Bill Number:	S. 0520 Introduced on February 9, 2023
Author:	Setzler
Subject:	Pharmacy Benefits
Requestor:	Senate Banking and Insurance
RFA Analyst(s):	Boggs
Impact Date:	February 23, 2023

Fiscal Impact Summary

This bill changes pharmacy rights and duties during audits and establishes a biannual auditing requirement for Medicaid managed care organizations. Additionally, this bill adds Article 23 to Chapter 71, Title 38 related to Pharmacy Services Administrative Organizations (PSAO). This bill also adds to and modifies the Department of Insurance's (DOI) responsibilities relative to the oversight of PSAOs and pharmacy benefit managers (PBM) as well as establishing or updating the fines and fees that may be charged by DOI for these oversight responsibilities, including licensing requirements and corresponding fees. Further, this bill specifies that a violation of the Articles within this bill will be subject to penalties as outlined in Sections 38-2-10 through 38-2-30. These sections include fines ranging from $2,500 to $30,000 and possible imprisonment of no more than two years depending upon the violation.

Section 38-71-2245 specifically exempts the State Health Plan from the provisions of this bill. Therefore, the Public Employee Benefit Authority (PEBA) anticipates no fiscal impact.

This bill will have minimal operational or fiscal impact on the Department of Health and Human Services (DHHS) as the bill exempts audits conducted on behalf of DHHS in administering Medicaid under Titles XIX and XXI. Additionally, the requirement for biannual audits of Medicaid managed care organizations pharmacy pricing and contract arrangements would be conducted through the normal course of business between DHHS and the Medicaid managed care organizations. Therefore, DHHS believes any additional costs can be managed using existing General Fund resources.

This bill will increase expenses for DOI by $386,760 in FY 2023-24 and $376,760 each year thereafter. The agency anticipates the need for additional administrative staff and operating expenses. This includes salary and fringe for 5.0 FTEs totaling $368,760. In addition, DOI reports that costs for the additional supplies and equipment are expected to total $8,000. Further DOI anticipates a $10,000 non-recurring expense to purchase laptops and other office equipment for these new FTEs. The agency indicates that an increase in Other Funds revenue will be used to partially offset some of these expenses, and the agency will request a General Fund appropriation increase to cover the remaining expenses.

Additionally, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill will have no expenditure impact for Judicial, the Commission on Prosecution Coordination, or the Commission on Indigent Defense. RFA anticipates any increase in caseload due to the potential increase in violations within the bill can be managed with existing staff and within the existing budgets of these agencies and Judicial.

RFA also anticipates this bill will have no expenditure impact for the Department of Corrections (Corrections) as we expect the agency can manage an increase in the inmate population due to this bill with existing staff and within existing appropriations.

This bill will increase Other Funds revenue by an undetermined amount for DOI. This increase is dependent upon the number of initial and recurring applications for licenses for PSAOs and PBMs, any fines and fees levied by DOI for the oversight responsibilities established or updated by this bill, and any fines collected pursuant to sections 37-2-10 through 37-2-30 for violations of this bill.

Explanation of Fiscal Impact

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State Expenditure
This bill changes pharmacy rights and duties during audits and establishes a biannual auditing requirement for Medicaid managed care organizations. Additionally, this bill adds Article 23 to Chapter 71, Title 38 related to PSAOs including establishing violations of law and penalty structure for these violations. This bill also adds to and modifies DOI's responsibilities relative to the oversight of PSAOs and PBMs as well as establishing or updating the fines and fees that may be charged by DOI for these oversight responsibilities, including licensing requirements and corresponding fees.

Public Employee Benefit Authority. Section 38-71-2245 specifically exempts the State Health Plan from the provisions of this bill. Therefore, PEBA anticipates no fiscal impact.

