

# Preliminary

Consolidated Fiscal Note

2021-2022 Legislative Session

## HF801 - 2A - Prescription Drug Affordability Act

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Lead Agency: **Health Dept**  
 Other Agencies:  
     Attorney General                      Commerce Dept  
     Human Services Dept                Minn Management and Budget  
     MNSure

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Attorney General</b>						
General Fund	-	-	256	256	256	
<b>State Total</b>						
General Fund	-	-	256	256	256	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>256</b>	<b>256</b>	<b>256</b>	
<b>Biennial Total</b>			<b>256</b>			<b>512</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Attorney General</b>					
General Fund	-	-	2	2	2
<b>Total</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>2</b>	<b>2</b>

### Lead LBO Analyst's Comment

LBO Signature:     Date:  
 Phone:             Email:

# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
<b>Attorney General</b>						
General Fund		-	-	256	256	256
<b>Total</b>		<b>-</b>	<b>-</b>	<b>256</b>	<b>256</b>	<b>256</b>
<b>Biennial Total</b>				<b>256</b>		<b>512</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
Attorney General						
General Fund		-	-	456	456	456
<b>Total</b>		<b>-</b>	<b>-</b>	<b>456</b>	<b>456</b>	<b>456</b>
<b>Biennial Total</b>				<b>456</b>		<b>912</b>
<b>2 - Revenues, Transfers In*</b>						
Attorney General						
General Fund		-	-	200	200	200
<b>Total</b>		<b>-</b>	<b>-</b>	<b>200</b>	<b>200</b>	<b>200</b>
<b>Biennial Total</b>				<b>200</b>		<b>400</b>

# Preliminary

Fiscal Note

2021-2022 Legislative Session

**HF801 - 2A - Prescription Drug Affordability Act**

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: Health Dept

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Carlos Guereca    **Date:** 3/1/2021 3:14:10 PM  
**Phone:** 651-2846541    **Email:** carlos.guereca@lbo.leg.mn

# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>2 - Revenues, Transfers In*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-

## Bill Description

This bill establishes a Prescription Drug Affordability Board and a Prescription Drug Advisory Council. It requires MDH to make prescription drug price data collected under Minnesota Statutes, section 62J.84, available to the board. It requires the board, in consultation with the advisory council, to identify and monitor a subset of drugs, as defined by cost or price increases, and make available to the public the names and price information of those drugs. The board is to conduct cost reviews for these drugs to determine if appropriate use of a drug has, or could lead to, affordability challenges for the state health care system or patients. If an affordability challenge is identified, the board shall establish an upper payment limit based on considerations outlined. The attorney general may pursue remedies for non-compliant entities. The board will submit an annual report to the governor and legislature. Drug cost reviews are to be made available to the public with the exception of proprietary information. Employee Retirement Income Security Act (ERISA) and Medicare drug plans may exceed the upper payment limit, but providers are not allowed to bill for a higher amount. The bill also requires MDH to provide to the board information reported by drug manufacturers within 30 days of receipt. It also calls for MDH representation with expertise in health economics on the newly formed Prescription Drug Affordability Advisory Council.

Technical comment:

MDH may not be able to make available the required information in the bill within the specified 30 days in all circumstances. While we expect the data collection and loading into MDH systems to be automated, our work also involves verifying the correctness and completeness of data and, making trade secret determinations based on assertions by manufacturers. The Prescription Drug Transparency Act requires a 30-day notification period prior to making data public in cases where MDH's findings deviate from claims made by manufacturers. In those instances, data to be made publicly available would likely be posted between 60 and 90 days following the submission of information to MDH.

## Assumptions

This bill requires one member of the advisory council representing the commissioner of health to have expertise in health economics. MDH assumes this representation will be provided as part of normal work duties and will not incur a fiscal impact as it will not result in substantial commitment of staff time. This bill requires the commissioner to provide the

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board within 30 days of information collected under the Prescription Drug Price Transparency Act (Minnesota Statutes, section 62J.84). MDH expects to meet that requirement at no additional cost with data that is generated for public display and processes established as part of its obligation under the Prescription Drug Price Transparency Act.

MDH does not assume any cost of implementing the Prescription Drug Affordability Board under section 3, and the Prescription Drug Advisory Council under Section 4, as the legislation does not assign responsibility of the board and council to the commissioner of health. These sections would, however, incur cost to MDH, if the department were to become responsible for specific implementation tasks, including the conduct of research and analysis. The bill specifies that the board would hire staff and provide technical assistance. Members of the council would be compensated per Minnesota Statutes, section 15.059, and there may be administrative cost to coordinate the council.

