



Legislative Council Staff

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REVISED FISCAL NOTE

(replaces fiscal note dated April 8, 2019)

Drafting Number: LLS 19-0686 Date: April 25, 2019
Prime Sponsors: Rep. Cutter; Will Sen. Woodward Bill Status: Senate Finance
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Bill Topic: LICENSING BEHAVIORAL HEALTH ENTITIES

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government (minimal), Statutory Public Entity

This bill consolidates the licensing of behavioral health entities in the Colorado Department of Public Health and Environment and requires licensing of certain entities that were not previously licensed. On net, these changes will increase state revenue and expenditures on an ongoing basis. The bill will also minimally increase local government workload.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$51,472 to the Department of Public Health and Environment.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Table 1 State Fiscal Impacts Under HB 19-1237*

Table with 5 columns: Category, Sub-category, FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23. Rows include Revenue (Cash Funds, Total), Expenditures (General Fund, Cash Funds, Central. Approp., Total), Total FTE, Transfers, and TABOR Refund.

* Additional impacts, including the transfer of staff and a shift in licensing revenue and expenditures from the Department of Human Services to the Colorado Department of Public Health and Environment, will occur starting in FY 2024-25 once the consolidated licensing program is fully implemented.

Summary of Legislation

This bill creates a new system for licensing behavioral health entities. Under current law, an entity that provides behavioral health services may hold a license from the Department of Public Health and Environment (CDPHE) or the Department of Human Services (DHS). This bill consolidates these licenses into one behavioral health entity license to be administered by the CDPHE. In addition, the bill requires certain entities to obtain a behavioral health entity license that are not currently licensed or are subject to voluntary licensure. A fund is created and a licensing fee structure will be established through rule to cover program costs. The implementation of this bill is divided into two phases, which are described in more detail below. Finally, the bill creates an advisory committee to assist with the bill's implementation.

Program funding. The bill creates the Behavioral Health Entity Cash Fund for the consolidated licensing program. By April 30, 2021, the State Board of Health must establish license fees to cover the direct and indirect costs of the program to be paid into the fund. The bill specifies that the DHS shall fund the costs of licensing activities related to behavioral health entity licensing across the DHS and the CDPHE, less money collected from the Behavioral Health Entity Cash Fund, through June 30, 2024. This funding will come from the federal Mental Health and Substance Abuse Prevention and Treatment block grant and will cover the licensing function costs that are transferred to CDPHE under this bill until the CDPHE program is self-sufficient through its own fee revenue.

Behavioral health entity licensing — phase one. In the first phase, entities that are currently licensed as mental health facilities by the CDPHE must transition over to the new license type. In addition, certain community clinics and mental health centers, which are classified as behavioral health entities under the bill, but which are not currently licensed mandatorily, will be required to obtain the new license type. A behavioral health entity that was previously licensed by the CDPHE must obtain the new behavioral health entity license by July 1, 2022. The bill also creates a new misdemeanor offense and civil penalties for failure to license as a behavioral health entity.

Behavioral health entity licensing — phase two. In the second phase, entities that provide substance or alcohol use disorder treatment must be licensed by the CDPHE as a behavioral health entity no later than July 1, 2024. These entities are currently licensed by the DHS.

Behavioral Health Entity Implementation and Advisory Committee. The bill creates the 15-member Behavioral Health Entity Implementation and Advisory Committee (committee) in the Department of Public Health and Environment. Committee members include the executive directors of the CDPHE, DHS, the Department of Health Care Policy and Financing (HCPF), and the Department of Public Safety (DPS), along with three representatives from currently licensed mental health facilities, four representatives from unlicensed substance use disorder providers with one representing a rural or frontier county, and four consumers or advocates with one having experience living with a substance use disorder. Appointments must be made by September 1, 2019. The committee is charged with advising various departments and the State Board of Health on the phased-in implementation of behavioral health entity licensing and ensuring improved information sharing between state agencies. Committee members are entitled to reimbursement for actual and necessary expenses. The committee repeals on September 1, 2025, following a sunset review.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates a new unclassified misdemeanor offense for failure to obtain a behavioral health license, subject to a fine ranging from \$50 to \$500 upon conviction. In the past three years, there have been no convictions for unauthorized practice of a mental health occupation. It is assumed that professionals will comply with the law and that there will be minimal or no additional case filings or convictions for the new offense under the bill.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

On net, this bill increases state cash fund revenue by \$189,817 in FY 2021-22 and by \$158,617 in FY 2022-23. This includes an increase in fee revenue to the Behavioral Health Entity Cash Fund of \$124,800 in FY 2021-22 and \$93,600 in FY 2022-23 from entities required to be licensed during phase one, as well as an offsetting decrease in fee revenue of \$53,108 per year starting in FY 2021-22 from entities that are currently licensed by the CDPHE no longer paying fees for the current license type. There will also be a revenue increase from fire and building code inspection fees charged by the DPS. The bill may also result in a minimal increase in fee and fine revenue from the misdemeanor and civil penalty in the bill. Cash fund revenue under the bill is summarized in Table 2 and discussed below.

