

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

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates)				
	<b>FY 2023-24</b>		<b>FY 2024-25</b>	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
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.**

LB 778 proposes changes and updates to the Pharmacy Benefit Manager (PBM) Licensure and Regulation Act (Act) that is administered by the Department of Insurance (DOI). The bill would expand plans subject to the Act and the scope of activities regulated by the DOI.

LB 778 specifically amends activities regulated under the Act to include the following:

- Prohibit spread pricing and require all PBM contracts to be amended to expressly state spread pricing is prohibited under the Act.
- Require a PBM to pay a pharmacy the acquisition cost if the maximum allowable cost price (MAC) is below the wholesaler cost, if that is the wholesaler used to purchase the majority of the pharmacy’s resale pharmaceuticals.
- Requires the maximum allowable cost price be adjusted to the acquisition cost for each similarly situated pharmacy;
- Prohibits a PBM from requiring a pharmacy to meet accreditation standards or recertification requirements more stringent than the minimum state and federal requirements for licensure.
- Requires a PBM to reimburse a pharmacy at the same rate it reimburses an affiliated pharmacy for a pharmacy service and expressly prohibits patient-steering to an affiliate of the PBM.
- Creates duties of a PBM to any covered person, health benefit plan, or provider/pharmacy. The order in cases of conflicts is to the duty of the covered person, the provider, and then the health plan.

The bill also amends the definition of “Health benefit plan” to include both Medicaid and self-insured plans such as those offered by the State of Nebraska and the University of Nebraska System.

Department of Administrative Services:

The State of Nebraska’s pharmacy and medical plans are currently under contract. If the bill were to pass, the health benefit plans would require to be renegotiated thus the fiscal impact cannot be determined at this time.

University of Nebraska System:

The University of Nebraska System is currently in the process of completing a Request for Proposals (RFP) for their pharmacy benefit manager. The University has included many of the changes as outlined in the bill and does not anticipate a significant fiscal impact.

Department of Insurance:

The bill would require that amended PBM applications be reviewed by the DOI’s legal division and would occur at the time of license renewal. With the increased number of Nebraskans in plans covered by the Act and the expanded scope of the Act, the Department estimates the number complaints requiring investigation will result in the need for one additional market conduct examiner. The personal costs plus benefits and operating are \$81,097 in FY 2023-24 and \$84,009 in FY 2024-25.

Increased investigations may increase in the number of enforcement actions by the Department, but the number of enforcement actions is indeterminable.

LB 778 mandates the Department promulgated rules and regulations to establish the scope of the duties of care, good faith and fair dealing owed to covered persons, providers, and health plans. The legal division will be required to research and draft the new regulations. These costs are one-time, which will be absorbed within the Department's current resources.

Department of Health and Human Services (DHHS):

DHHS anticipates a potential for increased prescription drug prices and/or premium payments supported by the Division of Public Health (DPH). However, these increased costs are difficult to estimate without knowing the price difference of the acquisition costs of the drugs currently being purchased using DPH funds. The Division contracts with a PBM for provision of drugs and provides premium support, as applicable, to participants in the Ryan White HIV/AIDS program. Both federal and state general funds are employed in this program.

Federal law allows Medicaid plans and Managed Care Organizations (MCOs) multiple options to utilize in determining reimbursement to pharmacies for medications dispensed to Medicaid recipients. The MAC pricing is set by each PBM based upon regional and national surveys of drug pricing, including acquisition cost, and updated every seven days by MCO PBMs. Each MCO PBM sets their own MAC pricing. By Federal law, fee for service (FFS) plans use National Average Drug Acquisition Cost (NADAC) methodology for reimbursement. LB 778 would require FFS claims to be paid at the individual pharmacy actual acquisition cost.

The price difference between NADAC and pharmacy actual acquisition cost would require to be paid with state general funds. The fiscal impact related to pharmacy aid costs in Medicaid is estimated to be substantial, however very difficult to quantify due to individual pharmacies contracting with drug wholesalers for the purchase of medications. Drug wholesalers set the acquisition price for individual pharmacies.

DHHS' best estimate is \$5 million per state fiscal year in total funds. The general funds would be eligible for applicable Federal Medical Assistance Percentages (FMAP) rates.

