



Legislative  
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*Nonpartisan Services for Colorado's Legislature*

# FINAL FISCAL NOTE

<b>Drafting Number:</b>	LLS 18-0609	<b>Date:</b>	August 1, 2018
<b>Prime Sponsors:</b>	Rep. Kennedy; Landgraf Sen. Kefalas	<b>Bill Status:</b>	Postponed Indefinitely
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**Bill Topic:** FREESTANDING EMERGENCY DEPARTMENTS LICENSURE

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input 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

This bill would have created a new facility license for freestanding emergency departments and required such facilities to be licensed by July 1, 2021. This would have increased state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2018-19, the bill would have required an appropriation of \$29,411 to the Department of Public Health and Environment.

**Fiscal Note Status:** The fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1  
State Fiscal Impacts Under HB 18-1212**

		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
<b>Revenue</b>	General Fund	-	-	<\$20,000	<\$20,000
	Cash Funds			\$305,900	\$114,900
	<b>Total</b>	-	-	<b>up to \$325,900</b>	<b>up to \$134,900</b>
<b>Expenditures</b>	General Fund	-	-	\$41,578	\$148,749
	Cash Funds	\$29,411	\$112,021	\$164,067	\$68,180
	Centrally Approp.	\$12,707	\$37,381	\$78,526	\$40,347
	<b>Total</b>	<b>\$42,118</b>	<b>\$149,402</b>	<b>\$284,171</b>	<b>\$257,276</b>
	<b>Total FTE</b>	<b>0.4 FTE</b>	<b>0.6 FTE</b>	<b>2.5 FTE</b>	<b>1.7 FTE</b>
<b>Transfers</b>		-	-	-	-
<b>TABOR Refund</b>		-	-	not estimated	not estimated

## Summary of Legislation

This bill requires the Colorado Department of Public Health and Environment (CDPHE) to create a new health facility license for freestanding emergency departments and begin issuing these licenses by December 1, 2020. To continue operating in the state, freestanding emergency departments must be licensed by the CDPHE by July 1, 2021, except that certain facilities in rural areas that are exempted by the CDPHE may continue to operate under the existing community clinic license type. Under the bill, freestanding emergency departments are defined as health facilities that offer emergency care that are:

- owned or operated by, or affiliated with, a hospital or hospital system and are located more than 250 yards from the main campus of the hospital; or
- independent from and not operated by or affiliated with a hospital or hospital system and are not attached to, contained within, or located within 250 yards of a hospital.

Freestanding emergency departments are allowed to provide primary and urgent care. The State Board of Health is required to adopt rules for the new license type, including licensure requirements, fees, standards for care and safety, and fine penalties for noncompliance. The bill prohibits freestanding emergency departments from charging patients a facility fee that is in excess of the costs reasonably related to the operating expenses of the facility or from charging any facility fee if the freestanding emergency department is unable to stabilize a patient and he or she must be transferred to a hospital. Licensed freestanding emergency departments must report annually to the Department of Health Care Policy and Financing (HCPF) on facility fees that they charge patients, and HCPF is required to analyze this data for one-third of freestanding emergency departments each year and to report to the CDPHE on any freestanding emergency departments that violate the provision of the bill for allowable facility fees.

## Background and Assumptions

Under current law, freestanding emergency departments are licensed by the CDPHE as community clinics with emergency departments. There are approximately 50 such facilities in the state. The fiscal note assumes that by 2020 there will be 54 health facilities providing emergency health care apart from a hospital, of which 46 must be licensed as freestanding emergency departments and 8 will be licensed as community health clinics.

## State Revenue

The bill increases net cash fund revenue to the CDPHE by \$305,900 in FY 2020-21 and \$114,900 in FY 2021-22, which is deposited in the General Licensure Cash Fund. In addition, fine revenue to the General Fund of less than \$20,000 per year may result starting in FY 2020-21. These impacts are discussed below.

**Fee impact on health facilities.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only; actual fees will be set administratively by the CDPHE based on cash fund balance, program costs, and the number of licenses subject to the fee. Table 2 below identifies the fee impact of this bill.

**Table 2  
Fee Impact on Health Facilities**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Estimated Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
<b>FY 2020-21</b>	Freestanding ER - Initial License	\$8,000	46	\$368,000
	Community Health Clinic - Renewal	\$1,350	(46)	(\$62,100)
<b>FY 2020-21 Total</b>				<b>\$305,900</b>
<b>FY 2021-22</b>	Freestanding ER - Initial License	\$8,000	2	\$16,000
	Freestanding ER - Renewal	\$3,500	46	\$161,000
	Community Health Clinic - Renewal	\$1,350	(46)	(\$62,100)
<b>FY 2021-22 Total</b>				<b>\$114,900</b>

**Freestanding emergency department license fee.** Once the new license type takes effect in 2020, CDPHE will collect \$368,000 in fee revenue in FY 2020-21 to license 46 freestanding emergency departments. In FY 2020-21, it is estimated that two new initial licenses will be issued and 46 renewals, resulting in a total of \$177,000 in revenue from freestanding emergency department licenses.

**Community clinic license fee.** Freestanding emergency departments are currently licensed as community clinics. Under the bill, it is estimated that 46 of these facilities will shift from the community clinic license type used under current law and instead be licensed as freestanding emergency departments. This will decrease revenue by \$62,100 per year starting in FY 2020-21.

**Fine revenue.** The CDPHE may establish and impose fines against freestanding emergency departments that are found to have charged patients facility fees prohibited by the bill. These fines are not to exceed \$1,000 per patient occurrence. Generally, a high level of compliance is assumed and any fine revenue is expect to be less than \$20,000 per year, deposited to the General Fund.

