# Bill 2

## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

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|---|---|---|---|
| **Drafting Number:** | LLS 24-0314 | **Date:** | October 26, 2023 |
| **Prime Sponsors:** | | **Bill Status:** | Bill Request |
| | | **Fiscal Analysts:** | Kristine McLaughlin \| 303-866-4776<br>kristine.mclaughlin@coleg.gov<br>Elizabeth Ramey \| 303-866-3522<br>elizabeth.ramey@coleg.gov |

**Bill Topic:** **TREATMENT FOR SUBSTANCE USE DISORDERS**

**Summary of Fiscal Impact:**

☒ State Revenue
☒ State Expenditure
☒ State Diversion
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill creates and expands programs and services for substance use disorder treatments. Beginning in FY 2024-25, the bill increases state and local revenue and expenditures on an ongoing basis, it also diverts and transfers money between funds.

**Appropriation Summary:** For FY 2024-25, the bill requires an appropriation of $12.7 million to multiple state agencies.

**Fiscal Note Status:** The fiscal note reflects the bill draft requested by the Opioid and Other Substance Use Disorders Study Committee.

**Table 1**
**State Fiscal Impacts Under Bill 2**

| | | Budget Year FY 2024-25 | Out Year FY 2025-26 | Out Year FY 2026-27 | Out Year FY 2027-28 |
|---|---|---|---|---|---|
| **Revenue** | General Fund | ($425,000) | ($850,000) | ($850,000) | ($850,000) |
| | Cash Funds | $220,000 | - | $220,000 | - |
| | **Total Revenue** | **($205,000)** | **($850,000)** | **($630,000)** | **($850,000)** |
| **Expenditures** | General Fund | $5,903,363 | $1,890,591 | $2,735,310 | $9,904,932 |
| | Cash Funds | $1,264,471 | $1,408,844 | $1,358,844 | $986,983 |
| | Federal Funds | $5,569,245 | $11,498,883 | $11,531,185 | $67,791,631 |
| | Central Approp. | $516,503 | $552,296 | $597,011 | $559,554 |
| | **Total Expenditures** | **$13,253,582** | **$15,065,200** | **$15,350,614** | **$16,222,350** |
| | **Total FTE** | **7.5 FTE** | **9.3 FTE** | **11.8 FTE** | **10.1 FTE** |

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**Table 1**
**State Fiscal Impacts Under Bill 2 (Cont.)**

| | | Budget Year FY 2024-25 | Out Year FY 2025-26 | Out Year FY 2026-27 | Out Year FY 2027-28 |
|---|---|---|---|---|---|
| **Transfers**[1] | General Fund | ($200,000) | ($200,000) | ($150,000) | ($150,000) |
| | Cash Funds | $200,000 | $200,000 | $150,000 | $150,000 |
| | **Net Transfers** | **$0** | **$0** | **$0** | **$0** |
| **Diversions** | General Fund | ($374,501) | ($46,726) | ($46,726) | ($46,726) |
| | Cash Funds | $374,501 | $46,726 | $46,726 | $46,726 |
| | **Net Diversion** | **$0** | **$0** | **$0** | **$0** |
| **Other Budget** | TABOR Refund | ($205,000) | ($850,000) | ($630,000) | ($850,000) |
| | GF Reserve | $885,504 | $283,589 | $410,297 | $1,485,740 |

[1] *This transfer is made via an appropriation from the General Fund to the Child Abuse Prevention Trust Fund.*

## Summary of Legislation

The bill creates and expands programs and services for substance use disorder (SUD) treatments. Specifically, the bill:

**Creates the Behavioral Health Diversion Pilot Program.** This new program will divert select defendants from the criminal justice system into early recovery services and treatment. If the defendant completes the treatment program, the court must dismiss offenses with prejudice and seal all records.

The bill specifies the following for the pilot program:

- the program will be operated by the Office of the State Court Administrator;
- the office must select between two and five judicial districts to participate, at least one of which is rural;
- the county is responsible for selecting a program coordinator who will be responsible for developing all necessary criteria, developing all treatment plans, and coordinating care;
- candidates must be referred to treatment through an assessment system;
- after the initial assessment, participating district attorneys will assess all other qualifications and refer qualified applicants to the program;
- a candidate's participation in the program is optional and if they choose not to participate or are dismissed for non-compliance prosecution may proceed;
- program participants are entitled to vocational assistance from the Division of Employment and Training in the Department of Labor and Employment (CDLE) in conjunction with the program coordinator and the Department of Higher Education (DHE);
- program coordinators, participating district attorneys, and state court administrators are subject to various reporting requirements; and
- the program is repealed on June 30, 2028.