## **Expenditure and/or Revenue Formula**

## **Long-Term Fiscal Considerations**

## **Local Fiscal Impact**

## **References/Sources**

### **Agency Contact:**

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# Preliminary

## Fiscal Note

2021-2022 Legislative Session

### HF801 - 2A - Prescription Drug Affordability Act

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	256	256	256	256
<b>Total</b>	-	-	<b>256</b>	<b>256</b>	<b>256</b>	<b>256</b>
<b>Biennial Total</b>			<b>256</b>			<b>512</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	2	2	2
<b>Total</b>	-	-	<b>2</b>	<b>2</b>	<b>2</b>

#### LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Adam Blom      **Date:** 3/4/2021 4:35:42 PM  
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# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	-	256	256	256	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>256</b>	<b>256</b>	<b>256</b>	
<b>Biennial Total</b>			<b>256</b>			<b>512</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	-	456	456	456	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>456</b>	<b>456</b>	<b>456</b>	
<b>Biennial Total</b>			<b>456</b>			<b>912</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	200	200	200	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>200</b>	<b>200</b>	<b>200</b>	
<b>Biennial Total</b>			<b>200</b>			<b>400</b>

## Bill Description

H.F. 801 (2nd Engrossment) (hereinafter the “Bill”) creates a 7-member Prescription Drug Affordability Board to protect consumers, state and local governments, health plan companies, providers, pharmacies, and other health care stakeholders from unaffordable costs of certain prescription drugs. (H.F. 801 § 3.) The Bill also establishes a 12-member stakeholder Advisory Council to provide advice to the Board on drug cost issues and to represent stakeholders views. (Id. § 4.)

The Bill authorizes the Board to hire an executive director who may employ and contract for additional assistance as the Board deems necessary. (Id. § 3.) The Bill further directs the Attorney General’s Office (“AGO”) to provide legal services to the Board. (Id.)

The Bill requires the Commissioner of Health to provide the Board with the prescription drug pricing information manufacturers are required to disclose pursuant to Minnesota Statutes section 62J.84, subdivisions 3, 4, and 5, within 30 days after the Commissioner receives such information. (Id. § 6.) The Bill also requires the Board to subscribe to a prescription drug pricing service, in furtherance of its prescription drug cost monitoring duties. (Id.)

Upon receiving and reviewing such information, or pursuant to vote of the Board, the Board is charged with identifying certain prescription drug products, including but not limited to: (1) brand name drugs or biologics whose wholesale acquisition cost (WAC) increased by more than 10% or \$10,000 during any 12-month period; (2) generic drugs whose 30-day supply is \$100 or more or whose price increased by 200% or more during the immediate preceding 12-month period; and (3) other prescription drug products that create significant affordability challenges for the state health care system or for patients. (Id. § 6.)

For prescription drug products that the Board identifies, the Board is authorized to conduct a cost-review of the drug to determine whether the drug has or will produce an affordability challenge for Minnesota’s health care system or patients. (Id. §§ 6, 7.) If the Board so finds, it is authorized to establish an upper payment limit for all public and private purchases, payments, and payer reimbursements for the prescription drug in Minnesota. (Id. § 8.)

If an entity is noncompliant with the upper payment limit established by the Board, the Bill authorizes the Board to refer the noncompliant entity to the AGO. (Id. § 8.) The AGO may then investigate the noncompliance and pursue an enforcement action and remedies in accordance with Minn. Stat. § 8.31. (Id.) The Bill further directs the AGO to “provide guidance to stakeholders concerning activities that could be considered noncompliant.” (Id.)

The Board is also charged with submitting an annual report to the Governor and Legislature on general price trends for prescription drug products and the Board’s activities. (Id. § 9.)

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## Assumptions

The AGO assumes that the Board and stakeholder Advisory Council will meet monthly in St. Paul, requiring limited travel for the AGO attorney assigned with providing legal services to the Board. The AGO further assumes that the Board will require legal services related to initial organization, and thereafter on an ongoing basis related to the work of the Board, including AGO attendance and representation during the Board's regular public meetings. The AGO assumes that the representational and legal services required by the Board can be provided within the AGO's existing staffing and resources.

The AGO will require additional staff in its Consumer, Wage, and Antitrust division devoted to the new investigatory and enforcement provisions in this Bill. The AGO assumes 1.0 FTE attorney and 1.0 FTE investigator will be required.

The AGO will also require qualified vendors with expertise in pharmaceutical pricing, reimbursement, as well as public and private purchases, payments, and payer reimbursements for prescription drugs to assist the AGO in assessing and investigating whether violations of the Bill's prohibitions have occurred, and to subsequently provide expert testimony in enforcement actions it brings for violations of these prohibitions in accordance with Minn. Stat. § 8.31.

