

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

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

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

LB 375 establishes the Pharmacy Benefit Manager Regulation and Transparency Act. The bill places restrictions and requirements on pharmacy benefit managers.

The bill requires Pharmacy Benefit Managers (PBM) doing business in Nebraska to obtain a certificate of authority as a third-party administrator (TPA) and pay a certification fee as established by the Director of Insurance, however, such fee cannot exceed \$5000. The director shall adopt and promulgate rules and regulations and enforce the provisions of the Act.

The State of Nebraska’s health plans are self-funded and currently provide a pharmacy benefit management service to its members. There is no fiscal impact.

The University of Nebraska estimates that the total costs of the University health plan will increase by \$2,000,000 in FY22 (\$440,000 GF, \$360,000 CF, \$400,000 FF, \$800,000 in other funds) and \$21,000,000 (\$462,000 GF, \$378,000 CF, \$420,000 FF, \$840,000 in other funds) in FY23 due to the additional requirements of the PBM.

The Nebraska Department of Insurance utilized data from other states that have enacted similar legislation to estimate the revenue that would be generated from PBM fees. The Department estimates that the TBA and PBM fees would generate \$104,000 in revenue for the Department’s cash fund in year one and \$9,000 in fees annually thereafter. The new PBM certification fee is \$5000 and the annual renewal fees are \$200. The estimate assumes 20 PBM paying the initial certification fee of \$5000 and the TPA \$200 admission/annual renewal fees in FY20-21. It is anticipated that 1 PBM will pay for the initial \$5000 certification fees and the 20 PBM \$200 renewal fees in FY21-22. Additionally, Sec. 3 provides that the Director of Insurance can examine and charge one PBM under the Insurers Examination Act annually. The Department will charge PBM \$10,000 for these examinations as allowed under the Insurers Examination Act.

The bill also provides requirements for the Department to provide oversight, respond to complaints, and request corrective actions in events of the PBM’s violating new provisions that are outlined in the bill. A market conduct examiner and consumer affairs investigator specialized in the field of pharmacy practices will be needed by the Department to investigate and complete corresponding examinations of PBMs. Additionally the Department would need an additional financial analyst to examine audits of PBMs and recuperate funds or penalties as well as providing assistance in the enforcement of maximum allowable cost requirements outlined in the bill. Also needed is an additional staff attorney to represent the Department in administrative actions brought to enforce the act and to provide legal oversight. The costs of the additional 4 FTE, benefits, operating and travel costs is \$285,894 in FY 21021-22 and \$293,360 in FY 2022-23.

The Department of Administrative Services reports that 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 limit the ability of the health plans in negotiations with providers. 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 could have a total fund increased cost of \$865,917.

There is no basis to disagree with these estimates.

CONTINUED

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 375	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 no fiscal impact.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 375	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.			

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE			
LB: 375	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: 375	AM:	AGENCY/POLT. SUB: University of Nebraska	
REVIEWED BY: Ann Linneman	DATE: 1-25-2021	PHONE: (402) 471-4180	
COMMENTS: No basis to disagree with the University of Nebraska's assessment of fiscal impact.			

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2021

LB⁽¹⁾ 375

FISCAL NOTE

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

Prepared by: ⁽³⁾ Jennifer Norris Date Prepared: ⁽⁴⁾ 1/15/2021 Phone: ⁽⁵⁾ 402/471-4443

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	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 375 would adopt the Pharmacy Benefit Manager Regulation and Transparency Act.

Page 3, lines 26 through 31 of the bill, excludes self-funded plans that provide pharmacy benefit management services directly to their members. The State of Nebraska's health plans are self-funded and already provide a pharmacy benefit management service to its members.

LB 375, as introduced, has no fiscal impact to the State of Nebraska's health plans.

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>21-23</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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2021

LB⁽¹⁾ 375 (PBM Regulation and Transparency Act)
(Revised)

FISCAL NOTE

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

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

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2019-20</u>		<u>FY 2020-21</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS	\$285,894	\$114,000	\$293,360	\$19,000
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS		\$114,000		\$19,000

Explanation of Estimate:

Legislative Bill 375 would adopt the Pharmacy Benefit Manager Regulation 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 as an attempt 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.

