

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See below		See below	
CASH FUNDS				
FEDERAL FUNDS	See below		See below	
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 prohibits the Department of Health and Human Services (DHHS) in Medicaid or any commercial insurance policy from discouraging coverage for non-opioid drugs as prescribed. The bill would require any new drug manufacturer to charge any amount upon FDA approval with no ability to dispute the price by placing the drug on a different tier or deny coverage. The policy has the potential to have significant fiscal impact to health insurance plans for state employees and the state’s medical assistance program including loss of federal match for all Medicaid pharmaceutical expenses including drug rebates.

The Department of Administrative Services estimates the fiscal impact of the legislation to be between \$760,000 to nearly \$5 million with a midrange estimate of \$2.8 million, a combination of General Funds, cash funds, federal funds, and revolving funds. These estimates utilize a population assumption of 1,800 members (20% of 9,000 annual claims) and a low-end cost of \$420 per week and high-end of \$2,758 per week. The midrange estimate seems reasonable given the assumptions however actual costs is indeterminable.

Similarly, DHHS presents cost analyses for non-steroidal anti-inflammatory drugs (NSAIDs) (\$3.6 million) and skeletal muscle relaxants (\$2.8 million) but notes that actual costs are indeterminable. DHHS notes that all pharmaceuticals are subject to the Center for Medicare and Medicaid (CMS) Medicaid Drug Use Review program in order to receive federal fund participation. In the status quo, a Pharmacy and Therapeutics committee is required to review drugs for efficacy, safety, cost, and other variables in order to determine if FDA approved drugs should be on the preferred drug list. LB252 would require circumvention of this CMS required process and jeopardize federal funding which DHHS estimates to be over \$535 million.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE				
LB:	252	AM:	AGENCY/POLT. SUB: Nebraska Department of Insurance	
REVIEWED BY:	Ann Linneman	DATE:	1-24-2025	PHONE: (402) 471-4180
COMMENTS: Concur with the Nebraska Department of Insurance’s assessment of no fiscal impact.				

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE				
LB:	252	AM:	AGENCY/POLT. SUB: Nebraska Department of Health and Human Services	
REVIEWED BY:	Ann Linneman	DATE:	2-20-2025	PHONE: (402) 471-4180
COMMENTS: Concur 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:	252	AM:	AGENCY/POLT. SUB: Nebraska Department of Administrative Services	
REVIEWED BY:	Ann Linneman	DATE:	2-13-2025	PHONE: (402) 471-4180
COMMENTS: Concur with the Nebraska Department of Administrative Services’ assessment of fiscal impact.				

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

2025

LB⁽¹⁾ 252

FISCAL NOTE

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

Prepared by: ⁽³⁾ Jennifer Norris Date Prepared: ⁽⁴⁾ 01/21/2025 Phone: ⁽⁵⁾ 402-471-4443

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2025-26</u>		<u>FY 2026-27</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$1,472,346		\$1,472,346	
CASH FUNDS	\$708,571		\$708,571	
FEDERAL FUNDS	\$537,301		\$537,301	
REVOLVING FUNDS	\$133,984		\$133,984	
TOTAL FUNDS	<u>\$2,862,202</u>		<u>\$2,862,202</u>	

Explanation of Estimate:

LB 252 provides that the Department of Health & Human Services (DHHS) is to ensure that no non-opioid drug approved by the Federal Food and Drug Administration for the treatment or management of pain shall be disadvantaged or discouraged with respect to coverage or cost sharing for an opioid or narcotic drug for the treatment or management of pain.

Currently the most used opioid drugs are in Tier 1, so it assumed that all non-opioids would be determined to be a Tier 1 drug regardless of cost and requires coverage. There would be an increase in the total cost to the State’s medical plans because of having to cover the difference between the cost of a prescription and the out-of-pocket limit. This difference has the potential to be quite significant for any future non-opioid drug not yet approved by the Federal Food and Drug Administration and not yet priced.

There is a non-opioid medication that is currently going through the approval process that is anticipated to be significantly more expensive, if proven that it is effective yet not addictive; however, it is impossible to predict the cost at this time or how frequently it would be utilized. The State’s third-party administrator has provided projected unit costs for the new upcoming medication as follows:

- 5 mg: \$197–\$1,180 per unit \$2,758 per week = (2 pills per day x 7 days = 14 units per prescription x \$197 per unit) = \$2,758 per week
- 10 mg: \$970–\$1,580 per unit
- 25 mg: \$497–\$2,350 per unit
- 1 g: \$2,970 per unit

Another possibility is a cost of not more than \$420 per week as a higher cost would impact demand.

Tier 1 opioid drugs (most used) have the following per unit costs:

- Hydrocodone Bitartrate/Acetaminophen (\$.27 per unit) Average Rx cost \$10.91
- Tramadol Hydrochloride (\$.28 per unit) Average Rx cost \$4.01
- Oxycodone Hydrochloride (\$.32 per unit) Average Rx cost \$7.54
- Oxycodone/Acetaminophen (\$.90 per unit) Average Rx cost \$17.37

The State's third-party administrator estimates that if only 20% of all members (9,000 processed claims of drugs in this category for the current plan year x 20% = 1,800 members) moved to the new medication it could add an additional \$760,000 (\$420 per week x 1,800 rounded) or \$4,964,400 using the lower per unit cost of \$197 – (\$2,758 per week x 1,800 members) to plan costs for just a one week's prescription for one possible drug.