It should be noted there are potential secondary costs with this Bill, which are not specified in the above tables. For example, last year Maryland was the first state in the nation to enact a Prescription Drug Affordability Commission similar to the one provided for in the Bill. While to date, Maryland's law has not faced a legal challenge, it is anticipated that it will face such a challenge from the pharmaceutical industry once its Commission begins to set upper payment limits for prescription drugs purchased in Maryland.<sup>1</sup> It is possible the Bill could face a similar pre-enforcement challenge to its constitutionality in federal district court, with any decision appealed to the 8th Circuit Court of Appeals and to the U.S. Supreme Court. Legal costs can be expected to be at least \$200,000, which could be borne by the Department of Health, unless other parties such as the AGO are named.

It is presently unknown how many cost reviews the Board will conduct in any given fiscal year, as well as how many price increases the Board will identify from the information it receives from the Commissioner of Health and its review of drug pricing data. There could, however, be a substantial number of notifications and cost reviews. For example, a recent report from California's Office of Statewide Health Planning and Development ("OSHPD"), which reviewed the pricing trends for 1,000 prescription drugs, showed that prescription drug manufacturers had raised the WAC by a median of 25.8% from 2017 through the first quarter of 2019.<sup>2</sup> Thus, for purposes of this fiscal note, the AGO will assume that beginning in fiscal year 2023, it will begin to receive at least 5 referrals from the Board for investigation and potential enforcement actions for violation of the upper payment limits established by the Board.

## Expenditure and/or Revenue Formula

It is estimated that 1.0 FTE attorney and 1.0 FTE investigator will be necessary to perform the investigatory and enforcement activities authorized by the Bill beginning in FY2023. 1.0 FTE attorney is \$222,000 and 1.0 FTE investigator is \$133,500.

The AGO will also incur litigation expenses in any lawsuit it brings to enforce and remediate violations of the Bill in accordance with Minnesota Statutes section 8.31. These costs will necessarily include filing fees, discovery costs, and ADR expenses. The lawsuits will also require the retention of expert witnesses to opine, for example, on the validity of the cost review process of the Board, the price and cost of the prescription drug at issue, and how the relevant prescription drug will produce or has produced an affordability challenge to Minnesota's health care system or patients. For purposes of this fiscal note, the AGO estimates that it will incur approximately \$50,000 in such costs for each enforcement action it brings.

Based on the above assumption that the AGO will receive at least 5 referrals from the Board each fiscal year beginning in fiscal year 2023, the AGO estimates that it will bring at least two enforcement actions in fiscal years 2023 and 2024 related to violations of the upper payment limits established by the Board.

Revenue may be generated in the investigations and enforcement actions the AGO brings under the Bill in the form of civil penalties, attorney's fees, and costs (including the costs of investigations) that are directed to the General Fund. See Minn. Stat. § 8.31, subs. 3, 3a (providing for civil penalties of up to \$25,000 per violation as well as "costs and disbursements, including costs of investigation and reasonable attorney's fees"). Recognizing the uncertainties inherent in any litigation and the uncertainties of predicting the fiscal year of recovery of such funds (which necessarily is at the end of litigation), the AGO assumes that recovery of fees and civil penalties will begin in Fiscal Year 2023 and therefore does not project



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revenue for Fiscal Year 2022.

Starting in Fiscal Year 2023, the AGO assumes it will bring and successfully litigate or settle at least two cases that will provide revenue to the State, in addition to enforcing the upper payment limits established by the Board under the Bill. The AGO assumes it will recover its expert costs on each of these two matters (estimated to be \$50,000 for each enforcement action), plus civil penalties on each matter of \$25,000 per violation estimated to be \$100,000 total per case. Thus, revenue of \$200,000 per year is projected starting in Fiscal Year 2023.

It is possible, depending on the violations being litigated, that the AGO could recover substantial civil penalties that amount to hundreds of thousands of dollars, or more. See Minn. Stat. § 645.25 (“when a penalty or forfeiture is provided for the violation of a law, such penalty or forfeiture shall be construed to be for each such violation.”). Accordingly, because the AGO in practice obtains substantial civil penalties where allowed by law; for purposes of preparing this fiscal note, the revenue projections are measured.

## **Long-Term Fiscal Considerations**

It is assumed that the increased AGO staff (referenced above) as well as litigation expenses (including expert costs) will be needed on an ongoing basis, into fiscal years 2023, 2024, and beyond. Staffing, expert, and revenue assumptions on a long-term basis outside the three year period will depend on reevaluation of the need for this work on a continuing basis.

