

PREPARED BY: Nikki Swope
 DATE PREPARED: February 25, 2022
 PHONE: 402-471-0042

LB 767

Revision: 03

Including amendments to date and change funding allocation from General Fund to Cash Fund.

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	\$172,930	\$10,000	\$176,277	\$5,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$172,930	\$10,000	\$176,277	\$5,000

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 amendment, AM1643, provides clarifying language defining 340B contract pharmacies.

The University of Nebraska provided explanation that the bill would require the University to change to an open specialty network which would reduce the discount for specialty medications the current specialty network plan provides. Based on 2021 utilization, the reduction in the specialty medication discount could potentially result in \$807,755 in FY2022-23 and \$1,615,510 in FY 2023-24 in additional costs. However, the University is exploring potential options to mitigate the negative fiscal impact.

The Department of Administrative Services estimates that the change in the pharmacy benefits would result in a one percent increase in premium costs. The State's health plans utilize trust funds and any available cost-sharing savings back into the State Employees Insurance Fund as revenues for current claims and to delay possible increases in premiums or co-pays. The State pays 79% of the premium costs and employees pay the remaining 21%. The Department estimates the state's share would reduce the trust fund by \$86,900 in FY 2022-23 and \$173,800 in FY 2023-24.

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.

The initial fiscal note from DOI placed the funding for the additional staff needs as a General Funds expense; however, the DOI is historically a cash funded agency and thus the revision moves the expenditures from General Funds to Cash Funds.

There is no basis to disagree with these estimates.

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: 1/24/2022	PHONE: (402) 471-4179	
COMMENTS: Insufficient information to concur or dispute with the revised University of Nebraska assessment of indeterminate fiscal impact from LB 767.			

CONTINUED

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 767	AM: 1643	AGENCY/POLT. SUB: Department of Administrative Services
REVIEWED BY: Neil Sullivan	DATE: 2/7/2022	PHONE: (402) 471-4179
COMMENTS: The Department of Administrative Services assessment of enterprise fiscal impact from LB 767 as amended by AM 1643 appears reasonable.		

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: 1643	AGENCY/POLT. SUB: Department of Health & Human Services
REVIEWED BY: Neil Sullivan	DATE: 2/4/2022	PHONE: (402) 471-4179
COMMENTS: No basis to disagree with the Department of Health & Human Services assessment of no fiscal impact from LB 767 as amended by AM 1643.		

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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

	<u>FY 2022-23</u>		<u>FY 2023-24</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	-----	0.00	-----	0.00
CASH FUNDS	-----	0.00	-----	0.00
FEDERAL FUNDS	-----	0.00	-----	0.00
OTHER FUNDS	-----	0.00	-----	0.00
TOTAL FUNDS	-----	0.00	-----	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 could potentially result in \$1.6 million of additional costs to our health plan. However, we are exploring potential options that could mitigate this, and thus no definitive fiscal estimates are being provided at this time.

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>
-----	0	0	-----	-----
-----	0	0	-----	-----
Benefits.....	-----	-----	-----	-----
Operating.....	-----	-----	-----	-----
Travel.....	-----	-----	-----	-----
Capital outlay.....	-----	-----	-----	-----
Aid.....	-----	-----	-----	-----
Capital improvements.....	-----	-----	-----	-----
TOTAL.....	-----	-----	-----	-----

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2022

LB⁽¹⁾ 767 AM 1643

FISCAL NOTE

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

Prepared by: ⁽³⁾ Ann Martinez Date Prepared: ⁽⁴⁾ 2/01/2022 Phone: ⁽⁵⁾ 402/471-4135

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	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>	<u>See Below</u>

Explanation of Estimate:

LB 767 would establish the Pharmacy Benefit Manager Licensure and Regulation Act, including standards and criteria for the licensure and regulation of a Pharmacy Benefits Manager. The changes are effective January 1, 2023.

LB 767, Sec. 10 provides that a Pharmacy Benefits Manager (PBM) cannot exclude from its specialty network any Nebraska pharmacy that holds a specialty pharmacy accreditation from a nationally recognized accrediting organization and is willing to accept the same terms the PBM has in place with its own specialty pharmacies. This provision reduces the ability of plans to negotiate lower prices with pharmacies based on the prospect of increased patient volume.

It is difficult to determine the impact of this change to the State's health plans. Specialty drug expenditures in prior plan years have been approximately \$22 million. The Third-Party Administrator estimates a one percent increase in costs, which would be a or \$110,000 in FY22-23 (January-June 2023) or a \$220,000 increase in claims per plan year in FY23-24.

The State applies available cost-sharing savings back into the State Employees Insurance Fund as revenue to increase the fund's balance. The fund's existing balance is used for current claims, to delay possible increases in premiums and increases in copays and deductibles through plan changes.

The State's health plans utilize trust funds; thus, no additional appropriation is being requested.

The State's current medical plans are self-insured and increased costs and/or a reduction of savings will result in increased premium costs. The State pays 79% of the premium and the employee pays 21%. The changes proposed in LB 767 would impact the State's and employee's premium costs.

The State's estimated impact in FY22-23 is \$110,000 (Jan-June 2023) and \$220,000 in FY23-24.

\$110,000 X 79% (State's Share) = \$86,900
\$220,000 X 79% (State's Share) = \$173,800

The table below summarizes the estimated impact by fund type of any premium increase. The allocation by fund type below is based on an average of Benefit expenditures over a four-year period (2018-2021).

Fund Type	Expenditures – FY22-23	Expenditures – FY23-24
General Fund	\$43,945	\$87,891
Cash Fund	\$22,059	\$44,119
Federal Fund	\$17,024	\$34,048
Revolving Fund	\$3,872	\$7,742
Total	\$86,900	\$173,800

AM 1643 defines what a 340B entity and a 340B contract pharmacy are and inserts the term 340B contract pharmacy in various lines of LB 767 as it was introduced. AM 1643 doesn't change, nor does it have any additional impact on the State's current health plans.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2022-23	2023-24
	22-23	23-24	EXPENDITURES	EXPENDITURES
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....			_____	_____
Operating.....			_____	_____
Travel.....			_____	_____
Capital outlay.....			_____	_____
Aid.....			_____	_____
Capital improvements.....			_____	_____
TOTAL.....			_____	_____

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

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	\$162,930		\$171,277	
CASH FUNDS	\$10,000	\$10,000	\$5,000	\$5,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	<u>\$172,930</u>		<u>\$176,277</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 2-4-2022

Phone: (5) 471-6719

	<u>FY 2022-2023</u>		<u>FY 2023-2024</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
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.

LB0767 references 340B in terms of reimbursement to pharmacies filling medications for 340B entities. AM1643 adds definition to a 340B entity and a 340B contract pharmacy. These definitions do not change the original scope of LB0767.

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

MAJOR OBJECTS OF EXPENDITURE

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