Fee impact on behavioral health entities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. For the CDPHE, 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. For fire and building code inspections by the DPS, the total fees charged will vary depending on the number of hours required to inspect each facility. The fiscal note estimates the fee revenue necessary to cover the costs for inspecting approximately 875 locations. Starting in FY 2024-25, revenue that is currently collected by the DHS will instead be collected under the consolidated licensing program in the CDPHE. Fee revenue is subject to TABOR.

**Table 2
 Fee Impacts Under HB 19-1237**

| Type of Fee | Proposed Fee | Number Affected | Total Fee Impact |
|---|---------------------|------------------------|-------------------------|
| FY 2021-22 | | | |
| Behavioral Health Entity License Fee | \$1,400 | 52 | \$72,800 |
| Behavioral Health Entity Endorsement Fee | \$500 | 104 | \$52,000 |
| Subtotal – Behavioral Health Entity Cash Fund (CDPHE) | | | \$124,800 |
| Community Clinic License/Renewal Fee | \$1,600 | 27 | (\$43,200) |
| Community Clinic Per Bed Fee | \$12 | 69 | (\$828) |
| Acute Treatment Unit License/Renewal Fee | \$1,500 | 5 | (\$7,500) |
| Acute Treatment Unit Per Bed Fee | \$20 | 79 | (\$1,580) |
| Subtotal – General Licensure Cash Fund (CDPHE) | | | (\$53,108) |
| Fire and Building Code Inspection Fee | \$135 | 875 | \$118,125 |
| Subtotal – Health Facility Construction and Inspection Cash Fund (DPS) | | | \$118,125 |
| FY 2021-22 TOTAL | | | \$189,817 |
| FY 2022-23 | | | |
| Behavioral Health Entity License Renewal | \$1,000 | 52 | \$52,000 |
| Behavioral Health Entity Endorsement Renewal | \$400 | 104 | \$41,600 |
| Subtotal – Behavioral Health Entity Cash Fund (CDPHE) | | | \$93,600 |
| Community Clinic Renewal | \$1,600 | 27 | (\$43,200) |
| Community Clinic per bed | \$12 | 69 | (\$828) |
| Acute Treatment Unit | \$1,500 | 5 | (\$7,500) |
| Acute Treatment Unit per bed | \$20 | 79 | (\$1,580) |
| Subtotal – General Licensure Cash Fund (CDPHE) | | | (\$53,108) |
| Fire and Building Code Inspection Fee | \$135 | 875 | \$118,125 |
| Subtotal – Health Facility Construction and Inspection Cash Fund (DPS) | | | \$118,125 |
| FY 2022-23 TOTAL | | | \$158,617 |

Criminal fines, court fees, and civil penalties. By creating a new unclassified misdemeanor offense, the bill may increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The bill may also result in civil penalties, assessed by the CDPHE, which are credited to the General Fund. The misdemeanor offense is punishable by a fine of between \$50 and \$500. The civil penalty may range between \$50 and \$100 per day for which a behavioral health entity is not licensed. Civil penalties are credited to the General Fund. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related

costs. It is assumed that behavioral health entities will have a high level of compliance and that any revenue from fines and penalties will be minimal. Criminal fines, court fees, and civil penalties are subject to TABOR.

State Expenditures

In total, this bill increases state expenditures by:

- \$72,135 and 0.5 FTE in FY 2019-20;
- \$105,324 and 0.5 FTE in FY 2020-21;
- \$452,956 and 2.6 FTE in FY 2021-22; and
- \$433,627 and 2.9 FTE in FY 2022-23.

These costs include planning and implementation costs for the CDPHE in the first two years, the transfer of existing CDPHE licensee to the new program starting in FY 2021-22, and the transfer of DHS licensees to the new program starting in FY 2023-24. In addition, the DPS will have additional costs to inspect health facilities for fire and building code compliance starting in FY 2021-22. The transition to the new licensing system is expected to be complete by FY 2024-25. Until licensing fees are collected by the CDPHE beginning in FY 2021-22, the fiscal note assumes General Fund will be required for the first two years of implementation. In addition, General Fund will be required to cover a portion of expenditures until FY 2023-24, as cash fund revenue will not be able to completely cover costs. These expenditures are shown in Table 3 along with the funding split in Table 4 and discussed below.