**Provides reentry services under Medicaid.** The bill requires the Department of Health Care Policy and Financing (HCPF) to provide the following reentry services to people immediately before they are released from the Division of Youth Services (DYS) in the Department of Human Services (CDHS), a Department of Corrections (DOC) facility, or a participating county jail:

- screening services;
- brief intervention services;
- medicated-assisted treatment (MAT) medications;
- additional medications, as needed;
- case management services; and
- care coordination services.

The bill specifies that:

- pending federal authorization, HCPF will implement the new benefit on January 1, 2025, for people in a DYS or a DOC facility and July 1, 2026, for people in county jail;
- the Behavioral Health Administration (BHA) will approve county jails for participation based on their commitment to diversion efforts and issue licenses to provide these services to the incarcerated members; and
- HCPF will produce an annual report which will require tracking participants following release and assessing the system.

**Provides partial hospitalization services for SUD under Medicaid.** The bill requires HCPF to seek federal authorization to provide partial hospitalization services for SUD.

**Expands the Colorado Child Abuse Prevention Trust Fund.** The bill appropriates $150,000 annually and an additional $50,000 for two years to the Colorado Child Abuse Prevention Trust Fund under the Department of Early Childhood (CDEC).

**Expands the Colorado Child Care Assistance Program.** The bill increases the appropriation for the Colorado Child Care Assistance Program (CCCAP) to accommodate more eligible applicants who are parents spending at least 9 hours per week in a state-licensed behavioral health treatment program.

**Provides safety net provider application support services.** The bill requires the BHA to contract with an independent third party to support providers seeking to become approved BHA safety net providers.

**Creates the Contingency Management Grant Program.** The bill creates a grant program in the BHA to support selected substance use disorder treatment programs.

**Creates a state income tax credit.** For tax years 2025 through 2029, the bill creates an income tax credit for health care providers who obtain credentials to provide substance use disorder treatment. The credit is equal to the cost of obtaining those credentials, up to $2,500 or the provider's state tax liability, whichever is lower, for the tax year in which the credentials are completed.

**Other changes.** The bill makes several other changes as outlined below.

- Places new reporting requirements on HCPF, the BHA, and the Department of Regulatory Agencies (DORA).
- Prohibits state-regulated insurance plans from applying a prior authorization requirement for SUD treatment drugs based on dosage, and prohibits insurance from applying a different reimbursement rate for SUD treatment drugs to pharmacists and take-home drugs.
- Requires the BHA to promulgate rules around gaining a certificate as an addiction specialist or technician.
- Requires the various boards under the DORA and potentially the Department of Public Health and Environment (CDPHE) to develop a statewide drug therapy protocol for pharmacists to prescribe, dispense, and administer MAT drugs.
- Makes changes to the MAT expansion pilot program including making pharmacies eligible for grants, removing the restriction on the number of counties that may be selected for participation, expanding membership requirements for the board, and changing the reporting requirements.
- Requires skilled nursing facilities to facilitate methadone use.

## State Revenue

The bill decreases General Fund revenue by up to $425,000 in FY 2024-25, $850,000 per year from FY 2025-26 through FY 2028-29, and up to $425,000 in FY 2029-30 from creation of the new income tax credit. The first and last year represent half-year impacts. It also increases cash fund revenue by $220,000 every other year starting in FY 2024-25 from increases licensing fees paid by pharmacists. These impacts are discussed below.

**State income tax credit for substance use disorder treatment credentials.** The new income tax credit is expected to reduce state General Fund revenue by up to $850,000 per year for tax years 2025 through 2029. On an accrual accounting basis by fiscal year, this his will reduce General Fund revenue by $425,000 in FY 2024-25 (a half-year impact), and by up to $850,000 per year in future years through FY 2028-29. A half-year impact will also be incurred in FY 2029-30. These amounts assume that both physician and non-physician providers are eligible to claim the tax credit, that the average cost of obtaining credentials equals the maximum amount of the credit, and that the number of tax credits awarded will be 340 per year, reflecting historical data on the number of new addiction counseling licenses granted in Colorado, as well as the number of Colorado physicians with addiction medicine certifications listed in the American Society of Addiction Medicine directory. Income tax revenue is subject to TABOR.

**State regulated insurance plan requirements—fee impact on pharmacists.** The bill amends the practice of pharmacy to include exercising prescriptive authority for any FDA-approved product or medication for opioid use disorder in accordance with federal law, if authorized through a collaborative agreement. This will require participating pharmacists to register to provide these services with the Prescription Drug Monitoring Program (PDMP). The registration fee is $22 for a two-year license and there are approximately 10,000 licensed pharmacists in the state. Table 2 identifies the fee impact of this bill. Fee revenue is subject to TABOR.

