

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 08-1003
Prime Sponsor(s): Rep. Romanoff
 Sen. Gordon

Date: July 9, 2008
Bill Status: Signed into Law
Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING STRENGTHENING PENALTIES FOR THE UNREASONABLE CONDUCT OF AN INSURANCE CARRIER, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Funds - Fines Collection Cash Fund	\$725,000	\$725,000
State Expenditures		
<u>Total</u>	<u>(\$277,780)</u>	<u>\$62,480</u>
General Fund	(\$138,890)	\$201,370
Federal Funds	(\$138,890)	(\$138,890)
FTE Position Change	0.0 FTE	4.8 FTE
Effective Date: The Governor signed the bill into law on June 4, 2008, and unless a referendum petition is filed, the bill will take effect August 5, 2008.		
Appropriation Summary for FY 2008-2009: See State Appropriations section of fiscal note.		
Local Government Impact: See Local Government Impact section of fiscal note.		

Summary of Legislation

The bill prohibits the unreasonable delay or denial of payment of a claim for benefits owed by an insurance company, and provides remedies for claimants, including a new cause of action. If an action brought under this bill is found to be frivolous, the court shall award costs and attorney fees to the defendant in the action. The bill exempts workers' compensation, life and title insurance from its provisions. It increases the monetary penalties the Commissioner of Insurance can impose on insurance companies and agents for violations of law. It prohibits an insurance contract from giving the plan administrator sole discretion in determining eligibility for benefits. The bill expands the definition of restitution to include costs and expenses for lost time from work and attorney fees.

State Revenue

State revenue from penalties is expected to increase by \$725,000 in FY 2008-09 and FY 2009-10 to the Fines Collection Cash Fund.

Penalties. The Department of Regulatory Agencies, Division of Insurance, expects annual increases of \$725,000 in penalties levied for violations discovered in financial and market exams and for insurance agent disciplinary actions as shown in Table 1. Penalties that were limited in statute to \$1,000 per violation up to \$10,000 total are increased to \$3,000 per violation with a \$30,000 maximum. Penalties when the company knew, or should have known about the violation, that were limited to \$10,000 per violation up to \$100,000 total are increased to \$30,000 per violation with a \$750,000 annual maximum.

Fine Categories	Penalty Levied
Market Conduct Examinations	\$500,000
Insurance Agent Discipline	200,000
Financial Examinations	25,000
TOTAL	\$725,000

State Expenditures

Total state expenditures are expected to decrease by \$277,780 in FY 2008-09 and increase by \$62,480 in FY 2009-10. The *decrease* in expenditures of \$277,780 in FY 2008-09 is in the Medicaid program, and is divided equally between General Fund and federal funds. The expenditures of \$62,480 in FY 2009-10 include an increase in General Fund expenditures of \$340,260 and 4.8 FTE in the Judicial Branch, and savings of \$277,780 in the Medicaid program as shown in Table 2. Additional costs may also be incurred by the state employee health plans as described below.

Judicial Branch — expects the new cause of action to result in a significant increase in filings and an additional 2 trial days for bad faith claim cases. The amount of filings for the new cause of action cannot be determined at this time, but because it provides for the award of attorney fees and up to 225% of the value of the claim that was denied, claimants have an incentive to file for recovery. In FY 2007, 159 cases of bad faith claims were tried in district court. With 2 extra days added to these trials, district court expenditure increases of \$340,260 and 4.8 FTE for magistrates and support staff are expected for FY 2009-10.

Health Care Policy and Financing, Medicaid—When it is cost effective to do so, the Medicaid program purchases private insurance for individuals who are Medicaid eligible through the Health Insurance Buy-In (HIBI) program. The department estimates that private insurance companies unreasonably deny claims for approximately 10 percent of the clients in the HIBI program. The bill is expected to discourage private insurance companies from this practice resulting in a *decrease* in state expenditures for the department of \$277,780 in both FY 2008-09 and FY 2009-10.

Table 2. Expenditures Under HB08-1407		
Cost Components	FY 2008-09	FY 2009-10
<i>Judicial Branch</i>		
Personal Services	\$0	\$268,986
FTE	0	4.8
Operating Expenses	0	8,550
Capital Outlay (one-time cost)	0	62,724
Subtotal - General Fund	\$0	\$340,260
<i>Health Care Policy and Financing</i>		
Medicaid Savings	(\$277,780)	(\$277,780)
TOTAL	(\$277,780)	\$62,480
General Fund	(138,890)	\$201,370
Federal Funds	(138,890)	(\$138,890)

State Employee Health Plans. The fiscal note assumes that the purpose of the prohibition of discretionary clauses is to facilitate the de novo (fresh eyes) review of eligibility determinations and is not to prevent an insurance company from making a determination of medical necessity. Any increase in premiums would be due to the reversal of benefit determinations by a court resulting in increased medical claim costs. Any increase would be paid by employees in FY 2009-10 and may influence the General Assembly to increase contributions in out years.

Department of Regulatory Agencies, Division of Insurance—is not expected to require an increase in expenditures. The bill authorizes the division to levy larger penalties for violations found in the normal course of business.

Local Government Impact

An increase in premiums for health insurance at the local level is possible due to increased medical claim costs and associated penalties due to the reversal of benefit determinations by a court. The size of the increase and who will bear the expense, cannot be determined.

Statutory Public Entity Impact

CoverColorado is a non-profit entity created in 1991 to offer health insurance coverage to people unable to obtain insurance at a reasonable cost without significant exclusions. It may see an increase in medical claim costs and associated penalties due to the reversal of benefit determinations by a court and may be subject to a cause of action brought by a claimant who was denied benefits. The amount of any increase cannot be determined at this time.

State Appropriations

For FY 2008-09, the fiscal note indicates that the Department of Health Care Policy and Financing should receive an appropriation that reduces funding by \$277,780 split equally between the General Fund and federal funds (\$138,890 each).

Departments Contacted

Judicial
Regulatory Agencies
Law

Personnel and Administration
Health Care Policy and Financing