department of Health & Human Services
REVIEWED BY: Neil Sullivan	DATE: 1/18/2022	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Department of Health & Human Services assessment of no fiscal impact from LB 767.		

LB ⁽¹⁾ 0767 Adopt the Pharmacy Benefit Manager Licensure and Regulation Act

FISCAL NOTE

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

Prepared by:⁽³⁾ Chris Kabourek

Date Prepared:⁽⁴⁾ 01/11/2022

Phone:⁽⁵⁾ (402) 472-7156

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2022-23		FY 2023-24	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	290,792.00	0.00	581,584.00	0.00
CASH FUNDS	185,784.00	0.00	371,567.00	0.00
FEDERAL FUNDS	32,310.00	0.00	64,620.00	0.00
OTHER FUNDS	298,869.00	0.00	597,739.00	0.00
TOTAL FUNDS	807,755.00	0.00	1,615,510.00	0.00

Explanation of Estimate:

Section 10 of LB 767 requires that a pharmacy benefit manager not exclude a Nebraska pharmacy from participation in the pharmacy benefit manager's specialty pharmacy network. The University of Nebraska System health plan currently utilizes an exclusive specialty network that requires participants to obtain specialty medications exclusively with CVS, and receives a 21% discount for specialty medications because of this exclusive specialty network. LB 767 would require the University of Nebraska System health plan to change to an open specialty network, reducing our specialty network. LB 767 would require the University of Nebraska System health plan to change to an open specialty network, reducing our specialty discount to 16%. Based on 2021 utilization, CVS estimates the 5% reduction in the specialty medication discount would result in our health plan incurring an additional cost of \$1,615,510. The bill is effective January 1, 2023, so the FY2022-2023 impact is half of the \$1,615,510 total.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2022-23	2023-24
	22-23	23-24	EXPENDITURES	EXPENDITURES
	0	0		
	0	0		
Benefits.....			807,755.00	1,615,510.00
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			807,755.00	1,615,510.00

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2022

LB⁽¹⁾ 767

FISCAL NOTE

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

Prepared by: ⁽³⁾ Martin Swanson Date Prepared: ⁽⁴⁾ 1/13/22 Phone: ⁽⁵⁾ 402-471-2201

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2022-23</u>		<u>FY 2023-24</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>\$162,930</u>	<u></u>	<u>\$171,277</u>	<u></u>
CASH FUNDS	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
FEDERAL FUNDS	<u></u>	<u></u>	<u></u>	<u></u>
OTHER FUNDS	<u></u>	<u></u>	<u></u>	<u></u>
TOTAL FUNDS	<u>\$172,930</u>	<u></u>	<u>\$176,277</u>	<u></u>

Explanation of Estimate:

LB 767 requires the Department of Insurance (Department) I to license and regulate pharmacy benefit managers (PBMs). The amount of work required to regulate PBMs is unknown and depends upon the number operation or wanting to operate in Nebraska and complaints relative to their operations. Currently, 20 PBMS are licensed by the Department as g PBMs as third-party administrators., It appears that those PBMS would become subject to licensing and registration under LB767. Section 11 specifically requires the Director to enforce compliance and allows examination under the Insurers Examination Act and audit authority. This section would allow some providers, in addition to policyholders, to file complaints to the Department and request corrective actions or sanctions. Responding to these complaints and bringing any related disciplinary actions would be a new responsibility for the Department.

The Department will need a staff attorney to perform new duties under LB767. Contracts must be brought into compliance with the Act before a license can be granted (Section 4(2)), so review of the PBM's contracts with insurers and pharmacies must occur at the time of license application review. The Department's due diligence will include verifying that the standards for licensure are met by conducting a search of criminal, civil, and regulatory databases for actions against the applicant entity and individuals responsible for the conduct of affairs of the applicant. Similar review would take place during renewal. Advising other divisions of the Department on statutory requirements and taking enforcement actions to impose fines will require that even after the Department has completed initial implementation, a full-time staff attorney will be necessary to perform the Department's enforcement duties.

Examination of financial transactions and oversight of audit practices and MAC pricing compliance by the PBMs will require that the Department hire a half-time employee financial examiner. Financial analysis of contracts and payments to check PBMs' reimbursement rates, chargebacks, and other adjustments must be completed to determine compliance. This level of familiarity with transaction-specific drug payments as well as overall financial arrangements and post-payment adjustments is a skill that will require use of a financial analyst familiar with pharmacy payments and drug pricing arrangements. Assuming at least 20 PBMs in Nebraska, these examinations would require a full-time financial examiner.

Examination of PBMs' treatment of pharmacies will require that the Department hire a full-time market conduct examiner. Examination of the PBMs' specialty pharmacy networks and review of any specialty pharmacy network request denials would be performed by a market conduct examiner. That examiner would also ensure that pharmacies were able to have their appeals decided in a timely manner. The Department can recoup an indeterminate amount of those costs through the Insurers Examination Act.

Assuming 20 PBMs in Nebraska, initial application fees totaling \$10,000 would be collected in the first fiscal year, and renewal fees of \$5,000 would be collected in the second year. This amount is reflected in the fiscal note as revenue.

There are no fund sources specified in LB767, so all money necessary to perform new Department functions under LB 767 is presumed to come from general funds.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2022-23</u>	<u>2023-24</u>
	<u>22-23</u>	<u>23-24</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Attorney III	1	1	\$81,639	\$83,272
Financial Examiner I	.5	.5	\$24,572	\$25,064
Market Conduct Examiner I	1	1	\$39,127	\$39,909
			<u>\$145,338</u>	<u>\$148,245</u>
Benefits			<u>\$22,019</u>	<u>\$22,459</u>
Operating			<u>\$ 5,573</u>	<u>\$ 5,573</u>
Travel				
Capital outlay				
Aid				
Capital improvements				
TOTAL			<u>\$172,930</u>	<u>\$176,277</u>

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

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

Prepared by: (3) John Meals

Date Prepared 1-11-2022

Phone: (5) 471-6719

	<u>FY 2022-2023</u>		<u>FY 2023-2024</u>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$0	\$0	\$0	\$0

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

Explanation of Estimate:

The Pharmacy Benefit Manager Licensure and Regulation Act establishes the standards and criteria for the licensure and regulation of pharmacy benefit managers providing a claims processing service or other prescription drug or device service for a health benefit plan.

There is no fiscal impact for the Department of Health and Human Services.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2022-2023 EXPENDITURES	2023-2024 EXPENDITURES
	22-23	23-24		
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....			\$0	\$0