

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

2022 South Dakota Legislature

FISCAL NOTE 2022-FN163A

SB 163 – An Act to address transparency in prescription drug pricing

This bill, as amended, would require pharmacy benefit managers (PBM) to maintain a maximum allowable cost list of all covered drugs. These drugs would be required to be an A or B class equivalent, be commercially available from a drug wholesaler, and not be obsolete. PBMs would be required to have an appeal process in case the maximum allowable cost is lower than the pharmacy acquisition cost (acquisition cost). PBMs would have to judge if the appeal has merit and adjust the maximum allowable cost if the appeal has merit. If the acquisition cost is higher than the maximum allowable cost and the maximum allowable cost is not adjusted, then the pharmacy could refuse to provide the drug.

The bill would require PBMs to reimburse other pharmacies to be reimbursed the same as affiliates of PBMs and would prevent PBMs from charging any remuneration or fees to the pharmacies. The bill would allow 340B entities to dispense drugs free from interference from PBMs, and PBMs could not refuse to make contracts with 340B entities. The bill would allow pharmacies to reveal information about the drugs such as the price of the drugs, reimbursement to PBMs, or alternative generics that the patient may use, and PBMs could not prevent pharmacies from doing these things.

The bill would give the enforcement power of this bill to the Division of Insurance (DOI) within the Department of Labor and Regulation. DOI would have power to make rules, use forms, have reporting requirements.

Wellmark Blue Shield and Blue Cross of South Dakota (Wellmark) is a PBM contracting with South Dakota to manage the state employee health care plan, including the prescription benefit. Wellmark used an actuarial analysis to determine the impact the bill would have on the health insurance, and they determined prescription prices would go up in a range of \$93 to \$149 per member per year. In January 2022, there were roughly 26,000 members enrolled in the State's health care plan. The bill would cost the state health plan in a range of \$2,418,000 to \$3,874,000 based on the actuarial analysis from Wellmark. The cost to the state health plan would be split between the employee and the State. The Bureau of Human Resources (BHR) estimates that roughly 69% of the cost would come from the State while the 31% would be covered by state employees through increased withholding of each employee paycheck. As a result, an additional \$1,668,420 to \$2,673,060 would need to come from the General Fund to pay for the increased pharmacy cost.

DOI would be the agency that would promulgate rules and enforce the provisions of the bill. According to DOI, it would not need any additional expenditures to administer the rule making section of the bill. However, DOI states bill could lead to a need for an additional 1.0 FTE in the future.

Data for this fiscal note came from DOI and BHR. The fiscal note for this bill is based on the amendments recommended by the Senate Committee on Health and Human Services on February 16.

APPROVED BY: /s/ Reed Holwegner

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Director, Legislative Research Council