**Table 2**
**Fee Impact on Pharmacists**

| Fiscal Year | Type of Fee | Proposed Fee | Number Affected | Total Fee Impact |
|---|---|---|---|---|
| **FY 2024-25** | Biennial Registration Fee | $22 | 10,000 | **$220,000** |
| **FY 2026-27** | Biennial Registration Fee | $22 | 10,000 | **$220,000** |

**Behavioral Health Diversion Pilot program**. The bill will minimally reduce state revenue from criminal fees and fines credited to the Judicial Department if more individuals are diverted into community-based treatment rather than being convicted of criminal offenses. Fine penalties for most misdemeanors and petty offenses range from $50 to $5,000 depending on the offense. Fees are also imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision. Revenue from criminal fees and fines is subject to TABOR. Actual state revenue impact will depend on myriad factors and cannot be estimated.

## State Transfers and Diversions

The bill transfers and diverts money between funds as outlined below.

**State transfers.** The bill requires the following appropriations to transfer money from the General Fund to the Child Abuse Prevention Trust Fund in CDEC: $200,000 per year in FY 2024-25 and FY 2025-26, and $150,000 per year starting in FY 2026-27 and future years. Use of these funds are described in the CDEC section of the State Expenditures section below.

**State diversions.** This bill diverts about $375,000 in FY 2024-25 and $47,000 in FY 2025-26 and ongoing from the General Fund. This revenue diversion occurs because the bill increases costs in the Department of Regulatory Agencies, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

## State Expenditures

The bill impacts state expenditures in nine state agencies on an ongoing basis, including the Judicial Department, CDLE, DHE, HCPF, DOC, BHA, CDEC, DORA and the Department of Revenue (DOR). It will increase expenditures in all but one of the agencies, DOC, until at least FY 2027-28.

In FY 2024-25, the majority of these costs are from the General Fund with a significant portion from federal funds and the remainder from the following cash funds: the Healthcare Affordability and Sustainability Cash Fund, the Colorado Child Abuse Prevention Trust Fund, and the Division of Insurance Cash Fund. In FY 2025-26 and FY 2026-27 the cost share will shift to primarily federal funds as a result of DOC General Fund savings. In FY 2027-28, expenditures will significantly increase as a result of increased expenditures in HCPF, which will be primarily funded from federal funds with a significant portion from the General Fund; however, these costs will be partially offset by savings in the Judicial Department and the BHA in the General Fund and the Correction Treatment Cash Fund. Costs are shown in Table 3 and discussed below.

**Table 3**
**Expenditures Under Bill 2**

| | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 |
|---|---|---|---|---|
| **Judicial Department** | | | | |
| Personal Services | $69,270 | $76,967 | $76,967 | $76,967 |
| Operating Expenses | $1,152 | $1,280 | $1,280 | $1,280 |
| Capital Outlay Costs | $6,670 | - | - | - |
| Grant Program (Assumes 5 JDs) | $831,215 | $831,215 | $831,215 | $831,215 |
| County Jail Reentry Services Savings | - | - | - | ($4,903,555) |
| Centrally Appropriated Costs[1] | $17,507 | $19,452 | $19,452 | $19,452 |
| FTE – Personal Services | 0.9 FTE | 1.0 FTE | 1.0 FTE | 1.0 FTE |
| **Judicial Subtotal** | **$925,814** | **$928,914** | **$928,914** | **($3,974,641)** |
| *General Fund* | *$908,307* | *$909,462* | *$909,462* | *$909,462* |
| *Cash Funds* | - | - | - | *($4,903,555)* |
| *Centrally Appropriated Costs* | *$17,507* | *$19,452* | *$19,452* | *$19,452* |
| **Department of Labor and Employment** | | | | |
| Personal Services | $53,877 | $61,573 | $61,573 | $61,573 |
| Operating Expenses | $896 | $1,024 | $1,024 | $1,024 |
| Capital Outlay Costs | $6,670 | - | - | - |
| Vocational Services—Service Costs | $1,200,000 | $1,200,000 | $1,200,000 | $1,200,000 |
| Vocational Services—Travel Costs | $6,000 | $6,000 | $6,000 | $6,000 |
| Centrally Appropriated Costs[1] | $387,962 | $390,852 | $390,852 | $390,852 |
| FTE – Personal Services | 0.7 FTE | 0.8 FTE | 0.8 FTE | 0.8 FTE |
| **CDLE Subtotal** | **$1,655,405** | **$1,659,450** | **$1,659,450** | **$1,659,450** |
| *General Fund* | *$1,267,443* | *$1,268,597* | *$1,268,597* | *$1,268,597* |
| *Centrally Appropriated Costs* | *$387,962* | *$390,852* | *$390,852* | *$390,852* |

