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SB 20-007

**REVISED
FISCAL NOTE**

(replaces fiscal note dated January 14, 2020)

Drafting Number: LLS 20-0297
Prime Sponsors: Sen. Pettersen; Winter
Rep. Buentello; Wilson

Date: March 10, 2020
Bill Status: Senate Appropriations
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Bill Topic: **TREATMENT OPIOID AND OTHER SUBSTANCE USE DISORDERS**

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input checked="" type="checkbox"/> State Diversion	<input type="checkbox"/> Statutory Public Entity

The bill makes various requirements concerning treatment for substance use disorders. It will increase state expenditures beginning in FY 2020-21 and create a one-time diversion in FY 2020-21.

Appropriation Summary: The bill requires an appropriation of \$2.7 million to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the Senate Health and Human Services Committee. It was originally recommended by the Opioid and Other Substance Use Disorders Study Committee.

**Table 1
State Fiscal Impacts Under SB 20-007**

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	\$771,873	\$272,913
	Marijuana Tax Cash Fund	\$1,500,000	\$1,250,000
	DOI Cash Fund	\$22,372	-
	HAS Cash Fund	\$54,124	\$54,815
	Federal Funds	\$350,014	\$354,480
	Centrally Appropriated	\$66,948	\$63,383
	Total	\$2,765,331	\$1,995,591
	Total FTE	3.1 FTE	3.0 FTE
Diversion	General Fund	(\$22,372)	-
	Cash Funds	\$22,372	-
		\$0	-
TABOR Refund		-	-

Summary of Legislation

The bill makes various requirements concerning treatment for substance use disorders. These are discussed below.

Studies, services, and support—Department of Human Services. The bill requires the Department of Human Services (DHS) and contracted entities to assess and study issues related to substance use disorder treatment, as well as to provide services and support for treatment, as discussed below.

- *Training and community outreach.* By September 1, 2020, the Office of Behavioral Health (OBH) must implement a program for training and community outreach related to substance use disorder treatment. The training must cover the availability of and process for civil commitment of persons with a substance use disorder.
- *State child care and treatment study.* The DHS is required to commission a state child care and treatment study and final report, in consultation with the Department of Health Care Policy and Financing (HCPF), to make findings and recommendations concerning gaps in family-centered substance use disorder treatment and to identify alternative payment structures for funding child care and children's services alongside substance use disorder treatment of a child's parent. By March 31, 2021, the report must be provided to the General Assembly and presented during the DHS's SMART Act hearing for the 2022 legislative session.
- *Grant writers.* The bill appropriates \$500,000 per year to the OBH for five years, from FY 2020-21 through FY 2024-25, from the Marijuana Tax Cash Fund for allocation to the Center for Research into Substance Use Disorder Prevention, Treatment, and Recovery Support Strategies (the center) at the University of Colorado to employ grant writers to assist local communities in drawing down federal and state funds to address opioid and other substance use disorders.
- *Access to treatment.* The bill prohibits managed service organizations; withdrawal management services; and recovery residences from denying access to medical or substance use disorder treatment services, including recovery services, to persons who are participating in prescribed medication-assisted treatment for substance use disorders.
- *Independent community assessments on sufficiency of substance use disorder services.* Managed service organizations are required to contract with an independent entity to assess the sufficiency of substance use disorder services in communities every three years. The bill requires the General Assembly to appropriate funding to managed service organizations for this contract assessment. The assessment must include input and review from community entities and individuals. Based on the assessment, each managed service organization will prepare a draft community action plan, allowing time for stakeholder review and comment on the assessment and plan, and submit the community action plan to DHS and the Department of Health Care Policy and Financing (HCPF) by May 1, 2022, initially and every three years thereafter.
- *Definitions and statutory clean-up.* The bill defines substance use disorder to include alcohol related disorders and consolidates related OBH statutes.

Behavioral health care provider loan forgiveness and scholarships—Department of Public Health and Environment. The bill increases a Marijuana Tax Cash Fund appropriation to the Colorado Health Services Corps program in the Colorado Department of Public Health and Environment (CDPHE) by \$1.0 million—from \$2.5 million to \$3.5 million—annually beginning in FY 2020-21 for the purpose of providing loan forgiveness and scholarships to behavioral health care providers, licensure candidates, and addiction counselors. The bill also requires the Primary Care Office in CDPHE to utilize best practices for increasing diversity in applicants. Upon request, the office is required to provide non-identifying demographic information concerning all applicants and those awarded.

