

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2021-22</b>		<b>FY 2022-23</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

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

This bill establishes the Pharmacy Benefit Manager Regulation Act. The bill places requirements and restrictions on pharmacy benefit managers. The bill directs the Auditor of Public Accounts to conduct and audit prior to January 1, 2022 of the Medicaid pharmacy benefit manager, comparing costs between the fee-for-service and managed care models. The bill states legislative intent to cover the costs with excess funds returned from managed care organizations under Medicaid.

The Department of Administrative Services indicates the new conditions and restrictions on pharmacy benefit managers could increase costs paid from the State Employee Insurance Fund. The provision in Section 10 that requires an insurer to include any cost-sharing amounts paid by the covered individual or on behalf of a covered individual by another person when calculating a covered individual's contribution to any applicable costs sharing requirement would decrease revenue into the State Employees Insurance Fund by \$16 million due to the loss of cost-sharing rebates. The loss of the revenue would require the state to increase the premium contribution and charge a higher premium to state employees.

Additionally, the provisions in the bill may limit the ability of managed care contractors in the Medicaid Program in negotiating drug prices. The potential higher costs are unknown.

The estimated cost of the audit of the Medicaid pharmacy benefit is estimated to cost \$52,450. The bill directs the funding from excess managed care funds returned to the state. At this time, there is no revenue in the Medicaid Managed Care Excess Profits Fund and it is unknown if or when there will be revenue deposited into the fund or the amount.

Technical Note: There is a conflict between the stated source of funds to cover the required audit and revenue available in the fund source, the Managed Care Excess Profits Fund.

<b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSE</b>			
LB: 270	AM:	AGENCY/POLT. SUB: Nebraska Department of Administrative Services	
REVIEWED BY: Ann Linneman	DATE: 1-25-2021	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the Nebraska Department of Administrative Services' assessment of fiscal impact.			

<b>ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY &amp; POLT. SUB. RESPONSE</b>			
LB: 270	AM:	AGENCY/POLT. SUB: Nebraska Department of Health and Human Services	
REVIEWED BY: Ann Linneman	DATE: 2-25-2021	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the Nebraska Department of Health and Human Services' assessment of fiscal impact.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 270	AM:	AGENCY/POLT. SUB: Nebraska Auditor of Public Accounts	
REVIEWED BY: Ann Linneman	DATE: 1-19-2021	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the Nebraska Auditor of Public Accounts' assessment of fiscal impact.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 270	AM:	AGENCY/POLT. SUB: Nebraska Department of Insurance	
REVIEWED BY: Ann Linneman	DATE: 2-25-2021	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the Nebraska Department of Insurance's assessment of fiscal impact.			

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

2021

LB<sup>(1)</sup> 270

FISCAL NOTE

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

Prepared by: <sup>(3)</sup> Jennifer Norris Date Prepared: <sup>(4)</sup> 1/14/2021 Phone: <sup>(5)</sup> 402/471-4443

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2021-22		FY 2022-23	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$6,877,427		\$6,877,427	
CASH FUNDS	\$3,384,986		\$3,384,986	
FEDERAL FUNDS	\$2,460,336		\$2,460,336	
REVOLVING FUNDS	\$549,251		\$549,251	
TOTAL FUNDS	\$13,272,000		\$13,272,000	

Explanation of Estimate:

LB 270 provides that a pharmacy benefit manager will not be allowed to exclude pharmacies from participation in its specialty pharmacy network. A licensed pharmacy or pharmacist would be able to dispense prescription drugs that are allowed pursuant to their license.

The current vendor has no access to the data on the cost of specialty drugs from specialty pharmacies that are currently excluded in our plan network. The estimated financial impact for paying higher prices, less management and support on specialty drugs, is estimated to be \$800,000 based on the contractor's book of business. The State of Nebraska specialty pharmacy spent \$20.2 million in a prior plan year.

Section 7 of LB 270 could potentially limit the State's future ability to negotiate drug prices. The fiscal impact is unknown until plan changes are completed.

Section 10 of LB 270 requires that when calculating a covered individual's contribution to any applicable cost-sharing requirement, an insurer include any cost-sharing amounts paid by the covered individual or on behalf of the covered individual by another person.

The State applies available cost-sharing rebates 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 co-pays and deductibles. The annual estimated loss of the cost-share would be \$16 million. This loss would be applied towards an increase in future premiums.

It is our assumption that Section 11 of LB 270 does apply to the State, thus impacting two plans the State currently offers; those being:

1. Direct Primary Care (DPC) Select Plan (Non-HSA qualified plan)
2. Direct Primary Care (DPC) Standard Plan (Non-HSA qualified plan)

The State would no longer be allowed to offer Direct Primary Care as they currently exist, because these plans require an enrollee to pay a deductible for prescription drugs. The fiscal impact cannot be determined until the replacement plan designs are approved, and the cost analysis completed. Currently the fiscal cost to replace these plans is unknown.

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

The State's current medical plans are self-insured, and increased costs will result in increased premium costs, The State pays 79% of the premium and the employee 21%. The changes proposed in LB 270 would impact the State's and the employee's premium costs.

The State's estimated impact per fiscal year is \$13,272,000.

$$\$800,000 + \$16,000,000 = \$16,800,000 \times 79\% \text{ (State's Share)} = \$13,272,000.$$

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 (2017-2020).

