



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0404	Date:	March 9, 2023
Prime Sponsors:	Rep. Sirota; Boesenecker Sen. Mullica; Cutter	Bill Status:	House Health & Insurance
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Bill Topic: **LIMITS ON HOSPITAL FACILITY FEES**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill places limitations on hospital facility fees and requires the Department of Health Care Policy and Financing to update information and restrictions and report on facility fees. The bill increases state expenditures and impacts state revenue on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$532,800 to the Department of Health Care Policy and Financing.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under HB 23-1215**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$532,800	\$107,030
	Centrally Appropriated	\$40,378	-
	Total Expenditures	\$573,178	\$107,030
	Total FTE	2.3 FTE	-
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$79,920	\$16,055

Summary of Legislation

The bill prohibits certain health care providers from charging a facility fee when the provider is affiliated with a hospital or health care system and the services are provided off-site or via telehealth. Facility fees also cannot be charged by these providers for outpatient, diagnostic, or imaging services that can be provided safely, reliably, and effectively in settings other than a hospital-based health facility, as identified by the State Medical Services Board in the Department of Health Care Policy and Financing (HCPF). HCPF must update the list of services subject to the facility fee limitation by March 31, 2024. Additionally, HCPF must use data from the All-Payers Health Claims Database to produce an annual report on facility fees beginning in FY 2024-25.

The bill does not restrict the ability of a provider to charge a facility fee for services that are provided on the hospital's main campus, at a facility that includes an emergency department, or at a licensed freestanding emergency department.

Lastly, providers are required to disclose information about facility fees to consumers and post this information in their facilities. Failure to comply with the various provisions of the bill is a deceptive trade practice under the Colorado Consumer Protection Act.

State Revenue

Beginning in FY 2023-24, the bill decreases state revenue from hospital fees, and may increase state revenue from civil penalties and filing fees.

Healthcare Affordability and Sustainability (HAS) fee. State revenue will decrease by an indeterminate amount. The bill reduces the amount a hospital can charge for an outpatient procedure by limiting facility fees for certain services. HCPF collects the HAS fee from hospitals based on their outpatient hospital charges. The impact is indeterminate as HCPF does not have data on facility fee contribution to the HAS fee. In addition, the exact outpatient services that may be limited under the bill must be identified by HCPF and there may be indirect impacts on rates and utilization, which will impact the hospital revenue subject to the fee. This revenue is not subject to TABOR. Impacts to HAS fee revenue will be adjusted for through the normal budget process.

Civil penalties. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to \$20,000 for each violation. Additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of cases that may be pursued by the Attorney General and district attorneys, as well as the wide range in potential penalty amounts, the fiscal note cannot estimate the potential impact of these civil penalties.

Filing fees. The bill may increase revenue to the Judicial Department from an increase in civil case filings. Revenue from filing fees is subject to TABOR.

State Expenditures

The bill increases state expenditures in Department of Health Care Policy and Financing (HCPF) by \$573,178 in FY 2023-24 and \$107,030 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HB 23-1215

	FY 2023-24	FY 2024-25
Department of Health Care Policy and Financing		
Personal Services	\$160,615	-
Operating Expenses	\$3,105	-
Capital Outlay Costs	\$13,340	-
Reporting System Costs	\$355,740	\$107,030
Centrally Appropriated Costs ¹	\$40,378	-
Total Cost	\$573,178	\$107,030
Total FTE	2.3 FTE	-

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Health Care policy and Financing. The bill increases workload in HCPF in FY 2023-24, with ongoing system costs continuing in subsequent years.

- **Staff.** HCPF requires 2.3 FTE in FY 2023-24 only to assess which services could be provided in settings other than a hospital-based health facility, rigorously review this list with stakeholders to determine when providers will be prohibited from charging a facility fee, and update rates and procedures to reflect this prohibition. Since this work does not exclusively apply to Medicaid clients, HCPF cannot claim its usual 50 percent federal match on personnel costs for any time spent on this work. Standard operating and capital outlay costs are included.
- **Reporting system costs.** Based on a contractor estimate, HCPF requires \$356,000 in FY 2023-24 and \$107,000 in FY 2024-25 and ongoing to update the All-Payer Health Claims Database to accommodate the required data on facility fees and maintain it thereafter. Once the system is updated, the workload of producing the report can be absorbed within existing resources. Since this work does not exclusively apply to Medicaid clients, HCPF cannot claim its usual 90 percent federal match on system changes.

Department of Law. The bill minimally increases workload to the extent that deceptive trade practice complaints are filed. The department will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

Judicial Department. The trial courts in the Judicial Department may have an increase in cases filed under the Colorado Consumer Protection Act from the addition of a new deceptive trade practice. It is assumed that online marketplaces will abide by the law and that any violations of the legislation will result in minimal number of new cases; no change in appropriations is required.

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 shown in Table 2.

Effective Date

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

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$532,800 to the Department of Health Care Policy and Financing to be paid from the General Fund, with 2.3 FTE.

State and Local Government Contacts

Health Care Policy and Financing
Public Health and Environment

Information Technology
Regulatory Agencies

Judicial