Coordination of care and prohibition of prior authorization requirements on certain prescriptions—Department of Health Care Policy and Financing. The bill requires managed care entities to provide coordination of care for the full continuum of substance use disorder treatment and recovery. In addition, no later than August 1, 2020, the Medical Services Board may not impose any prior authorization requirements on any prescription medication approved by the FDA for the treatment of substance use disorders

Insurance coverage and reporting—Department of Regulatory Agencies. The bill requires insurance carriers to cover certain levels of treatment and specific medications, and authorizes the Commissioner of Insurance in DOI to promulgate related rules and accept reporting, as discussed below.

- *Treatment coverage.* The bill requires insurance carriers to provide coverage for the treatment of substance use disorders in accordance with the most recent edition of American Society of Addiction Medicine (ASAM) criteria for placement, medical necessity, and utilization management determinations. The bill also specifies a mechanism for replacing ASAM with another treatment placement tool, if needed.
- *Medication coverage.* The bill authorizes the Insurance Commissioner, in consultation with CDPHE, to promulgate rules, or to seek a revision of the essential health benefits package for prescription medications, for medication-assisted treatment to be included on insurance carriers' formularies. The bill also requires insurance carriers to provide coverage for naloxone hydrochloride, or other similarly acting drug, without prior authorization and without imposing any deductible, copayment, coinsurance, or other cost-sharing requirement.
- *Reporting.* The bill requires that insurance carriers report to the commissioner on the number of in-network providers who are licensed to prescribe medication-assisted treatment for substance use disorders, including buprenorphine, and of that number, to indicate how many providers are actively prescribing medication-assisted treatment. The commissioner is required to promulgate rules concerning the reporting.

Enhanced dispensing fee for administration of injectable medication-assisted treatment. The bill authorizes pharmacies in a collaborative pharmacy agreement with one or more physicians to receive an enhanced dispensing fee for the administration of all FDA-approved injectable medications for medication-assisted treatment, not just injectable antagonist medication.

No prohibition of medication-assisted treatment by courts or corrections. The bill prohibits courts and parole, probation, and community corrections from prohibiting the use of prescribed medication-assisted treatment as a condition of participation or placement.

Emergency treatment and commitments for substance use disorders. The bill consolidates state laws relating to emergency treatment and voluntary and involuntary commitment of persons for treatment of drug and alcohol use disorders to create a single process that includes all substance use disorders. The changes and additions include:

- defining "administrator" to include an administrator's designee;
- adding a definition of "incapacitated by substances" to include a person who is incapacitated by alcohol or incapacitated by substances;
- changing terminology throughout to refer to "substances" to include both alcohol and drugs;
- adjusting the duration of the initial involuntary commitment from 30 days to up to 90 days;
- allowing a person to enter into a stipulated order for committed treatment, expediting placement into treatment;
- removing the mandatory hearing for the initial involuntary commitment but allowing a person to request a hearing if the person does not want to enter into a stipulated order for committed treatment;
- incorporating in statute "patient's rights" relating to civil commitment;
- using person-centered language throughout the statutory process; and
- relocating the existing Opioid Crisis Recovery Funds Advisory Committee to the new consolidated article.

State Diversions

This bill diverts \$22,372 from the General Fund in FY 2020-21 only. This revenue diversion occurs because the bill increases costs in the Division of Insurance, Department of Regulatory Agencies, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures by \$2.8 million and 3.1 FTE in FY 2020-21 and \$2.0 million and 3.0 FTE in FY 2021-22. Costs are paid from the General Fund, the Marijuana Tax Cash Fund, the DOI Cash Fund, the HAS Cash Fund, and federal funds. Costs are shown in Table 2 and discussed below.