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**Table 3**
**Expenditures Under Bill 2 (Cont.)**

| | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 |
|---|---|---|---|---|
| **Department of Higher Education** | | | | |
| Personal Services | $69,270 | $76,967 | $76,967 | $76,967 |
| Operating Expenses | $1,152 | $1,280 | $1,280 | $1,280 |
| Capital Outlay Costs | $6,670 | - | - | - |
| Travel | $6,000 | $6,000 | $6,000 | $6,000 |
| Centrally Appropriated Costs[1] | $14,521 | $16,134 | $16,134 | $16,134 |
| FTE – Personal Services | 0.9 FTE | 1.0 FTE | 1.0 FTE | 1.0 FTE |
| **DHE Subtotal** | **$97,613** | **$100,381** | **$100,381** | **$100,381** |
| *General Fund* | *$83,092* | *$84,247* | *$84,247* | *$84,247* |
| *Centrally Appropriated Costs* | *$14,521* | *$16,134* | *$16,134* | *$16,134* |
| **Department of Health Care Policy and Financing** | | | | |
| Personal Services | $235,042 | $338,124 | $401,447 | $324,480 |
| Operating Expenses | $3,456 | $5,120 | $6,400 | $5,120 |
| Capital Outlay Costs | $20,010 | $6,670 | $6,670 | - |
| Reentry Services—State Facilities | - | $7,978,516 | $7,978,516 | $7,978,516 |
| Reentry Services—County Jails | - | - | - | $76,345,778 |
| Partial Hospitalization Costs | $6,400,000 | $6,400,000 | $6,400,000 | $6,400,000 |
| Partial Hospitalization Savings | ($5,374,500) | ($5,374,500) | ($5,374,500) | ($5,374,500) |
| Centrally Appropriated Costs[1] | $55,370 | $81,082 | $99,362 | $79,801 |
| FTE – Personal Services | 2.7 FTE | 4.0 FTE | 5.0 FTE | 4.0 FTE |
| **HCPF Subtotal** | **$1,339,378** | **$9,435,012** | **$9,517,895** | **$85,759,196** |
| *General Fund* | *$373,154* | *$2,039,853* | *$2,072,155* | *$17,540,876* |
| *Cash Funds* | *$67,807* | *$541,392* | *$541,392* | *$5,073,085* |
| *Federal Funds* | *$843,047* | *$6,772,685* | *$6,804,987* | *$63,065,433* |
| *Centrally Appropriated Costs* | *$55,370* | *$81,082* | *$99,362* | *$79,801* |

**Table 3**
**Expenditures Under Bill 2 (Cont.)**

| | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 |
|---|---|---|---|---|
| **Department of Corrections** | | | | |
| State Facility Reentry Services Savings | - | ($5,280,000) | ($5,280,000) | ($5,280,000) |
| **DOC Subtotal** | **$0** | **($5,280,000)** | **($5,280,000)** | **($5,280,000)** |
| *General Fund* | - | *($5,280,000)* | *($5,280,000)* | *($5,280,000)* |
| **Behavioral Health Administration** | | | | |
| Personal Services | $70,145 | $70,145 | $195,109 | $124,964 |
| Operating Expenses | $1,280 | $1,280 | $2,944 | $1,664 |
| Capital Outlay Costs | $13,340 | - | $6,670 | - |
| Legal Services | - | - | $38,406 | $115,218 |
| County Jail Reentry Services Savings | - | - | - | ($6,544,903) |
| County Jail Reentry Services Licensing Systems Costs | - | - | $670,551 | $167,637 |
| Application Support Services | $500,000 | $500,000 | $500,000 | $500,000 |
| Contingency Management Grant Costs | $1,250,000 | $1,250,000 | $1,250,000 | - |
| Opioid Treatment Workgroup | $26,550 | $8,850 | - | - |
| Centrally Appropriated Costs[1] | $17,896 | $17,896 | $44,332 | $26,436 |
| FTE – Personal Services | 1.0 FTE | 1.0 FTE | 2.3 FTE | 1.3 FTE |
| FTE – Legal Services | 0.0 FTE | 0.0 FTE | 0.2 FTE | 0.5 FTE |
| **BHA Subtotal** | **$1,879,211** | **$1,848,171** | **$2,708,011** | **($5,608,985)** |
| *General Fund* | *$1,861,315* | *$1,830,275* | *$2,663,680* | *($5,635,420)* |
| *Centrally Appropriated Costs* | *$17,896* | *$17,896* | *$44,332* | *$26,436* |

