LEGISLATIVE FISCAL OFFICE
Fiscal Note

Fiscal Note On: **HB 172** HLS 24RS 81

Bill Text Version: **ORIGINAL**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

Date: April 1, 2024 8:32 PM **Author:** ECHOLS

Dept./Agy.: Office of Group Benefits

Subject: Annual Report on Revenues from Contracts with OGB **Analyst:** Patrice Thomas

INSURANCE/GROUP-STATE OR INCREASE GF EX See Note

Provides relative to disclosure and remittance to the state of revenues in excess of certain contractual amounts in certain circumstances for certain contractors with the state's Office of Group Benefits

Proposed law requires each administrator (including its third-party administrator, TPA) and pharmacy benefit manager (including its third-party pharmacy benefit managers) that had a contract with the Office of Group Benefits (OGB) in the preceding calendar year to file two annual revenue reports with OGB: (1) before April 1st on initial revenues; and (2) before June 30th on final revenues. Both reports shall also be submitted to House and Senate insurance committees. Proposed law authorizes each administrator and pharmacy benefit manager to establish and retain an administrative fee and prohibits these entities from retaining revenues directly attributable to the OGB contract including rebates and other fee arrangements with third-party administrators or third-party pharmacy benefit managers. Proposed law requires remittance to the state treasury all revenues within 30 days of filing the April 1st report and new revenue disclosed within 30 days of filing the June 30th report. Proposed law provides for failure to file penalties not to exceed the greater of the following: (1) twice the party's total rebates and fees received, or (2) $10,000 per day per violation. Proposed law requires OGB to create the form for revenue reports and authorizes an exception under the Administrative Procedure Act so OGB may promulgate emergency rules. Proposed law is effective 7/01/24.

EXPENDITURES	2024-25	2025-26	2026-27	2027-28	2028-29	5 -YEAR TOTAL
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total						

REVENUES	2024-25	2025-26	2026-27	2027-28	2028-29	5 -YEAR TOTAL
State Gen. Fd.	INCREASE	INCREASE	INCREASE	INCREASE	INCREASE	
Agy. Self-Gen.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total						

EXPENDITURE EXPLANATION

Proposed law will likely have an indeterminable, but significant, impact on the Office of Group Benefits (OGB), and may increase SGF expenditures as a result of refunding the Federal government the federal participation rate that was utilized by certain state departments to pay health and life insurance premiums. The proposed law requires OGB contracted administrators, third-party administrators (TPA), pharmacy benefit managers (PBMs), and third-party benefit managers to remit back to OGB all revenues earned in the prior calendar (plan) year directly attributable to its OGB contacts. Then, OGB shall remit the revenues to the state treasury for deposit into the state general fund, state fisc.

Office of Group Benefits (OGB) - OGB anticipates the proposed law will significantly deplete its annual revenues that are received from prescription drug manufacturer rebates associated with prescription drug claims and Medicare Part D subsidy payments. Currently, OGB's PBM, CVS Caremark, remits all earned rebates or a minimum rebate guarantee back to OGB. For plan year 2023, OGB is projected to receive $238.9 M in rebates from CVS Caremark ($234.7 M) and OGB's TPA, Blue Cross Blue Shield of LA ($4.2 M). OGB utilizes this revenue to offset and mitigate expenditures so that it may maintain an actuarially recommended fund balance of at least $276 M. With the loss of rebate and subsidy revenue, OGB future pharmacy claim expenditure increases would have the be absorbed by the OGB fund balance. Once the fund balance is below $276 M, OGB would have the following options: (1) decrease or eliminate benefits; (2) enact premium rate increases (see "Note" below); or (3) seek a direct SGF appropriation (see "OGB Direct Appropriation" in the Revenue section on page 2). OGB anticipates expenditure increases from the loss of rebate revenue under this measure as follows: $220.8 M in FY 25; $233 M in FY 26; $238 M in FY 27; $241.9 M in FY 28; and $245.9 M in FY 29.

Note: For plan years 2025 through 2028, OGB's contracted actuary is projecting a 7.8% annual premium rate increase to prevent the OGB fund balance from falling below $276 M.

Federal Government Refunds - Proposed law creates a potential SGF exposure as certain state agencies use Federal funds to pay OGB premiums. The federal *Office of Management and Budget (OMB) Guidance for Grants and Agreement* states that if funds are "transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred". Under this measure, rebates and subsidy revenue transferred to the state fisc, may result in a Federal refund. This exposure is indeterminable, but may be significant.

OGB Fund Balance - Currently, the OGB Fund Balance is $346 M. Existing law, R.S. 42:854(C), provides that OGB's fund balance may not be utilized for the state's operating budget.

REVENUE EXPLANATION

Rebate Remittance - Proposed law will likely increase deposits into the State General Fund, state fisc as OGB will be required to submit all revenues that are received from prescription drug manufacturer rebates and Medicare Part D subsidy payments. In FY 25, according to its contracted actuary, OGB is projected to receive $71.9 M in rebates and $108.2 in subsidies. Under proposed law, this revenue would be remitted to the state fisc. The total 5-year projected revenue that OGB will have to remit to the state treasury is $1.1 B: $180 M in FY 25; $199.9 M in FY 26; $223.4 M in FY 27; $238.9 M in FY 28; and $258 M in FY 29.

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Senate	Dual Referral Rules	House
[x] 13.5.1 >= $100,000 Annual Fiscal Cost {S & H}		[x] 6.8(F)(1) >= $100,000 SGF Fiscal Cost {H & S}
[ ] 13.5.2 >= $500,000 Annual Tax or Fee Change {S & H}		[ ] 6.8(G) >= $500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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CONTINUED EXPLANATION from page one:

REVENUE Explanation, Continued from Page 1

OGB Direct Appropriation - In past fiscal years, particularly in the late 1990s, when OGB's fund balance was insufficient to pay claim expenditures, the legislature directly appropriated SGF to the agency. To the extent that the OGB Fund Balance falls below the actuarially recommended amount of $276 M, the legislature may directly appropriate SGF to OGB. Therefore, any increase in SGF under this measure may be directly appropriated back to OGB if there is an insufficient fund balance.

Penalties - Proposed law may increase SGR in OGB as a result of increased penalties authorized by this measure. If an administrator, third-party administrator (TPA), pharmacy benefit manager (PBM), or third-party pharmacy benefit manager fails to file their annual revenue report, the proposed law provides for penalties not to exceed the greater of the following: (1) twice the party's total rebates and fees received, or (2) $10,000 per day per violation. The LFO presumes the potential revenue may accrue to OGB due to failure to file annual revenue reports constitutes a breach of contract duties under this proposed measure. The amount of penalty revenue is speculative and indeterminable.

Senate	Dual Referral Rules	House
[x]	13.5.1 >= $100,000 Annual Fiscal Cost {S & H}	[x] 6.8(F)(1) >= $100,000 SGF Fiscal Cost {H & S}
[ ]	13.5.2 >= $500,000 Annual Tax or Fee Change {S & H}	[ ] 6.8(G) >= $500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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