## **Local Fiscal Impact**

N/A

## **References/Sources**

National Academy for State Health Policy, Q&A: *How Maryland’s First-in-the-Nation Rx Affordability Board is Faring*, available at <https://nashp.org/qa-how-marylands-first-in-the-nation-rx-affordability-board-is-faring/> (last visited March 11, 2020).

OSHPD Report, *Prescription Drug Wholesale Acquisition Cost (WAC) Increases*, available at <https://oshpd.ca.gov/visualizations/prescription-drug-wholesale-acquisition-cost-increases/> (last visited March 12, 2020)

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

If Information Technology costs are included, my agency’s Chief Information Officer has reviewed the estimate.

**Agency Contact:** Carly Melin

**Agency Fiscal Note Coordinator Signature:** Carly Melin

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# Preliminary

Fiscal Note

2021-2022 Legislative Session

## HF801 - 2A - Prescription Drug Affordability Act

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: **Commerce Dept**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-

### LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Christian Larson    **Date:** 2/25/2021 2:59:08 PM  
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# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-
<b>2 - Revenues, Transfers In*</b>					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-

## Bill Description

House File 801-2A proposes the creation of a prescription drug affordability board and a prescription drug affordability advisory council.

The prescription drug affordability advisory council is a 12-member stakeholder council representing multiple areas of the health care system to represent stakeholder views on prescription drug affordability.

The bill establishes requirements for conducting a prescription drug price cost review. Initial information for the cost review is to be provided by the Commissioner of Health and other sources. Initial information provided to the board will come from data collected under Minn. Stat. § 62J.84, Subds. 3, 4, and 5.

The bill establishes a number of prescription drug products to be reviewed by the board and council, with a focus on prescription drugs with significant increases in wholesale acquisition costs and other potentially high-cost drugs. The board and advisory council must make their findings publicly available minus any drug pricing information determined to be proprietary. A cost review of a specific prescription drug under this section may be pursued with board consensus.

The bill includes factors to consider if a prescription drug product is being reviewed. Factors to be considered include pricing information of the drug; rebates; the cost of the drug to group purchasers and health plan enrollees on average; and associated financial impacts of the drug based on its utilization.

The board may also consider additional information for review if unable to come to a definitive conclusion regarding the prescription drug's affordability challenges.

The bill also establishes compliance remedies when a prescription drug product has been reviewed and found to create an affordability challenge. The board may establish an upper payment limit for the drug reviewed, which will apply to all public and private purchases, payments, and payer reimbursements. The Attorney General is tasked enforcing compliance in this area.

The bill establishes reporting requirements of the board beginning March 1, 2022. The report must include general information on prescription drug pricing as well as the specific drugs reviewed by the board.

## Assumptions

Commerce assumes that HF 801-2A will not have a fiscal impact on the agency. The bill does not include any specific responsibilities for the agency. Commerce may be consulted by the proposed board on certain drug pricing items given its work with implementing transparency reporting requirements for PBMs under Minn. Stat. § 62W.06. Any requests for information or assistance would not substantially increase existing staff workload.

# Preliminary

## Expenditure and/or Revenue Formula

N/A

## Long-Term Fiscal Considerations

## Local Fiscal Impact

## References/Sources

### **Agency Contact:**

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# Preliminary

Fiscal Note

2021-2022 Legislative Session

**HF801 - 2A - Prescription Drug Affordability Act**

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: Human Services Dept

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Steve McDaniel    **Date:** 2/26/2021 6:05:43 PM  
**Phone:** 651-284-6437    **Email:** steve.mcdaniel@lbo.leg.mn

# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

## Bill Description

Section 3 of this bill would establish a Prescription Drug Affordability Board.

Section 8 of this bill authorizes the Board to establish an upper payment limit under select circumstances for those drugs deemed to create an affordability challenge for the state health care system or for patients.

## Assumptions

Upper payment limits established by the Board are assumed to apply to both the Medical Assistance (MA), Minnesota's Medicaid program, and MinnesotaCare.

In the case that the Board sets an upper payment limit for a drug, both the Department of Human Services (DHS) in its administration of the fee-for-service (FFS) MA program and managed care organizations (MCOs) providing MA and MinnesotaCare would be subject to the upper payment limit for the drug. DHS already utilizes upper payment limits for the FFS program, as do the PBMs contracted with MCOs. If the upper payment limit was set higher than the current upper payment limits, then there would be no impact to claims payments. If the upper payments were set lower than the current upper payment limits, then DHS or the MCOs may experience a fiscal impact; however the impact is not quantifiable because the drugs that would have a capped reimbursement rate and the level of that cap are not currently known.