**Table 3**
**Expenditures Under Bill 2 (Cont.)**

| | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 |
|---|---|---|---|---|
| **Department of Early Childhood** | | | | |
| Personal Services | $56,991 | $63,323 | $63,323 | $63,323 |
| Operating Expenses | $1,152 | $1,280 | $1,280 | $1,280 |
| Capital Outlay Costs | $6,670 | - | - | - |
| Child Care Task Force for SUD Treatment | $50,000 | $50,000 | - | - |
| Prenatal Substance Exposure Initiatives | $150,000 | $150,000 | $150,000 | $150,000 |
| CCCAP Expansion Service Costs | $6,301,597 | $6,301,597 | $6,301,597 | $6,301,597 |
| CHATS System Modifications | $400,000 | - | - | - |
| Centrally Appropriated Costs[1] | $15,700 | $17,445 | $17,445 | $17,445 |
| FTE – Personal Services | 0.9 FTE | 1.0 FTE | 1.0 FTE | 1.0 FTE |
| **CDEC Subtotal** | **$6,982,110** | **$6,583,645** | **$6,533,645** | **$6,533,645** |
| *General Fund* | *$1,410,052* | *$1,009,842* | *$1,009,842* | *$1,009,842* |
| *Cash Funds* | *$830,160* | *$830,160* | *$780,160* | *$780,160* |
| *Federal Funds* | *$4,726,198* | *$4,726,198* | *$4,726,198* | *$4,726,198* |
| *Centrally Appropriated Costs* | *$15,700* | *$17,445* | *$17,445* | *$17,445* |
| **Department of Regulatory Agencies** | | | | |
| Personal Services | $29,322 | $36,652 | $36,652 | $36,652 |
| Operating Expenses | $512 | $640 | $640 | $640 |
| Capital Outlay Costs | $6,670 | - | - | - |
| Division Utilization Management Report | $180,000 | - | - | - |
| Network Adequacy Report | $150,000 | - | - | - |
| Centrally Appropriated Costs[1] | $7,547 | $9,434 | $9,434 | $9,434 |
| FTE – Personal Services | 0.4 FTE | 0.5 FTE | 0.5 FTE | 0.5 FTE |
| **DORA Subtotal** | **$374,051** | **$46,726** | **$46,726** | **$46,726** |
| *Cash Funds* | *$366,504* | *$37,292* | *$37,292* | *$37,292* |
| *Centrally Appropriated Costs* | *$7,547* | *$9,434* | *$9,434* | *$9,434* |

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**Table 3**
**Expenditures Under Bill 2 (Cont.)**

| | FY 2024-25 | FY 2025-26 | FY 2026-27 | FY 2027-28 |
|---|---|---|---|---|
| **Department of Revenue** | | | | |
| Computer Programming and Testing | - | $20,407 | - | - |
| Document Management | - | $516 | - | - |
| Research and Analysis | - | $7,392 | $7,328 | $7,328 |
| **DOR Subtotal** | **$0** | **$28,315** | **$7,328** | **$7,328** |
| *General Fund* | *$0* | *$28,315* | *$7,328* | *$7,328* |
| **Grand Total** | **$13,253,582** | **$15,350,614** | **$16,222,350** | **$79,243,100** |
| **Total FTE** | **7.5 FTE** | **9.3 FTE** | **11.8 FTE** | **10.1 FTE** |
| *Total General Fund* | *$5,903,363* | *$1,890,591* | *$2,735,310* | *$9,904,932* |
| *Total Cash Funds* | *$1,264,471* | *$1,408,844* | *$1,358,844* | *$986,983* |
| *Total Federal Funds* | *$5,569,245* | *$11,498,883* | *$11,531,185* | *$67,791,631* |
| *Total Centrally Appropriated Costs* | *$516,503* | *$552,296* | *$597,011* | *$559,554* |

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

**Judicial Department.** The Judicial Department is responsible for implementing the Behavioral Health Diversion Pilot Program, which is assumed to begin July 1, 2024, and repeals June 30, 2028. Additionally, the Judicial Department will have cost savings resulting from the reentry services provided by HCPF.

- **Behavioral Health Diversion Pilot Program.** Based on the administrative and reimbursement costs of the Redirection Criminal Justice Behavioral Health Pilot Program created by SB 18-249, the department requires 1.0 FTE administrative FTE and $166,245 per district. The bill requires between 2 and 5 districts to participate resulting a range of costs between $410,000 and $910,000. For the purposes of the fiscal note, it is assumed that 5 districts will participate. It is also assumed that the Judicial Department will develop a system to reimburse counties for the added workload (see Technical Note).

- **Reentry services.** The Judicial Department partially funds the reentry services provided by the BHA. These costs will be offset by reentry services provided by HCPF for the county jail population.

**Department of Labor and Employment.** CDLE is responsible for providing vocational services to the participants of the Behavioral Health Diversion Pilot Program. This will involve working directly with the participants to develop an individualized plan. Based on past experience with diversion pilot programs, it is assumed that 40 participants per district will progress far enough in the program to receive these services. CDLE will contract with local workforce centers at a rate of $6,000 per participant to create the plans. An administrator (0.8 FTE) will administer the program, working directly with the workforce centers and traveling to locations as required. The bill requires between 2 and 5 districts to participate resulting a range of costs between $725,000 and $1,660,000. For the purposes of the fiscal note, it is assumed that 5 districts will participate.