Prior information from the Kansas Department of Insurance indicated 38 registered PBMs in Kansas. Previously provided information from Arkansas, which has passed similar legislation, indicated there are 14 licensed or pending PBMs in Arkansas. Based on this information, the Department estimates 20 PBMs would become licensed in NE under LB 375. Combined, the TPA and PBM fees will generate an estimated \$104,000 in revenue for the Department of Insurance Cash Fund in the first year, and \$9,000 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 prohibits PBMs from charging or collecting from a covered person a copayment that exceeds the amount retained by the network pharmacy from all payment sources for filling the prescription or providing the service. Section 5 also prohibits the exclusion of Nebraska pharmacies from participation in specialty pharmacy networks. These prohibitions are new oversight requirements of the Department.

Section 6 allows a pharmacist or covered individual that receives incorrect, misleading or inaccurate information to make a complaint to the Department and request corrective actions or sanctions. Responding to these complaints and bringing any related disciplinary actions would be a new responsibility of the Department.

A market conduct examiner and a consumer affairs investigator (a/k/a, "insurance claims investigator") specialized in the field of pharmacy practices will be needed by the Department to field and investigate complaints, as well as complete corresponding examinations of PBMs. Additionally it is anticipated that the Department would need an additional financial analyst to examine audits of PBMs and any recuperation of funds or penalties when disputed, as well as providing assistance in the enforcement of maximum allowable cost requirements outlined in the bill. Finally, the Department anticipates needing an additional staff attorney to represent the Department in administrative actions brought to enforce the act under sections 3(3) and 6 of the bill and to provide legal oversight, implementation,

analysis and coordination of the various duties required under the bill.

The amount of revenue into the Department of Insurance Cash Fund from LB 375 will not self-sustain the appropriation for an additional employee. Without additional revenue, LB 375 may impact long-term sustainability of the fund.

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>
Insurance Market Conduct Examiner I	1.0	1.0	\$39,127	\$39,909
Insurance Claims Investigator I	1.0	1.0	\$39,127	\$39,909
Insurance Analyst I	1.0	1.0	\$36,572	\$37,304
Attorney II	1.0	1.0	\$55,832	\$56,949
Benefits.....			\$87,363	\$90,857
Operating.....			\$25,834	\$26,351
Travel.....			\$2,040	\$2,081
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			\$285,894	\$293,360

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 2-25-21

Phone: (5) 471-6719

	<u>FY 2021-2022</u>		<u>FY 2022-2023</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

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

Explanation of Estimate:

LB 375 bill introduces the Pharmacy Benefit Fairness and Transparency Act. 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 limit the 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 could have a total fund increased cost of \$865,917.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	NUMBER OF POSITIONS		2021-2022	2022-2023
	21-22	22-23	EXPENDITURES	EXPENDITURES
POSITION TITLE				
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
TOTAL.....				

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2021

LB⁽¹⁾ 375

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ University of Nebraska

Prepared by: ⁽³⁾ Michael Justus Date Prepared: ⁽⁴⁾ January 15, 2021 Phone: ⁽⁵⁾ 402-472-7109

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	<u>440,000</u>	<u> </u>	<u>462,000</u>	<u> </u>
CASH FUNDS	<u>360,000</u>	<u> </u>	<u>378,000</u>	<u> </u>
FEDERAL FUNDS	<u>400,000</u>	<u> </u>	<u>420,000</u>	<u> </u>
OTHER FUNDS	<u>800,000</u>	<u> </u>	<u>840,000</u>	<u> </u>
TOTAL FUNDS	<u>2,000,000</u>	<u> </u>	<u>2,100,000</u>	<u> </u>

Explanation of Estimate:

The bill adds requirements for the Pharmacy Benefits Manager. We are working with the Senator on language that we expect will eliminate this fiscal note.

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>
<u>Benefits.....</u>	<u> </u>	<u> </u>	<u>2,000,000</u>	<u>2,100,000</u>
<u>Operating.....</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>Travel.....</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>Capital outlay.....</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>Aid.....</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>Capital improvements.....</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL.....	<u> </u>	<u> </u>	<u>2,000,000</u>	<u>2,100,000</u>