

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2016-17		FY 2017-18	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$792,500		\$1,585,000	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$792,500		\$1,585,000	

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

LB 706 defines habilitative services for purposes of Chapter 44 which pertains to insurance. Habilitative services for the purposes of insurance are defined to be health care services that help a person keep, learn, or improve skills and functioning for daily living, including applied behavior analysis.

The Department of Insurance indicates the bill will have a general fund fiscal impact for the state to pay for the cost of habilitative services for the following reasons. The bill provides for the coverage of applied behavior analysis as a habilitative service in insurance plans. Habilitative services are included as one of the essential benefits the Affordable Care Act requires in every health insurance plan. However, the DOI indicates the benchmark plan selected by Nebraska does not specifically include applied behavior analysis as a covered service. If a state mandates coverage for a service that is not included in its benchmark plan as an essential benefit, then the state must pay the costs for such services.

The fiscal note prepared by the DOI discusses recent federal guidance in reference to defining habilitative services. DOI was provided informal guidance that the state would not have to defray costs if "reasonable" additional habilitative services were included beyond those in the benchmark plan. However, a federal official advised the state of Tennessee that providing habilitative services in addition to those included in the benchmark plan would mean the state has to pay the insurance costs for such benefits.

DOI indicates that federal guidance on the issue could change again in the future, but, at the present time the department believes the state would be responsible to defray the costs for habilitative services, specifically for applied behavior analysis. A report by the Missouri Department of Insurance about a similar mandate shows there were \$5 million of claims incurred for applied behavior analysis in 2014. Nebraska has a population rate that is about 31.7% of that of Missouri, so assuming utilization would be similar in the two states, annual claims cost for applied behavior analysis would be about \$1,585,000. Assuming a January 1, 2017 operative date will be added to the bill, the general fund fiscal impact is \$792,500 in FY17 and \$1,585,000 in FY18.

It is assumed the cost to provide insurance benefits to persons for habilitative services pursuant to LB 706 will be funded with general funds rather than cash funds from the Department of Insurance Cash Fund because the expenditure of funds for insurance benefits for individuals would not be a permissible use of the department cash fund.

The bill will not have a fiscal impact for the Department of Health and Human Services (HHS) because the provisions in Chapter 44 applying to insurance have been interpreted by the DOI and the HHS to not apply to Medicaid or Medicaid managed care.

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
LB: 706	AM:	AGENCY/POLT. SUB: Department of Insurance
REVIEWED BY: Robin Kilgore	DATE: 2-4-16	PHONE: 471-4180
COMMENTS: No basis to disagree with agency estimate of fiscal impact.		

ADMINISTRATIVE SERVICES-STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES		
LB: 706	AM:	AGENCY/POLT. SUB: Department of Health & Human Services
REVIEWED BY: Robin Kilgore	DATE: 1-28-16	PHONE: 471-4180
COMMENTS: No basis to disagree with agency estimate of fiscal impact.		

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

2016

LB⁽¹⁾ 706

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾

Nebraska Department of Insurance

Prepared by: ⁽³⁾ Robert M. Bell

Date Prepared: ⁽⁴⁾

Phone: ⁽⁵⁾ 402-471-4650

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2016-17</u>		<u>FY 2017-18</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	791,666		1,583,333	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	791,666		1,583,333	

Explanation of Estimate:

Legislative Bill 706 defines habilitative services for the purposes of Chapter 44. The definition includes applied behavior analysis, which is a service provided to individuals with autism. Section 1311(d)(3)(B) of the federal Patient Protection and Affordable Care Act provides that beginning January 1, 2014, if a state law mandates insurers cover benefits on a health insurance exchange that are not included in the final United States Health and Human Services "essential benefits" list, the state will pay any additional costs for those benefits for enrollees for any individual or small group plan issued on or after January 1, 2014. The method by which states "will pay any additional costs" has not yet been determined. In the proposed federal essential health benefits rule the cost of additional benefits is as determined by the insurer alone.

Habilitative services are one of the ten essential health benefits the Affordable Care Act requires in every qualified health plan (individual and small group plans). From 2014 to 2016, plans in Nebraska used the habilitative services definition found in the Blue Cross Blue Shield small employer plan which was the default benchmark plan selected for Nebraska by the federal Secretary of Health and Human Services. For plan year 2017, the benchmark plan selected for Nebraska was a plan in existence in 2014 meaning the definition of habilitative services remained the same. The definition in the benchmark plan does not include the specific inclusion of applied behavioral analysis contained in LB 706.

A new federal regulation suggested that a state may define habilitative services after the selection of a benchmark plan without creating a mandated benefit. However, specific guidance from the federal government on whether or not a state would have to defray the costs of the insurers if the state defines habilitative services that provides more services than in the benchmark plan has been elusive at best.

Late last year, the Department was provided informal guidance that the Nebraska would not have to defray costs if the definition was "reasonable," however on January 15, 2016, Kevin Counihan, the federal official in charge of the exchanges, stated to the Tennessee Insurance Commissioner Julie Mix McPeak that if a state legislature requires an insurer to "provide habilitative services in addition to those already included in the base-benchmark plan [it] would be considered imposing a state-required additional benefit, and the state would be required to defray the cost of qualified health plans' providing such benefits." The letter indicates that if a state has already made a benchmark plan selection for 2017 and the state legislature subsequently expands the definition, the state would be responsible to the insurers to defray the increased costs of the insurer related to the new definition because it would be a mandated benefit.

Additionally, the federal government has also given notice through a proposed rule that states would be responsible, retroactively, for any insurance mandates even if the mandate only applied to plans not required to include essential health benefits.

Though the guidance from the federal government may change yet again, the best information available to the Department is that the State of Nebraska would be responsible to defray the costs associated with this mandate. A 2015 report from the Missouri Department of Insurance, Financial Institutions and Professional Registration states that a similar mandate became effective in Missouri in 2014. The claim costs incurred for applied behavioral analysis were approximately \$5,000,000. According to the United States Census bureau, Missouri has a population of approximately 6,000,000, Nebraska nearly 1,900,000. Presuming that the rates of utilization of the services would be similar between the two states, the claim costs for Nebraska would be an estimated \$1,583,333.

This note presumes that plans would not start coverage until January 1, 2017. The identified fiscal impact will be to the State of Nebraska as an entity and will not impact the Department of Insurance's budget.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2016-17</u>	<u>2017-18</u>
	<u>16-17</u>	<u>17-18</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....			791,666	1,583,333
Capital improvements.....				
TOTAL.....			791,666	1,583,333

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

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

Prepared by: (3) Pat Weber

Date Prepared:(4) 1-21-16

Phone: (5) 471-6351

	<u>FY 2016-2017</u>		<u>FY 2017-2018</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:

This bill will have no impact to Medicaid because the provisions of Title 44 have been interpreted by DHHS in consultation with Department of Insurance not to apply to Medicaid or Medicaid managed care. Therefore, there is no Fiscal Impact to the Department of Health and Human Services.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	NUMBER OF POSITIONS		2016-2017	2017-2018
	POSITION TITLE	16-17	17-18	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....			\$0	\$0