**Table 2
 Expenditures Under SB 20-007**

Cost Components	FY 2020-21	FY 2021-22
Dept of Human Services <i>(GF unless otherwise noted)</i>		
Personal Services	\$131,544	\$143,502
Operating, Capital Outlay, and Overnight Travel Costs	\$24,140	\$11,740
State Child Care and Treatment Study and Final Report	\$300,000	-
Grant Writers at The Center <i>(MTCF)</i>	\$250,000	\$250,000
Public Information Campaign	\$200,000	-
Community Assessment <i>(MTCF)</i>	\$250,000	-
Centrally Appropriated Costs*	\$29,399	\$32,425
FTE – Personal Services	1.8 FTE	2.0 FTE
DHS (Subtotal)	\$1,185,083	\$437,667
Dept of Public Health & Environment <i>(MTCF)</i>		
Personal Services	\$59,613	\$59,613
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Loan Forgiveness and Scholarships	\$932,837	\$939,037
Centrally Appropriated Costs*	\$32,539	\$30,958
FTE – Personal Services	1.0 FTE	1.0 FTE
CDPHE (Subtotal)	\$1,032,539	\$1,030,958
Dept of Health Care Policy & Financing <i>(GF, HAS Cash Fund, FF)</i>		
Generic Drugs	\$516,666	\$523,259
Net Utilization Increase (Less Rebate Reduction)	\$3,661	\$3,707
HCPF (Subtotal)	\$520,327	\$526,966
Department of Regulatory Agencies <i>(DOI Cash Fund)</i>		
Personal Services	\$22,372	-
Centrally Appropriated Costs*	\$5,010	-
FTE – Personal Services	0.3 FTE	-
DORA (Subtotal)	\$27,382	-
Total	\$2,765,331	\$1,995,591
Total FTE	3.1 FTE	3.0 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Human Services. The DHS requires \$1,185,083 and 1.8 FTE in FY 2020-21 and \$437,667 and 2.0 FTE in FY 2021-22 for the expenditure categories discussed below.

- *Community assessments.* Beginning in FY 2020-21, managed service organizations will require \$250,000 to contract for the community assessment required by the bill.
- *Training and community outreach.* To administer training, public information education, and outreach as required under the bill, the OBH requires 2.0 FTE Administrator IV. One administrator will be deployed throughout the state to provide training support to agencies that employ first responders, law enforcement, criminal justice workers, emergency department and hospital staff, treatment facility staff, treatment facilities, primary care providers, private non-profit behavioral health provider staff, county departments of human or social services staff, and other relevant organizations. As a result, 32 overnight stays and 10,000 miles are assumed. The second administrator will remain at the central office and will administer additional involuntary commitment cases, which will include the coordination with family members, courts, and health care providers. This position will also manage public information and education campaigns, schedule statewide trainings, and manage administrative tasks.
- *State child care and treatment study and final report.* The DHS will contract for a one-time study in FY 2020-21 at an estimated cost of \$300,000 General Fund. This estimate is based on a similar recent behavioral health population-in-need study conducted by the DHS. Actual study costs will be determined through the request for proposals process.
- *Grant writers.* The DHS will pass-through \$250,000 of Marijuana Tax Cash Fund to pay for grant writers at the center at the University of Colorado to assist local communities in drawing down federal and state funds to address opioid and other substance use disorders.
- *Public information campaign.* In addition to the FTE discussed above, the bill requires public information campaign funding estimated at \$200,000 based on prior public information campaigns. This includes design and purchase of statewide digital advertising.

Department of Public Health and Environment. The CDPHE is appropriated an additional \$1.0 million from the Marijuana Tax Cash Fund to fund loan forgiveness and scholarships for behavioral health providers and students. The funding is anticipated to cover 45 loan forgiveness and scholarship contracts per year: 15 three-year loan repayment program contracts with behavioral health care professionals each year, assuming contracts of \$55,000, and 30 one-year addictions counseling scholarship program contracts, assuming contracts of \$4,000. The additional workload created to award this funding requires 0.1 FTE Contract Administrator, 0.6 Public Health and Community Outreach, and 0.3 Statistical Analyst through FY 2024-25.

Department of Health Care Policy and Financing. HCPF will have increased costs from the prohibition on imposing any prior authorization or step therapy requirements on any FDA-approved drug prescribed for the treatment of substance use disorders, and related to the increased utilization resulting from the prohibition on excluding coverage on the grounds the substance use disorder medications are court ordered.