**Department of Higher Education.** When the individualized plans developed by CDLE involve seeking higher education, DHE will develop individualized plans for seeking financial aid. DHE administrative costs are estimated at $100,000 per year for this work. These costs are mostly fixed and do not vary significantly depending on the number of judicial districts participating in the pilot.

**Department of Health Care Policy and Financing.** The bill requires HCPF to provide two new services: reentry services and partial hospitalization services.

- **Reentry services.** The bill requires HCPF to provide reentry services, pending federal approval. SB 22-196 instructed HCPF to study the impact of providing these services. The following estimates were based on the preliminary findings of the study:

    - **State incarcerated population.** Serving the state incarcerated population immediately prior to release is estimated as the equivalent of serving about 1,400 members year-round at an annual cost of around $6,000. Because the work of requesting federal approval cannot begin until after the bill is passed, the fiscal note assumes that HCPF cannot meet the implementation date specified in the bill and that implementation will begin no sooner than FY 2025-26.

    - **County jail population.** Compared to the state prison population, the county jail population is much larger and less consistent; it is estimated as the equivalent of serving about 14,000 members at an annual cost of around $5,500. Given the logistics of serving this large and variable population, many of whom are incarcerated for brief periods of time, the fiscal note assumes that HCPF cannot meet the implementation date specified in the bill and that implementation will begin no sooner than FY 2027-28.

    - **Staff.** HCPF will need 5.0 FTE to oversee the program. As with previous complex waivers, 2.0 FTE ongoing and 1.0 term-limited FTE are required to oversee the waiver process, conduct stakeholder and provider outreach, and manage the ongoing benefit once approved by the federal government. The other 2.0 FTE will be dedicated to the unique data issues related to this population and their high turnover rate. Of this staff, 1.0 FTE will not start until a year before county jail implementation.

    - **Cost savings.** These costs will partially offset by a reduction in services under the DOC, the Judicial Department and the BHA. See the corresponding agency narratives in this analysis.

- **Partial hospitalization services.** The bill instructs HCPF to provide partial hospitalization services. These are classified as level 2.5 services on the system used by HCPF and its SUD treatment providers, the American Society of Addiction Medicine (ASAM) level of care criteria. Providing level 2.5 services will drive a cost increase that will be partially offset by a reduction in utilization of higher level services. The bill specifies that services must be implemented no later than July 1, 2026; however, given that implementation of these services can begin July, 1, 2024, this earlier implementation date is assumed.

  - **Costs.** Based on utilization of other levels of care, it is assumed that 2,000 members would benefit from level 2.5 services, which would provide 10 days of partial hospitalization annually. Managed Care Organizations (MCEs) assessed the per member per day cost at $320.

  - **Savings.** The HCPF portion of the per member per day rate for level 3.1 services is $190 and 3.5 is $425. The savings shown above assumes that all level 3.1 clients could substitute level 2.5 services for up to 6 days and all level 3.5 clients could substitute for up to 3.5 days. It should be noted that the room and board portion of the level 3.1 rate is paid by the BHA. By reducing the demand from Medicaid clients, the BHA will be able to service more non-Medicaid clients, assuming funding for the BHA program remains constant.

**Department of Corrections.** The DOC provides health care services to their incarcerated population. Costs for these services will be partially offset by the reentry services for state incarcerated populations provided by HCPF under the bill. When providing health care services for the total length of incarceration, DOC costs are estimated to be $132 million per year. It is assumed that the availability of services through HCPF will offset no more than 4 percent of these DOC costs, resulting in a decrease in DOC expenditures of up to $5.3 million per year starting in FY 2025-26.

**Behavioral Health Administration.** The Behavioral Health Administration will have a reduction in costs as a result of HCPF's reentry services program and increased costs to provide the following services.

- **Behavioral Health Diversion Pilot Program.** The bill requires the BHA to compile a list of approved assessors for the program. This work is absorbable under the assumption that the BHA only needs to coordinate with DORA to compile a list of assessors that have met the licensing requirements.

- **Reentry services.** The reentry services provided by HCPF starting in FY 2027-28 will partially offset the services currently being provided by the BHA. The bill requires the BHA to license county jails to provide services under HCPF's program.

- **Current program offset.** The BHA currently provides select reentry services to the county jail population at a cost of $25 million annually. It is assumed that HCPF will offset 70 percent of these costs after the county jail portion of their reentry services is implemented. About 40 percent of the BHA's program is funded through the Correction Treatment Cash Fund. This portion of the savings can be seen under the Judicial Department section.

- **Licensing services.** Beginning one year prior to HCPF's estimated implementation date for county jail reentry services. The BHA will begin licensing county jails to provide these services. This is estimated to require:

  - 300 hours of legal services prior to implementation and 900 hours annually post implementation;
  - 1.3 FTE to assess and issue licenses to approximately 50 facilities and respond to any complaints; and
  - one-time and ongoing funds to update and maintain the Behavioral Health Administration Licensing and Designation Database and Electronic Records System (LADDERS).

