

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

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates) |                     |                  |                     |                 |
|---|---------------------|------------------|---------------------|-----------------|
|   | <b>FY 2017-18</b>   |                  | <b>FY 2018-19</b>   |                 |
|   | <b>EXPENDITURES</b> | <b>REVENUE</b>   | <b>EXPENDITURES</b> | <b>REVENUE</b>  |
| GENERAL FUNDS   |                     |                  |                     |                 |
| CASH FUNDS  | \$178,836           | \$197,600        | \$173,028           | \$28,000        |
| FEDERAL FUNDS   |                     |                  |                     |                 |
| OTHER FUNDS   |                     |                  |                     |                 |
| <b>TOTAL FUNDS</b>  | <b>\$178,836</b>    | <b>\$197,600</b> | <b>\$173,028</b>    | <b>\$28,000</b> |

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

LB 324 is the Pharmacy Benefit Fairness and Transparency Act. The bill requires pharmacy benefit managers to apply to the Department of Insurance (DOI) for a certificate of authority to operate in the state as a third-party administrator. The one-time application fee is \$200. A pharmacy benefit manager is also required to pay a certification fee established by the DOI. The fee is to be set to allow the oversight activities by the department relative to the act to be self-supporting. The fee shall not exceed \$5,000. Pharmacy benefit managers are required to file an annual report with the department and pay a \$200 filing fee. The DOI is to have access to records maintained by a pharmacy benefit manager for the purposes of examination, audit and inspection.

Revenue: The number of pharmacy benefit managers in the state is unknown. The DOI estimates 38 pharmacy benefit managers will apply for a certificate of authority in FY2017-18, based upon the number registered in Kansas. Estimated revenue will be \$7,600 of cash funds in FY18. It is assumed two new pharmacy benefit managers will apply each year thereafter, so cash fund revenue from certificate of authority fees is estimated to be \$400 in FY19.

Based upon a discussion with the DOI, it is assumed the requirement for a pharmacy benefit manager to file an annual report and pay a \$200 filing fee will begin in FY19. So, the estimated revenue from the \$200 annual filing fee will be \$7,600 in FY19.

The bill provides for the DOI to set a certification fee of up to \$5,000 to pay for oversight responsibilities. The department indicates it will set the fee at \$5,000 in order to try to make the act self-supporting. Cash fund revenue from the one-time certification fee is estimated to be \$190,000 in FY18 and \$10,000 in FY19.

The DOI has the authority to charge pharmacy benefit managers for the cost of examinations. The department estimates about \$10,000 annually in examination expenses which will be paid by the entities being examined. It is assumed that market conduct examinations will not begin until FY19.

The Director of the DOI has the authority to revoke or suspend certificates of authority as specified in the bill and in lieu of suspension or revocation may impose an administrative penalty of \$1,000 to \$10,000. Failure to file to an annual report results in a penalty of \$50 per day. Fines accrue to the county where the fine is imposed for use by the public schools. Fine revenue is projected to be minimal pursuant to the bill.

Expenditures: LB 324 requires the DOI to license and regulate pharmacy benefit managers. The amount of work required to regulate these entities is unknown and depends upon the number in the state and complaints relative to their operations. DOI projects the need for 2 FTE (1.0 Market Conduct Investigator; 1.0 Attorney) for administrative and regulatory purposes. The estimated increase in cash fund expenditures for two employees to regulate pharmacy benefit managers is \$178,836 in FY18 and \$173,028 in FY19.

Technical Note: Based upon the estimated cost of the bill and estimated revenue from the certificate of authority fee, annual filing fee and one-time certification fee, it does not appear that revenues will be sufficient to make the act self-supporting as intended per Section 3 of the bill.

| ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSES      |                 |  |
|---|-----------------|--|
| LB: 324   | AM:             | AGENCY/POLT. SUB: Department of Insurance          |
| REVIEWED BY: Elton Larson   | DATE: 2/23/2017 | PHONE: <a href="tel:4024714173">(402) 471-4173</a> |
| COMMENTS: Department of Insurance analysis and estimate of fiscal impact appear reasonable. |                 |  |

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2017

LB<sup>(1)</sup> 324

FISCAL NOTE

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

Prepared by: <sup>(3)</sup> Robert M. Bell Date Prepared: <sup>(4)</sup> 2/22/2017 Phone: <sup>(5)</sup> (402) 471-4650

