

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **SB 218** SLS 21RS 39

Bill Text Version: **ENGROSSED**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

| | | |
|--|---------|--------------------------------|
| Date: May 2, 2021 | 5:38 PM | Author: MILLS, FRED |
| Dept./Agy.: Insurance, Office of Group Benefits, Medicaid | | Analyst: Patrice Thomas |
| Subject: Pharmacy Benefit Managers (PBMs) | | |

PHARMACEUTICALS EG INCREASE SG EX See Note
Provides relative to the payment of pharmacy claims. (gov sig)

Proposed law provides health insurance issuers have a maximum of one year (excludes fraud) from the date a claim was adjudicated to perform any review, reconsideration, or any other audit of the claim. Proposed law provides restrictions on auditing of a pharmacy as follows: once a year or for more than one hundred prescriptions annually; a comprehensive list of claims by prescription number to be audited; removes the notice exception for cases of alleged fraud or willful misrepresentation; the auditor shall not receive payment nor be compensated based on the amount directly or indirectly recovered; and auditor shall provide notice of any investigation to the Commissioner of Insurance who will take appropriate enforcement action including suspending or revoking a license or imposing a fine. Proposed law provides that no PBM shall reimburse a pharmacy or pharmacist in this state an amount less than the amount that the PBM bills to the health plan provider for the same claim. Proposed law prohibits spread pricing. Proposed law requires that a PBM may obtain and maintain a permit from the LA Board of Pharmacy. Proposed law adds the action of causing or knowingly permitting the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading as a prohibited act or unfair and deceptive trade practice by PBMs. Proposed law is effective 7/01/22 for audits and 1/01/23 for reimbursements.

| EXPENDITURES | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | 5 -YEAR TOTAL |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------------|
| State Gen. Fd. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Agy. Self-Gen. | INCREASE | INCREASE | INCREASE | INCREASE | INCREASE | |
| Ded./Other | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | \$0 |
| Annual Total | | | | | | |

| REVENUES | 2021-22 | 2022-23 | 2023-24 | 2024-25 | 2025-26 | 5 -YEAR TOTAL |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------------|
| State Gen. Fd. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Agy. Self-Gen. | INCREASE | INCREASE | INCREASE | INCREASE | INCREASE | |
| Ded./Other | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Federal Funds | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Funds | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> | \$0 |
| Annual Total | | | | | | |

EXPENDITURE EXPLANATION

Proposed law may result in increased SGR expenditures by an indeterminable amount in the Office of Group Benefits as a result of increased pharmacy claims. The proposed law prohibits pharmacy benefit manager (PBMs) or pharmacy services administration organization (PSAOs) to reduce payment to a pharmacist or pharmacy for a drug, device, or service under a reconciliation process. Presently, OGB contracts with a pharmacy benefit manager (MedImpact). OGB reports that prohibition from reducing payment under proposed law may place limits on the amount PBMs can recoup from pharmacies for overpayments when performing the reconciliation process in relation to the adjudication of rates paid versus contractual pricing guarantees, including those for generic prescription drugs. A reduction in pharmacy recoupments may result in increased pharmacy claim expenditures under this measure. For illustrative purposes, in the calendar year 2020, OGB recouped approximately \$474,000 through pharmacy desk audits, onsite audits, and pre-pay audits.

The proposed law requires an entity conducting an audit on pharmacies and pharmacists to provide notice of any investigation to the Louisiana Department of Insurance (LDI), Insurance Fraud Division to take any appropriate enforcement action, which includes suspending or revoking a license or imposing fines. LDI reports that it is capable of conducting any investigations from the proposed law with existing budgetary and personnel resources.

REVENUE EXPLANATION

The proposed law will increase SGR in the LA Board of Pharmacy (LBP) as a result of permitting pharmacy benefit managers (PBMs). Under present law, it was permissive for PBMs to acquire a permit from LBP. The proposed law requires PBMs to obtain and maintain a permit from the pharmacy board. The PBM permit fee is \$500 annually. The number of PBMs that will acquire permits is unknown, therefore anticipated permit revenue is indeterminable. However, to the extent that PBMs enter and exit the Louisiana market, actual collections from permit fees may fluctuate from year-to-year.

The Office of Group Benefits (OGB) does not anticipate that additional costs associated with proposed law will require premium increases, and therefore will not affect SGR premium collections. Furthermore, the OGB reports that projected pharmacy claim expenditures under the proposed law would be covered by its fund balance of approximately \$349.1 M as of March 2021. However, while proposed law may not necessitate premium increases, to the extent numerous pieces of legislation are enacted that increase the overall costs of the OGB program, the OGB may be required to increase premiums to fund ongoing program costs and maintain an actuarially sound fund balance of \$250 M.

The proposed law will have an indeterminable impact on SGR revenues for the LA Department of Insurance (LDI). The proposed law authorizes the Commissioner of Insurance to impose penalties on parties in violation of this measure. Penalties are used to mitigate the expenses of the state. The Legislative Fiscal Office cannot determine the number and cost of penalties that would be imposed under this measure or anticipate the amount of revenue collected by LDI from penalties in future fiscal years.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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