- **Application support services.** The bill requires the BHA to provide application support services to providers seeking to become behavioral health safety net providers. Based on previous contracts for provider technical support, this will require an annual $500,000 contract. The bill specifies that services must be implemented no later than July 1, 2025. Because implementation can begin July, 1, 2024, that implementation date is assumed

- **Contingency management grant program.** The bill creates the Contingency Management Grant Program. It is assumed that program will distribute $1.25 million in grants annually. Based on past grant programs, this is estimated to require 1.0 FTE. Implementation will begin July 1, 2024. Per the bill, the program ends July 1, 2027.

- **Opioid Treatment Workgroup.** The BHA is responsible for convening the Opioid Treatment Workgroup. It is assumed that they will meet once a month from October 2024 through September 2025 and the BHA will cover meeting costs, including hiring a meeting facilitator to organize discussions, a venue, and a catering company for a total of about $3,000 per meeting.

**Department of Early Childhood.** The bill expands appropriations/services under two programs in the CDEC – the Child Abuse Prevention Trust Fund and the Colorado Child Care Assistance Program (CCCAP), as described below.

- **Child Abuse Prevention Trust Fund.** As described in the State Transfers section above, the bill requires appropriations from the General Fund to the Colorado Child Abuse Prevention Trust Fund to support initiatives to reduce prenatal substance exposure ($150,000 per year starting in FY 2024-25) and to convene a stakeholder taskforce on identify strategies for increasing access to child care for families seeking substance use disorder treatment and recovery services ($50,000 per year in FY 2024-25 and FY 2025-26 only). It is assumed that annual spending from the trust fund will equal the annual amount moved into the fund for these purposes.

- **CCCAP expansion.** CCCAP is not an entitlement program, but is instead limited by available appropriations, with counties determining eligibility and using wait lists and other methods to manage enrollment and costs within available funding. The bill seeks to expand enrollment to include parents who are eligible but not enrolled in the program and are enrolled in SUD treatment (subject to available appropriations and the CDEC informing counties that any necessary IT system changes have been made). The fiscal note estimates costs to fund this population at about $6.4 million per year. These service costs, as well as administrative and IT expenses related to the change, are described below. Costs are paid which are paid from General Fund and federal funds.

  - **Service costs.** To estimate the population and costs, the fiscal note assumes that 36 percent of Medicaid members in SUD treatment have a child under 5. The program currently costs around $467 per enrollee per month and it is assumed that the referenced population will, on average, be in treatment for four months out of the year, resulting in increased costs of $6.4 million per year.

  - **Administrative costs.** The bill specifies that a county may prioritize working families over this population. CDEC requires 1.0 FTE to promulgate prioritization rules that comply with federal regulations and further assist counties with implementation. The fiscal note assumes such prioritization is only required when counties are required to use a waitlist due to program demand being greater than available funding. Costs to implement the new eligibility category in the CHATS data system is preliminarily estimated at $400,000, based on projects of similar scope.

**Department of Regulatory Agencies.** The bill requires DORA to produce two one-time reports and oversee/enforce several changes to state-regulated insurance plans. Costs are paid from the Division of Insurance Cash Fund

- **Reporting requirements.** DORA requires two contractors to produce the required reports, with this work requiring a combined 1,100 hours at $300 per hour. The contractors will analyze the network adequacy and utilization of SUD treatments.

- **Insurance plan regulation.** DORA requires 0.5 FTE to implement, ensure compliance, and respond to complaints. The bill amends the practice of pharmacy to include exercising prescriptive authority for any FDA- approved product or medication for opioid use disorder in accordance with federal law, if authorized through a collaborative agreement. Additionally, this bill requires the State Board of Pharmacy, the Colorado Medical Board, and the State Board of Nursing to develop a protocol for pharmacists to prescribe, dispense, and administer medicated assisted treatment.

**Department of Revenue.** The Department of Revenue (DOR) requires administrative expenses, paid from the General Fund, starting in FY 2025-26 to implement and document the new tax credit as follows:

- **Computer programming and testing.** The DOR will have one-time costs of $20,407 in FY 2025-26 for computer programming and testing. Programming costs are estimated at $2,318, representing 10 hours of contract programming at a rate of $231.75 per hour. Costs for user acceptance testing are estimated at $18,089, representing 355 hours for the Systems Support Office at $35 per hour and 177 hours of user acceptance testing at a rate of $32 per hour.

- **Document management.** The DOR will have one-time costs of $516 in FY 2025-26 for form changes. These services are performed in the Department of Personnel and Administration using reappropriated DOR funds.

- **Research and analysis.** Expenditures in the Office of Research and Analysis are required for changes in related GenTax reports so that the department can access and document tax statistics related to the new tax policy. These costs are estimated at $7,392, or 231 hours for data management and reporting at a rate of $32 per hour in FY 2025-25 and similar amounts through FY 2030-31.