There is no basis to disagree with these estimates.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 778	AM:	AGENCY/POLT. SUB: Department of Administrative Services (DAS)
REVIEWED BY: Ryan Walton	DATE: 2/8/2023	PHONE: (402) 471-4174
COMMENTS: No basis to disagree with the Department of Administrative Services assessment of indeterminate fiscal impact from LB 778.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 778	AM:	AGENCY/POLT. SUB: University of Nebraska System
REVIEWED BY: Ryan Walton	DATE: 1/26/2023	PHONE: (402) 471-4174
COMMENTS: No basis to disagree with the University of Nebraska System assessment of no fiscal impact to the agency from LB 778.		

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

**2023**

**LB<sup>(1)</sup> 778**

**FISCAL NOTE**

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

Prepared by: <sup>(3)</sup> Jennifer Norris Date Prepared: <sup>(4)</sup> 1/24/2023 Phone: <sup>(5)</sup> 402/480-9728

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2023-24</u>		<u>FY 2024-25</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 778 proposes changes to the Pharmacy Benefit Manager Licensure and Regulation Act to require a pharmacy benefit manager to allow a pharmacy appeal process if the maximum allowable cost listing price is below the pharmacy’s acquisition cost and prohibits the pharmacy benefit manager from requiring accreditation or using spread pricing. LB 778 further requires the pharmacy benefit manager to reimburse all pharmacies at the same level as any pharmacy benefit manager affiliated or owned pharmacy.

LB 778 could cause renegotiation of the State of Nebraska’s pharmacy and medical contract. Renegotiation may cause a fiscal impact, but the exact fiscal impact is indeterminable at this time.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____

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

2023

**LB <sup>(1)</sup> 0778 Change the Pharmacy Benefit Manager Licensure and Regulation Act**

**FISCAL NOTE**

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

Prepared by:<sup>(3)</sup> Chris Kabourek Date Prepared:<sup>(4)</sup> 01/25/2023 Phone:<sup>(5)</sup> (402) 472-7102

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	FY 2023 - 24		FY 2024 - 25	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
CASH FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
FEDERAL FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
OTHER FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL FUNDS	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>

**Explanation of Estimate:**

The bill would require changes to our existing pharmacy benefit plan administration.

However, the University of Nebraska System is currently completing a request for proposal for its pharmacy benefits manager. Many of the changes included in the bill are addressed in the University's request for proposal.

The request for proposals has not yet been received or evaluated at this time, but we are hopeful that there will be no fiscal impact based on our RFP.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023 - 24 EXPENDITURES</u>	<u>2024 - 25 EXPENDITURES</u>
	<u>23 - 24</u>	<u>24 - 25</u>		
	<u>0</u>	<u>0</u>		
	<u>0</u>	<u>0</u>		
Benefits.....				
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				

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

**2023**

**LB<sup>(1)</sup> 778**

**FISCAL NOTE**

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

Prepared by: <sup>(3)</sup> Jordan Blades Date Prepared: <sup>(4)</sup> 2/28/2023 Phone: <sup>(5)</sup> 402-471-1432

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	81,097	_____	84,009	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	<u>81,097</u>	_____	<u>84,009</u>	_____

**Explanation of Estimate:**

LB 778 amends the Pharmacy Benefit Manager (PBM) Licensure and Regulation Act (the Act) to expand both the types of plans subject to the Act and the scope of activities regulated by the Department of Insurance. The Act became effective January 1, 2023. Absent a specific operative date, the changes from this bill will be effective three months after adjournment.

The bill amends the definition of “Health benefit plan” to include both Medicaid and self-insured plans such as those offered by the State of Nebraska and University of Nebraska. As self-insured plans are regulated by federal law and not the Department of Insurance, an estimate of the total number of self-insured plans is not available. In 2021, an estimated 14.9% of Nebraskans were enrolled in Medicaid and approximately 55.3% of Nebraskans were covered by employer sponsored plans of which 75.5% are self-insured.