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

|               | <u>FY 2017-18</u>   |                  | <u>FY 2018-19</u>   |                 |
|---------------|---------------------|------------------|---------------------|-----------------|
|               | <u>EXPENDITURES</u> | <u>REVENUE</u>   | <u>EXPENDITURES</u> | <u>REVENUE</u>  |
| GENERAL FUNDS |                     |                  |                     |                 |
| CASH FUNDS    | \$178,836           | \$207,600        | \$173,028           | \$22,600        |
| FEDERAL FUNDS |                     |                  |                     |                 |
| OTHER FUNDS   |                     |                  |                     |                 |
| TOTAL FUNDS   | <u>\$178,836</u>    | <u>\$207,600</u> | <u>\$173,028</u>    | <u>\$22,600</u> |

Explanation of Estimate:

Legislative Bill 324 would adopt the Pharmacy Benefit Fairness and Transparency Act. It places new duties on the Nebraska Department of Insurance to license and regulate Pharmacy Benefit Managers (PBMs). Section 3 of the legislation requires PBMs in Nebraska to be licensed both as a Third-Party Administrator (TPA) and, in addition to the fees established for TPAs (\$200 admission fee and annual renewal fee), pay a certification fee not to exceed \$5,000 to make the regulation of PBMs self-sustaining. A certification fee is a one-time fee and the Department will charge the maximum \$5,000 in attempt to make the oversight activities of PBMs self-supporting.

Information from the Kansas Department of Insurance indicates 38 registered PBMs in Kansas. The Department estimates a similar number of PBMs currently active in Nebraska. Combined, the TPA and PBM fees will generate an estimated \$197,600 in revenue for the Department of Insurance Cash Fund in the first year, and \$12,600 in fees thereafter, presuming one new PBM paying the certification fee annually on top of the annual TPA fees.

Section 3 provides that the Director of Insurance can examine a PBM under the Insurers Examination Act, which will allow the Department to charge the PBM under an examination for the costs of the examination. It is estimated that the Department will charge regulated PBMs, in total, \$10,000 in examination costs annually.

In addition to the ability to suspend or revoke a PBM's licenses under Section 3, Section 5 of the legislation permits a covered individual or pharmacist to contact the Department if such a person receives incorrect, misleading, or inaccurate information from a PBM and request corrective actions or sanctions from the director against the PBMs. This would be a unique duty for the Department. Currently, the Department may issue orders, including sanctions, against licensed entities for violation of the insurance code, but individual disputes that cannot be resolved with 'corrective action' and instead parties go to court for resolution. It is estimated that this corrective action requirement will result in a spike in administrative actions initiated by the Department, necessitating an additional attorney for the filing of such actions under the Administrative Procedures Act.

A market conduct investigator specialized in the field of pharmacy practices will be needed by the Department to investigate complaints and complete examinations of PBMs. Both the investigator and the attorney will also otherwise assist the Department in the implementation of LB 324 and the regulation of PBMs.

The amount of revenue into the Department of Insurance Cash Fund from LB 324 will not self-sustain the appropriation for the two additional employees. Without additional revenue, LB 324 may impact long-term sustainability of the fund.

Finally, LB 324 provides that violation of the Pharmacy Benefit Fairness and Transparency Act by a PBM will be an unfair trade practice in the business of insurance. If a PBM is found to have committed such violations flagrantly and in conscious disregard or if the violations are committed with such frequency to indicate a general business

practice, the PBM may be fined by the Department after a notice and hearing. The number of possible fines annually is unknown, but is not anticipated to be significant.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| <u>POSITION TITLE</u>      | <u>NUMBER OF POSITIONS</u> |              | <u>2017-18</u>      | <u>2018-19</u>      |
|----------------------------|----------------------------|--------------|---------------------|---------------------|
|                            | <u>17-18</u>               | <u>18-19</u> | <u>EXPENDITURES</u> | <u>EXPENDITURES</u> |
| Attorney I                 | 1.0                        | 1.0          | 57,120              | 57,834              |
| Market Conduct Examiner II | 1.0                        | 1.0          | 54,808              | 55,493              |
| Benefits.....              |                            |              | 48,988              | 49,601              |
| Operating.....             |                            |              | 7,920               | 8,100               |
| Travel.....                |                            |              | 2,000               | 2,000               |
| Capital outlay.....        |                            |              | 8,000               |                     |
| Aid.....                   |                            |              |                     |                     |
| Capital improvements.....  |                            |              |                     |                     |
| <b>TOTAL.....</b>          |                            |              | <b>178,836</b>      | <b>173,028</b>      |