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

The State of Nebraska medical plans are self-insured. Any increases in costs would need to be covered by an increase in premiums. Currently the State of Nebraska pays 79% of the premiums for State of Nebraska teammates and the teammate pays 21%, however LB 252 requires 100% coverage

The table below summarizes the estimated impact by fund type of a range of possible premium increases based on one week's prescription. The allocation by fund type is based on an average for Health Insurance expenditures over a five-year period (2020-2024).

Fund Type	Expenditures – \$760,000	Expenditures – \$4,964,400	Expenditures - Midrange
General Fund	\$393,607	\$2,571,084	\$1,482,346
Cash Fund	\$188,147	\$1,228,994	\$708,571
Federal Fund	\$142,669	\$931,932	\$537,301
Revolving Fund	\$35,577	\$232,391	\$133,984
Total	\$760,000	\$4,964,400	\$2,862,202

The Enterprise funding amounts by fund type above, are the midrange of the two scenarios provided by the State's third-party administrator above in the body of the Fiscal Note.

The passing of this bill would result in any new manufacturer or a new drug to charge any amount desired when their product is approved with no recourse or ability to deny coverage or place the drug in another tier. Given all the unknowns of future drug approvals, pricing and how much would be used by plan members, it is impossible to estimate the fiscal impact.

As written, this bill has a definite fiscal impact, the total impact of which is unknown.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2025-26</u>	<u>2026-27</u>
	<u>25-26</u>	<u>26-27</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

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2025

LB⁽¹⁾ 252

FISCAL NOTE

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

Prepared by: ⁽³⁾ Jordan Blades Date Prepared: ⁽⁴⁾ 1/22/24 Phone: ⁽⁵⁾ 402-471-4638

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2025-26</u>		<u>FY 2026-27</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:

The Department does not anticipate any fiscal impact at this time.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2025-26</u>	<u>2026-27</u>
	<u>25-26</u>	<u>26-27</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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 2-20-25

Phone: (5) 471-6719

	<u>FY 2025-2026</u>		<u>FY 2026-2027</u>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below	\$0	See Below	\$0

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

Explanation of Estimate:

LB252 prohibits disadvantaging or discouraging Medicaid coverage for non-opioid drugs as prescribed. This bill removes Medicaid’s ability to use step-therapy and utilization management with regard to medications to treat or manage pain. The language of LB252 applies to all medications used to treat pain, including those that are over-the-counter (OTC) and those that are used off-label.

Currently, Medicaid has utilization management strategies for opioid and non-opioid medications, preferred agents for both opioid and non-opioid medications, and processes in place involving prior authorizations. These utilization management tools, preferred agents, and prior authorizations are associated with improved health indicators and financial savings and are required as part of Medicaid’s Drug Use Review (DUR) program by the Centers for Medicare and Medicaid (CMS) to receive federal funding. Medicaid also currently utilizes a Pharmacy and Therapeutics (P&T) committee, as required, to review drugs with an expert panel of pharmacists and physicians to determine which medications should be on the preferred drug list taking cost, safety, and effectiveness into consideration. LB252 applies to non-opioid drugs immediately upon approval by the federal Food and Drug Administration (FDA), regardless of whether the P&T committee has reviewed such drug.

The fiscal impact is unknown at this time and is dependent on several factors. Newer agents typically cost between \$10 to \$40 per day for therapy compared to less than \$1 per day for preferred medications. For example, for non-steroidal anti-inflammatory drugs (NSAIDs), the average cost is \$22.58 for a preferred medication and \$359.57 for a non-preferred medication. In SFY 2024, Medicaid had 107,733 claims for NSAIDs. Assuming 10% of all patients would switch to the non-preferred medications, the annual increase in aid expenditures would be \$3,630,494 total funds.

As another example, for skeletal muscle relaxants, the average cost is \$18.77 for a preferred medication and \$519.77 for a non-preferred medication. In SFY 2024, Medicaid had 57,036 claims for skeletal muscle relaxants. Assuming 10% of all patients would switch to the non-preferred medication, the annual increase in aid expenditures would be \$2,857,504 total funds.

These two examples combined would equate to \$6,487,998 in additional annual aid expenditures. Assuming a federal match rate of 65%, federal funds would increase by \$4,217,199 and general funds would increase by \$2,270,799. The department is showing NSAIDs and muscle relaxants as examples because those would be drugs most likely used to treat pain. There are additional classes that could also be used like nerve pain agents, but the applicable cost is difficult to determine. The additional classes include drugs that are significantly more expensive than the two shown as examples but then predicting the utilization for individuals that would switch to a non-preferred medication is difficult.

Aside from the examples above, there is a much more significant risk to general funds with this bill. If LB252 were to pass, Medicaid could be at risk of losing the federal match on pharmacy related expenses as well as drug rebates due to not meeting CMS requirements. The loss of the federal match on pharmacy related

expenses, assuming the expenses would then be covered entirely by general funds, combined with the complete loss of drug rebates, would result in an annual increase to general funds of over \$535,000,000.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2025-2026	2026-2027
	26-26	26-27	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....				