

Colorado Legislative Council Staff Fiscal Note
STATE and STATUTORY PUBLIC ENTITY
CONDITIONAL FISCAL IMPACT

Drafting Number: LLS 12-0500
Prime Sponsor(s): Sen. Neville
 Rep. Looper

Date: January 20, 2012
Bill Status: Senate Health and Human Services
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TITLE: CONCERNING THE REPEAL OF THE "COLORADO HEALTH BENEFIT EXCHANGE ACT" IF ANY PART OF THE "PATIENT PROTECTION AND AFFORDABLE CARE ACT" AS AMENDED BY THE "HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010" IS RULED UNCONSTITUTIONAL.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill repeals the Colorado Health Benefit Exchange Act if the federal Patient Protection and Affordable Care Act (ACA) is ruled unconstitutional, in full or in part, by the United States Supreme Court or is repealed by Congress.

Background

The Colorado Health Benefit Exchange Act, enacted under Senate Bill 11-200, established a non-profit organization to oversee the establishment and operation of a competitive insurance marketplace (exchange) in Colorado. The exchange, which is currently developing its operational and financial plans, is governed by a board of directors consisting of 12 members, who serve without compensation. All expenses of the exchange board are required to be paid with gifts, grants, and donations received by the board.

A 10-member Legislative Health Benefit Exchange Implementation Review Committee (review committee) was created to guide implementation of the exchange, make recommendations, and carry legislation. The review committee is authorized to meet up to five times per year, and met four times during the 2011 interim. Support to the review committee and post-enactment review are provided by staff of the Legislative Council and Office of Legislative Legal Services.

The U.S. Supreme Court is set to hear oral arguments on the constitutionality of ACA in March 2012. This analysis assumes a decision will be published by June 2012.

State Expenditures

Conditional upon actions taken by the U.S. Supreme Court or Congress, this bill may both reduce or increase state expenditures, as discussed below.

Legislative branch. If any part of ACA is repealed or ruled unconstitutional, staffing support to the review committee will no longer be provided by the Legislative Council and Office of Legislative Legal Services. While no separate appropriations were provided under SB11-200, these costs were estimated as \$20,288 General Fund and 0.4 FTE per year. These costs are not shown as a reduction because the General Assembly prioritizes which, if any, interim committees it wishes to fund through each year's annual budget process. If ACA is repealed or ruled unconstitutional, the General Assembly may allocate resources currently provided to the review committee to an alternate committee or direct the moneys to be used for another purpose. In addition, any unexpended or unencumbered funds are returned to the General Fund at the end of each fiscal year.

The fiscal note for SB11-200 assumed that per diem and travel reimbursements for the legislators serving on the review committee could cost up to \$9,350 per year. This analysis assumes those costs would be reduced. However, as SB11-200 did not contain a separate appropriation for these costs, this analysis assumes no reduction in appropriations would occur should this bill become law.

State agencies. Representatives from the Governor's Office and the Departments of Health Care Policy and Financing and Regulatory Agencies currently consult with the exchange and review committee. Participation currently has a minimal impact on agency workload, but did not require an appropriation under SB11-200. Therefore, the fiscal note assumes no reduction in appropriations for any state agency will be required under this bill.

Repayment of grant moneys. If any part of ACA is repealed or ruled unconstitutional, Colorado's health benefit exchange will be repealed. Under ACA, if the state does not operate an exchange, the federal government will do so. The state has received a number of federal grants to conduct various aspects of health benefit exchange related planning. For example, in 2010, the state received a \$1 million federal grant to perform economic modeling, actuarial analysis, and identify infrastructure needs. As of this writing, the full amount of funds received to date was not available, and it is unknown how much, if any, of these funds would be required to be repaid. This analysis assumes that state expenditures could increase if the federal government requires any planning grant moneys already received to be returned.

Statutory Public Entity Impact

Conditional upon actions taken by the U.S. Supreme Court or Congress, if any part of ACA is repealed or ruled unconstitutional, Colorado's health benefit exchange, and therefore its board of directors, will be repealed. To the extent that the board has received any moneys for exchange-related expenses or activities, the fiscal note assumes those moneys could be required to be repaid. No information about the amount of any such moneys received to date was available as of this writing, and it is unknown how much, if any, of these funds would be required to be repaid or from what source.

State Appropriations

Due to the Legislative Council's approval of the review committee, no separate appropriations were required for SB11-200. The legislature is budgeted each year with resources to support five interim committees of the General Assembly. This analysis assumes that the Legislative Council would not reduce its appropriation for interim committees, but that instead those moneys would be used to support other activities of the General Assembly.

Departments Contacted

Governor's Office
Health Care Policy & Financing
Regulatory Agencies

Governor's Office of Information Technology
Legislative Branch
State Auditor