LB 778 specifically amends activities regulated under the Act to include the following:

- Prohibit spread pricing and require all PBM contracts to be amended to expressly state spread pricing is prohibited under the Act.
- Require a PBM to pay a pharmacy the acquisition cost if the MAC price is below the wholesaler cost, if that is the wholesaler used to purchase the majority of the pharmacy’s resale pharmaceuticals.
- Requires the MAC price be adjusted to the acquisition cost for each similarly situated pharmacy;
- Prohibits a PBM from requiring a pharmacy meet accreditation standards or recertification requirements more stringent than the minimum state and federal requirements for licensure.
- Requires a PBM to reimburse a pharmacy at the same rate it reimburses an affiliated pharmacy for a pharmacy service and expressly prohibits patient-steering to an affiliate of the PBM.
- Creates duties of a PBM to any covered person, health benefit plan, or provider/pharmacy. The order in cases of conflicts is the duty to the covered person, the provider, and then the health plan.

This fiscal note does not anticipate any new PBM applications. Amended PBM applications will require review by the Department’s legal division and would occur at the time of license renewal. With the increased number of Nebraskans in plans covered by the Act and the expanded scope of the Act, the Department estimates the number complaints requiring investigation will result in the need for one additional market conduct examiner. Increased investigations may increase in the number of enforcement actions by the Department, but the number of enforcement actions is indeterminable.

LB 778 mandates the Department promulgated rules and regulations to establish the scope of the duties of care, good faith, and fair dealing owed to covered persons, providers, and health plans. The legal division will be required to research and draft the new regulations. These costs are a one-time cost that will be absorbed within the Department’s current resources.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Market Conduct Examiner II	1.0	1.0	48,423	50,931
Benefits.....			30,550	31,788
Operating.....			2,124	2,220
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
<b>TOTAL.....</b>			<b>81,097</b>	<b>84,009</b>

**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 3-17-2023

Phone: (5) 471-6719

	<u>FY 2023-2024</u>		<u>FY 2024-2025</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
<b>GENERAL FUNDS</b>				
<b>CASH FUNDS</b>				
<b>FEDERAL FUNDS</b>				
<b>OTHER FUNDS</b>				
<b>TOTAL FUNDS</b>	See Below		See Below	

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

**Explanation of Estimate:**

LB 778 proposes changes and updates to the Pharmacy Benefit Manager (PBM) Licensure and Regulation Act that is administered by the Department of Insurance. This bill requires PBMs to pay an individual pharmacy above their actual acquisition cost for a drug, in addition to paying the same to each similarly situated pharmacy.

It is possible that LB 778 would result in higher drug prices and/or premium payments supported by the Division of Public Health (DPH). However, these increased costs are difficult to estimate without knowing the price difference of the acquisition costs of the drugs currently being purchased using DPH funds. The Division contracts with a PBM for provision of drugs under the Ryan White HIV/AIDS program. Additionally, it provides premium support to low-income individuals participating in the Ryan White program. Both federal and state general funds are employed in this program.

Federal law allows Medicaid plans and Managed Care Organizations (MCOs) multiple options to utilize in determining reimbursement to pharmacies for medications dispensed to Medicaid recipients. LB778 specifically references the pricing methodology Maximum Allowable Cost (MAC). The MAC pricing is set by each PBM based upon regional and national surveys of drug pricing, including acquisition cost, and updated every seven days by MCO PBMs. Each MCO PBM sets their own MAC pricing.

By Federal law, FFS plans use National Average Drug Acquisition Cost (NADAC) methodology for reimbursement. LB 778 would require FFS claims to be paid at the individual pharmacy actual acquisition cost. The price difference between NADAC and pharmacy actual acquisition cost would need to be paid with state funds.

The fiscal impact related to pharmacy aid costs in Medicaid is estimated to be substantial, however very difficult to quantify due to individual pharmacies contracting with drug wholesalers for the purchase of medications. Drug wholesalers set the acquisition price for individual pharmacies. The department's best estimate is \$5 million per state fiscal year in total funds. The majority of the costs would be increases in payments for MCO pharmacy payments. These would be expenditures in Medicaid, CHIP and Medicaid Expansion, and eligible for applicable FMAP rates.

PERSONAL SERVICES:

POSITION TITLE	NUMBER OF POSITIONS		2023-2024	2024-2025
	23-24	24-25	EXPENDITURES	EXPENDITURES
Benefits.....				
Operating.....				
Travel.....				
Capital Outlay.....				
Aid.....				
Capital Improvements.....				
<b>TOTAL</b> .....				