Given the unknown impact of this bill on DHS programs, the agency assumes no administrative costs for implementation of the bill.

## Expenditure and/or Revenue Formula

## Long-Term Fiscal Considerations

## Local Fiscal Impact

## References/Sources

**Agency Contact:** Elyse Bailey, 651-431-2932

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# Preliminary

**Fiscal Note**

**2021-2022 Legislative Session**

**HF801 - 2A - Prescription Drug Affordability Act**

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: **Minn Management and Budget**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
<b>Local Fiscal Impact</b>		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

<b>State Cost (Savings)</b>	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

<b>Full Time Equivalent Positions (FTE)</b>	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

## Bill Description

This bill establishes a Prescription Drug Affordability Board and Prescription Drug Affordability Advisory Council. The board is created with the stated purpose to protect consumers, state and local governments, health plan companies, providers, pharmacies, and other health care system stakeholders in the state of Minnesota from excessive cost changes in certain prescription medications. The advisory council provides data and advice to the board on pharmaceutical cost issues and stakeholder views, drug price changes, and expensive new drug entrants onto the pharmacy market. This advice is provided after the advisory council reviews reporting from, and consults with, pharmaceutical manufacturers. Based on the information provided by the advisory council, the affordability board is authorized to establish a maximum reimbursement level for specific drugs that applies to all payers in the state. The board must report annually on the data they collect. The legislation outlines compliance guidelines and legal remedies for violations.

## Assumptions

Minnesota Management and Budget (MMB) administers the State Employee Group Insurance Program (SEGIP) which provides health, dental, life and other benefits to eligible State employees and their dependents, and other groups including quasi-state agencies under the legislative authority provided in Minnesota Statutes 43A. Health benefits are provided through the self-funded Minnesota Advantage Health Plan. SEGIP contracts with three health plan administrators to administer medical benefits and a Pharmacy Benefit Manager (PBM) to administer its prescription drug benefit.

The proposed bill would create administrative bodies to review pharmaceutical manufacturer data and potentially mandate a maximum reimbursement for drugs that meet criteria to be determined by the Prescription Drug Affordability Board. It is possible that SEGIP could see its costs for certain pharmaceuticals decrease if a maximum price is instituted by the board for a medication that SEGIP includes in its formulary, and that price is below SEGIP's current cost. However, there is no way to predict the medications to be targeted by the board for price reductions, the timing of any changes to medication pricing, the magnitude of the price decrease that SEGIP would experience, or the utilization of those medications by SEGIP's members. Due to these unknown factors, any fiscal impact on SEGIP cannot be realistically estimated at this time.

## Expenditure and/or Revenue Formula

## Long-Term Fiscal Considerations

## Local Fiscal Impact



# Preliminary

## References/Sources

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# Preliminary

Fiscal Note

2021-2022 Legislative Session

## HF801 - 2A - Prescription Drug Affordability Act

Chief Author: **Kelly Morrison**  
 Committee: **Health Finance and Policy**  
 Date Completed:  
 Agency: **MNsure**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Dollars in Thousands					
<b>Total</b>	-	-	-	-	-
<b>Biennial Total</b>			-		-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-

### LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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# Preliminary

## State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

## Bill Description

This bill establishes a prescription drug affordability board and prescription drug affordability advisory council. The board may conduct prescription drug product reviews in order to identify whether a particular drug creates an affordability challenge for the state health care system or patients and establish an upper payment limit for all public and private purchases, payments, and payer reimbursements for the prescription drug product that is intended for individuals in the state.

## Assumptions

This bill would result in no direct fiscal impact to MNsure; however, changes in plan premiums, plan choice, or plan demand could have an effect on the amount of revenue MNsure generates through its premium withhold.

The cost to provide prescription drug coverage is one of many factors health plans consider each year when setting their rates for plans sold on the individual market. Because the affordability board established in HF801 can establish an upper payment limit on any prescription drugs that it identifies as presenting an affordability challenge for the state health care system or for patients, this could impact rates and therefore plan premiums and plan design in the individual market.

An actuarial study would need to be conducted to determine the impact to health insurance premiums, plan choice, or plan demand caused by the effects of HF801. Further, MNsure does not know which prescription drugs will be reviewed by the affordability board nor whether any of those reviews will result in the establishment of an upper payment limit on a particular drug.

## Expenditure and/or Revenue Formula

## Long-Term Fiscal Considerations

## Local Fiscal Impact

## References/Sources

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# Preliminary

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