**TABOR Refund**

The bill increases state revenue subject to TABOR by up to \$325,900 in FY 2020-21 and up to \$134,900 in FY 2021-22. While it is unknown if a TABOR refund will be required since these years are outside of the current forecast period, any refund in these years or future years will be increased if the state collects a TABOR surplus.

**State Expenditures**

The bill increases state expenditures by the following amounts:

- \$42,118 and 0.4 FTE in FY 2018-19;
- \$149,402 and 0.6 in FY 2019-20;
- \$284,171 and 2.5 FTE in FY 2020-21; and
- \$257,276 and 1.7 FTE in FY 2021-22 and future years.

These costs are incurred in both the CDPHE and HCPF. CDPHE expenses are paid from General Licensure Cash Fund, and HCPF expenses are paid from the General Fund. Costs for these agencies are summarized in Table 3 and discussed below.

**Table 3  
Expenditures Under HB 18-1212**

<b>Cost Components</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Public Health and Environment</b>				
Personal Services	\$22,044	\$44,087	\$150,585	\$46,298
Operating / Capital Outlay	\$4,703	\$570	\$6,603	\$570
Legal Services	\$2,664	\$2,664	\$2,664	\$21,312
Computer System Updates	-	\$64,700	-	-
Travel	-	-	\$4,215	-
Centrally Appropriated Costs*	\$12,707	\$37,381	\$71,554	\$26,404
FTE – Personal Services	0.4 FTE	0.6 FTE	2.0 FTE	0.6 FTE
FTE - Legal Services	-	-	-	0.1 FTE
<b>CDPHE (Subtotal)</b>	<b>\$42,118</b>	<b>\$149,402</b>	<b>\$235,621</b>	<b>\$94,584</b>
<b>Health Care Policy and Financing</b>				
Personal Services	-	-	\$36,400	\$72,799
Operating / Capital Outlay	-	-	\$5,178	\$950
Auditing Expenses	-	-	-	\$75,000
Centrally Appropriated Costs*	-	-	\$6,972	\$13,943
FTE – Personal Services	-	-	0.5 FTE	1.0 FTE
<b>HCPF (Subtotal)</b>	<b>-</b>	<b>-</b>	<b>\$48,550</b>	<b>\$162,692</b>
<b>Total</b>	<b>\$42,118</b>	<b>\$149,402</b>	<b>\$284,171</b>	<b>\$257,276</b>
<b>Total FTE</b>	<b>0.4 FTE</b>	<b>0.6 FTE</b>	<b>2.5 FTE</b>	<b>1.7 FTE</b>

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

**Licensing and inspection staff.** In the first two years, the CDPHE requires policy staff to establish program rules and procedures for the new freestanding emergency department license and to conduct stakeholder outreach. This will result in the need for 0.4 FTE in FY 2018-19 and 0.6 FTE in FY 2019-20. In FY 2020-21, the CDPHE will require 2.0 FTE to conduct an initial inspection of all freestanding emergency departments that apply for the new license type between December 1, 2020, and July 1, 2021. In FY 2021-22 and future years, it is assumed that 0.6 FTE will be required to inspect freestanding emergency departments on a rotating schedule once every three years. This staff will also be responsible for addressing any consumer complaints about freestanding emergency departments and any finding by HCPF of improper facility fees. Personal services, operating, and capital outlay expenses for this staff are shown in Table 3 above.

**Legal services.** The CDPHE will have legal services costs of \$2,664 per year from FY 2018-19 to FY 2020-21. This is for 25 hours of legal services per year for rulemaking and general counsel associated with establishing the new license type. In FY 2021-22, costs will increase to \$21,312 per year for 200 hours of legal services associated with enforcement actions regarding freestanding emergency centers.

**Computer system modifications.** To create the new license type and track required information about free-standing emergency departments, the CDPHE requires \$64,700 in FY 2019-20 to make computer system modifications to its licensing and data system. This cost is based on a total of 500 hours of computer programming at a rate of \$115 per hour and 60 hours of business analyst time at \$120 per hour.

**Travel.** Travel costs of \$4,215 to conduct initial facility inspections will be incurred by the CDPHE in FY 2020-21. These costs are based on hotel, staff per diem, and vehicle mileage costs for 10 overnight trips in FY 2020-21. In future years, it is assumed that travel costs will be paid within existing appropriations.

**Department of Health Care Policy and Financing.** HCPF will require 1.0 FTE starting in FY 2020-21 to manage financial reporting by freestanding emergency departments. Costs for this staff are shown in Table 3 and are prorated in the first year to reflect a December 1, 2020, start date. In addition, to ensure that freestanding emergency departments comply with the bill's restrictions on facility fees, \$75,000 in contract audit costs per year will be incurred starting in FY 2021-22 to conduct a detailed review of the financial reports of one-third of freestanding emergency departments each year. This cost is based on approximately 375 hours of contractor time at a rate of \$200 per hour, which is similar to the existing rates and workload for audits currently conducted by HCPF concerning hospitals and nursing facilities.

**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, supplemental employee retirement payments, and indirect cost recoveries, are shown in Table 3 above for CDPHE and HCPF.

### **Effective Date**

This bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on May 1, 2018.

### **State Appropriations**

For FY 2018-19, this bill requires an appropriation of \$29,411 to the CDPHE from the General Licensure Cash Fund and an allocation of 0.4 FTE. Of this amount, \$2,664 is reappropriated to the Department of Law for legal services.

### **State and Local Government Contacts**

Counties	Health Care Policy and Financing
Information Technology	Law
Public Health and Environment	Regulatory Agencies