**Department of Human Services.** CDHS operates two skilled nursing facilities that will be impacted by the requirements around facilitating access to methadone. The facilities will have an increased workload and costs to comply with the current regulations around methadone use. Lacking information on the process, these costs are indeterminate at this time.

**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.

## Other Budget Impacts

**TABOR refunds.** The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the September 2023 LCS revenue forecast. A forecast of state revenue subject to

TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save, while decreased General Fund revenue results in no net change to the amount of General Fund otherwise available to spend or save.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Local Government

**Behavioral Health Diversion Pilot program.** The program affects local governments in several ways, as described below. The exact impact to any particular jurisdiction will depend on the amount of work required to develop the local redirection program and the number of individuals who participate in it:

- **District attorneys.** The bill increases district attorney workload to participate in the development of the pilot programs and to handle more diversion cases. It is assumed that these costs will be reimbursed through a grant program (see technical note). Because it is not known how many individuals will be diverted into community-based treatment in lieu of the criminal justice system, these impacts have not been estimated.

- **Denver County Court.** For misdemeanors and petty offenses committed in Denver County, criminal fine and court fee revenue is collected by Denver County Court, and probation supervision is provided by the court. To the extent that this bill results in more individuals diverted out of the criminal justice system, revenue and workload will decrease. Because the court has discretion when sentencing misdemeanors and petty offenses, the precise reduction to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees.

- **County jails**. Under current law, a court may sentence an offender to jail for a class 1 petty offense and most misdemeanors. The range of the term of incarceration generally ranges from 0 to 18 months. This bill may result in fewer individuals being convicted of these offenses and sentenced to a term of incarceration in county jail. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary.

**Reentry services.** County jails will be impacted by the reentry services program provided by HCPF starting in FY 2027-28. Costs may decrease if the program funds efforts currently funded at the county level. Workload will increase as a result of the licensing requirements of the program and costs may increase in the event a county jail is not issued a license and has to contract with another facility.

## Technical Note

In order to get local agents to participate in the Behavioral Health Diversion Pilot Program, a reimbursement mechanism must be specified. For the purposes of this fiscal note, it is assumed that the bill will be amended to allow the Judicial Department to operate a grant program for this purpose. Depending on the exact language of the amendment, costs may be adjusted.

The bill allows counties to prioritize working families over those in SUD treatment for CCCAP benefits. It is assumed this prioritization is intended to apply when funding is insufficient to serve all eligible clients and counties are required to use waitlists to manage costs. If CDEC is required to rework the CHATS system to create a prioritization process outside of the existing wait list process, IT implementations costs would increase relative to the fiscal note estimate above to about $2.2 million.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, except for Section 22 which takes effect July 1, 2025.

## State Appropriations

For FY 2024-25 the bill requires appropriations totaling $12,337,079 multiple state agencies as described below.

- **Judicial Department.** The bill requires an appropriation of $908,307 and 0.9 FTE to the Judicial Department, paid from the General Fund.

- **Department of Labor and Employment.** The bill requires an appropriation of $1,267,443 and 0.7 FTE to CDLE, paid from the General Fund.

- **Department of Higher Education.** The bill requires an appropriation of $83,092 and 0.9 FTE to the DHE, paid from the General Fund.

- **Department of Health Care Policy and Financing.** The bill requires an appropriation of $1,284,008 and 2.7 FTE to HCPF, paid from the following funds:

  - $373,154 from the General Fund;
  - $67,807 from the Healthcare Affordability and Sustainability Cash Fund; and
  - $843,047 from federal funds.

- **Behavioral Health Administration.** The bill requires an appropriation of $1,861,315 and 1.0 FTE to the BHA, paid from the General Fund.

- **Department of Early Childhood.** The bill requires an appropriation of $6,966,410 and 0.9 FTE to CDEC, paid from the following funds:

  - $200,000 from the Child Abuse Prevention Trust Fund;
  - $1,410,052 from the General Fund;
  - $630,160 from the Local Government Fund; and
  - $4,726,198 from federal funds.

  In addition, the bill requires an appropriation of $200,000 from the General Fund to the Child Abuse Prevention Trust Fund.

- **Department of Regulatory Agencies.** The bill requires an appropriation of $366,504 and 0.4 FTE to DORA, paid from the Division of Insurance Cash Fund.

## State and Local Government Contacts

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| Behavioral Health Administration | Connect for Health Colorado | Corrections |
| Denver County Courts | County Clerks | Counties |
| District Attorneys | Early Childhood | Governor |
| Health Care Policy and Financing | Higher Education | Human Services |
| Information Technology | Judicial | Labor |
| Law | Personnel | Public Defender |
| Public Health and Environment | Public Safety | Regulatory Agencies |
| Revenue | Sheriffs | |