<b>Fund Type</b>	<b>Expenditures – FY21-22</b>	<b>Expenditures – FY22-23</b>
General Fund	\$6,877,427	\$6,877,427
Cash Fund	\$3,384,986	\$3,384,986
Federal Fund	\$2,460,336	\$2,460,336
Revolving Fund	\$549,251	\$549,251
<b>Total</b>	<b>\$13,272,000</b>	<b>\$13,272,000</b>

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<b><u>POSITION TITLE</u></b>	<b><u>NUMBER OF POSITIONS</u></b>		<b><u>2021-22</u></b>	<b><u>2022-23</u></b>
	<b><u>21-22</u></b>	<b><u>21-23</u></b>	<b><u>EXPENDITURES</u></b>	<b><u>EXPENDITURES</u></b>
Benefits.....			\$13,272,000	\$13,272,000
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
<b>TOTAL.....</b>			<b>\$13,272,000</b>	<b>\$13,272,000</b>

**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 2-25-2021

Phone: (5) 471-6719

**FY 2021-2022**

**FY 2022-2023**

	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
<b>GENERAL FUNDS</b>				
<b>CASH FUNDS</b>				
<b>FEDERAL FUNDS</b>				
<b>OTHER FUNDS</b>				
<b>TOTAL FUNDS</b>	See Below		See Below	

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

**Explanation of Estimate:**

LB 270 places restrictions and requirements on Pharmacy Benefit Managers and requires an annual audit of pharmacy benefits.

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 the 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. If specialty drug unit cost were to increase one percent, the Department of Health and Human Services (DHHS) could have a total fund increased cost of \$865,917.

The audit is to be paid with funds forfeited by the contracted Medicaid Managed Care Entities and returned to the Department of Health and Human Services (DHHS). There are no guarantees of any funds being available for these purposes. LB270 language does not address the existing statutory and contractual requirements regarding the funds forfeited by the Managed Care Entities.

The audit will be completed by the Auditor of Public Accounts. DHHS estimates that the cost of the audit performed by the Auditor of Public Accounts and invoiced to DHHS will be \$52,450. In order to support the audits, there will be a significant amount of work for the DHHS Division of Medicaid and Long Term Care. Analytics, Financial, and Pharmacy team members will need to provide claims data and all policy, program, and regulatory changes applicable to the audit periods. The extra work will be completed by existing Department staff and the cost will be absorbed by DHHS during the duration of the audit.

**MAJOR OBJECTS OF EXPENDITURE**

PERSONAL SERVICES:	NUMBER OF POSITIONS		2021-2022	2022-2023
	21-22	22-23	EXPENDITURES	EXPENDITURES
POSITION TITLE				

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Benefits.....  
Operating.....  
Travel.....  
Capital Outlay.....  
Aid.....  
Capital Improvements.....  
**TOTAL**.....

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**2021**

**LB<sup>(1)</sup> 270**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Auditor of Public Accounts

Prepared by: <sup>(3)</sup> Mary Avery Date Prepared: <sup>(4)</sup> 1/15/21 Phone: <sup>(5)</sup> 402-471-3686

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

**Explanation of Estimate:**

LB 270, as currently written, requires the Auditor of Public Accounts, prior to January 1, 2022; conduct an audit of the pharmacy benefit of the medical assistance program under the Medical Assistance Act for the period January 1, 2018, through December 31, 2020. The audit shall compare the costs of the pharmacy benefit under the medical assistance program in fee-for-service model with a managed care model. All fees, spread pricing, rebates, and other costs associated with the managed care pharmacy benefit shall be considered. It is the intent of the Legislature to pay for the audit using the excess funds from the managed care organizations that were returned to the State of Nebraska.

Any work necessary will be done at actual costs of Agency 010, Auditor of Public. Since the audit cost are to be paid from the rebates from managed care organizations, this will be done on a reimbursement basis through the APA cash fund, Program 525. At this time, we do not anticipate that cost to exceed \$52,450 and 1250 hours; however, it will depend on what the audit testing finds and the time needed to complete such a two-year audit.

The proposed Programs 525 appropriations requested for Agency 010; Auditor of Public should be able to handle this. If program 525 appropriations were to be cut, then we may have to request additional appropriations. At this time, there would be no additional fiscal impact to Agency 010-Auditor of Public Accounts.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____

Capital improvements.....

TOTAL.....

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**2021**

**LB<sup>(1)</sup> 270**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Insurance

Prepared by: <sup>(3)</sup> Thomas Green Date Prepared: <sup>(4)</sup> 2/24/2021 Phone: <sup>(5)</sup> 402-471-4650

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2021-22</u>		<u>FY 2022-23</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
<b>TOTAL FUNDS</b>	=====	=====	=====	=====

Explanation of Estimate:

LB 270 enacts the Pharmacy Benefit Manager Regulation Act.

The Department does not see any fiscal impact on its operations as a result of LB 270. While the bill outlines specific restrictions on, and bars specific actions by, Pharmacy Benefit Managers, it is silent as to the entity that is in charge of enforcement. Because it does not specifically indicate that the Department of Insurance is in charge of enforcement, combined with the fact that the bill modifies a statute that appears under Chapter 71, Public Health and Welfare, the Department of Insurance is preparing this fiscal note with the belief that any enforcement duties specified in the act are not to be carried out by the Department of Insurance. In the event that the Legislature believes that the Department of Insurance is to provide enforcement, a revised fiscal note would be required.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2021-22</u>	<u>2022-23</u>
	<u>21-22</u>	<u>22-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
<b>TOTAL.....</b>	_____	_____	_____	_____