- *Generic drugs.* The department currently uses Suboxone for substance use disorder treatment, for which it receives a rebate and is less expensive than generic. Because the bill disallows prior authorization requirements, it is assumed this will increase costs for generic alternatives, estimated at \$516,666 in FY 2020-21 and \$523,259 in FY 2021-22.

- *Utilization.* Using claim data from FY 2018-19 on covered substance use disorder treatment drugs with pre-authorization requirements, and a claim denial rate of 0.04 percent, the department will have an increase in expenditures under \$5,000, once drug rebate changes are factored in.

In addition, HCPF currently provides behavioral, mental health, and substance use disorder treatment services through Medicaid and the Child Health Plan Plus (CHP+). A few components of the bill have potential fiscal impacts to HCPF. These are discussed below.

- *ASAM criteria and insurer requirements.* Requiring ASAM criteria impacts the CHP+ and would require changes to contracts with managed care entities. Any impact to utilization and rates would be adjusted through the annual rate setting process and updated through the annual budget process. Because substance use disorder services are not heavily utilized under the CHP+, the fiscal note assumes a minimal impact.
- *Injectable treatments.* HCPF currently pays the same rate for administration of Vivitrol regardless of where the medication was administered. It covers one non-antagonist injectable medication, Sublocade, and does not allow any payments to pharmacies for its administration. It is assumed that a change in setting will not change utilization.

Division of Insurance, DORA. The DOI will require one-time rulemaking and rate form review to implement the bill estimated to cost \$27,382 and 0.3 FTE in FY 2020-21, paid from the Division of Insurance Cash Fund. The data gathering requirements of the bill can be accomplished with existing resources.

- *Rulemaking.* The DOI will revise four regulations which will require a one-time 0.1 FTE Policy Advisor IV to manage the revisions and related stakeholder meetings and engagement.
- *Rate and form review.* The DOI will perform additional rate and form review of all health coverage filings to ensure compliance with the bill, which will require one-time 0.1 FTE Rate and Financial Analyst II and 0.1 FTE Actuary II. In subsequent years, the adjustment to rate and form review under the bill will be incorporated into the DOI's review procedures.

Judicial Department. The Judicial Department may have a workload impact related to the bill's consolidated process governing the involuntary commitment of persons with alcohol use disorders and substance use disorders and the addition of a new option for the petition respondent to enter into a stipulation for commitment. Stipulations related to commitments may decrease some hearings that would have taken place, while additional respondents may request representation, increasing workloads. Due to the narrowly defined subject matter, any impact is expected to be minimal.

Potential state expenditure. By requiring the ASAM treatment standards, this bill modifies health benefits that health insurance plans must cover in Colorado. To the extent these changes constitute an expansion of health benefits compared to those identified as an essential health benefit in the federal Affordable Care Act, state costs may increase. Under the federal law, states may be required to cover health insurers' costs to provide newly mandated health benefits using state funds, rather than the insurer covering these costs using premiums collected from policy holders. At this time, it is unknown if the federal government would require these payments and the potential costs have not been estimated.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$66,948 in FY 2020-21 and \$63,383 in FY 2021-22.

Technical Note

The time frame for the state child care and treatment study and final report is limited. An August 1, 2021, deadline would allow time for the request for proposal process and the study to take place.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2020-21, the bill requires the following appropriations:

- \$655,684 and 1.8 FTE General Fund and \$500,000 Marijuana Tax Cash Fund to the Department of Human Services;
- \$1,000,000 and 1.0 FTE Marijuana Tax Cash Fund to the Department of Public Health and Environment;
- \$520,327 to the Department of Health Care Policy and Financing, including \$116,189 General Fund, \$54,124 from the HAS Cash Fund, and \$350,014 from federal funds; and
- \$22,372 and 0.3 FTE Division of Insurance Cash Fund to the Department of Regulatory Agencies.

State and Local Government Contacts

Colorado Health Benefit Exchange
Counties
Human Services
Public Health and Environment

Corrections
Health Care Policy and Financing
Information Technology
Regulatory Agencies