Department of Health and Human Services. This bill creates a requirement for a biannual audit for Medicaid managed care organizations pharmacy pricing and contract arrangements. DHHS anticipates this bill will have minimal operational or fiscal impact for the agency, as the bill exempts audits conducted on behalf of DHHS in administering Medicaid under Title XIX and XXI. Additionally, the proposed biannual audit requirements of Medicaid managed care organizations pharmacy pricing and contract arrangements would be conducted through the normal course of business between DHHS and the Medicaid managed care organizations. Therefore, DHHS believes any additional costs can be managed using existing General Fund resources.

Department of Insurance. This bill requires DOI to perform additional responsibilities. These responsibilities include promulgating regulations relating to the review process for pharmacies whose internal appeals have been denied by a PBM, examining the books and records of PBMs at least once every five years, and licensing and establishing an application process for PSAOs.

This bill will increase expenses for DOI by $376,760 beginning in FY 2023-24 for additional administrative staff and operating expenses. This includes salary and fringe for 5.0 FTEs totaling $368,760. In addition, DOI reports that costs for the additional supplies and equipment are expected to total $8,000. Also, DOI anticipates a non-recurring expense of $10,000 for laptops for the new employees. Therefore, this bill will increase expenses for DOI by $386,760 in FY 2023-24 and $376,760 each year thereafter. DOI anticipates that some of these expenses will be offset by Other Funds revenue generated with an increase in fees and fines due to this bill. DOI also anticipates requesting additional General Fund appropriations to cover the remaining expenses.

Judicial. This bill modifies certain provisions related to PBMs under Article 21 of Chapter 71, Title 38, and establishes provisions for PSAOs under the newly created Article 23 of Chapter 71, Title 38. This bill specifies that a violation of either of these Articles will be subject to penalties as outlined in Sections 38-2-10 through 38-2-30. These sections include fines ranging from $2,500 to $30,000 and possible imprisonment of no more than two years depending upon the violation. This may increase the number of actions brought in court. However, RFA anticipates any increase in caseload can be managed within the normal course of business for the courts. Therefore, RFA anticipates this bill will have no expenditure impact for Judicial.

Department of Corrections. The newly created and modified violations specified in this bill may increase the number of convictions with a sentence of imprisonment of no more than two years. The annual total cost per inmate in FY 2021-22 for Corrections was $32,247, of which $30,044 was state funded, and the marginal cost per inmate was $4,836, of which $4,830 was state funded. However, absent a significant change in inmate population, RFA anticipates the agency will be able to manage any change in the inmate population due to this bill with existing staff and within existing appropriations.

Commission on Prosecution Coordination. This bill creates new violations, which could result in an increase in the number of warrants that are sent to the Offices of Circuit Solicitor for review, prosecution, and disposition. However, the potential increase in warrants is unknown. RFA anticipates the commission can manage any increase in caseloads due to this bill within current resources.

Commission on Indigent Defense. RFA anticipates the implementation of this bill will have no expenditure impact for Indigent Defense, as the commission will likely be able to manage any increase in caseloads due to this bill within current resources.

State Revenue

This bill establishes a new licensing requirement for PSAOs, including a $1,000 initial license application fee and a $500 renewal fee. This bill also modifies the definition of PBM, which may increase the number of requests for licensing for PBMs within the state. These licenses are administered by DOI. Additionally, DOI may establish reasonable filing fees for a pharmacist's request for an external review of a denied internal appeal by a PBM and other such fees as outlined in this bill. This bill also specifies that violations of the provisions within this bill will be subject to penalties ranging from $2,500 to $30,000 depending on the violation. The fees and penalties established within the bill may be retained by DOI for the administrative purposes. The total amount of the fines and fees collected by DOI will depend upon the number of applications as well as the number of requests for review and the number of violations due to this bill resulting in penalties. Therefore, the Other Funds revenue increase for DOI due to this bill is undetermined. This increase in revenue will be used to offset expenses for DOI.

Local Expenditure
N/A

Local Revenue
N/A

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