**Table 3
 Expenditures Under HB 19-1237**

| | FY 2019-20 | FY 2020-21 | FY 2021-22 | FY 2022-23 |
|--|------------------------|-------------------------|-------------------------|-------------------------|
| Department of Public Health and Environment | | | | |
| Personal Services | \$32,100 | \$108,652 | \$174,589 | \$450,530 |
| Operating Expenses / Capital Outlay Costs | \$5,178 | \$1,425 | \$2,470 | \$6,555 |
| Committee Member Reimbursement | \$14,194 | \$14,194 | \$14,194 | \$14,194 |
| Stakeholder Meetings | - | \$1,971 | - | \$1,971 |
| Inspection Travel | - | - | \$4,929 | - |
| Information Technology System Updates | - | - | \$85,500 | - |
| Legal Services | - | \$2,591 | \$17,618 | \$6,736 |
| Centrally Appropriated Costs* | \$20,663 | \$56,590 | \$116,215 | \$227,100 |
| FTE – Personal Services | 0.5 FTE | 1.5 FTE | 2.6 FTE | 6.9 FTE |
| CDPHE (Subtotal and Fund Split) | <u>\$72,135</u> | <u>\$185,423</u> | <u>\$415,515</u> | <u>\$707,086</u> |
| <i>General Fund</i> | \$51,472 | \$63,444 | \$162,219 | \$126,038 |
| <i>Cash Funds</i> | - | - | \$71,692 | \$40,492 |
| <i>Federal Funds</i> | - | - | \$65,389 | \$313,456 |
| <i>Centrally Appropriated</i> | \$20,663 | \$56,590 | \$116,215 | \$227,100 |

**Table 3 (cont.)
Expenditures Under HB 19-1237**

| | FY 2019-20 | FY 2020-21 | FY 2021-22 | FY 2022-23 |
|---|------------------------|-------------------------|-------------------------|-------------------------|
| Department of Human Services | | | | |
| Personal Services | - | (\$64,439) | (\$64,439) | (\$308,706) |
| Operating Expenses / Capital Outlay Costs | - | (\$950) | (\$950) | (\$4,750) |
| Centrally Appropriated Costs* | - | (\$14,710) | (\$14,710) | (\$72,324) |
| FTE – Personal Services | | (1.0 FTE) | (1.0 FTE) | (5.0 FTE) |
| <u>DHS (Subtotal and Fund Split)</u> | - | (\$80,099) | (\$80,099) | (\$385,780) |
| <i>Federal Funds</i> | - | (\$65,389) | (\$65,389) | (\$313,456) |
| <i>Centrally Appropriated</i> | - | (\$14,710) | (\$14,710) | (\$72,324) |
| Department of Public Safety | | | | |
| Personal Services | - | - | \$65,519 | \$65,519 |
| Operating Expenses / Capital Outlay Costs | - | - | \$5,653 | \$950 |
| Cell Phone | - | - | \$1,200 | \$1,200 |
| Vehicle for Traveling | - | - | \$9,000 | \$9,000 |
| Travel Expenses | - | - | \$10,000 | \$10,000 |
| Centrally Appropriated Costs* | - | - | \$26,168 | \$25,652 |
| FTE – Personal Services | | | 1.0 FTE | 1.0 FTE |
| <u>DPS (Subtotal and Fund Split)</u> | - | - | \$117,540 | \$112,321 |
| <i>Cash Funds</i> | - | - | \$91,372 | \$86,669 |
| <i>Centrally Appropriated</i> | - | - | \$26,168 | \$25,652 |
| <u>Total Cost</u> | <u>\$72,135</u> | <u>\$105,324</u> | <u>\$452,956</u> | <u>\$433,627</u> |
| <i>General Fund</i> | \$51,472 | \$63,444 | \$162,219 | \$126,038 |
| <i>Cash Funds</i> | - | - | \$163,064 | \$127,161 |
| <i>Federal Funds</i> | - | - | - | - |
| <i>Centrally Appropriated</i> | \$20,663 | \$41,880 | \$127,673 | \$180,428 |
| <u>Total FTE</u> | <u>0.5 FTE</u> | <u>0.5 FTE</u> | <u>2.6 FTE</u> | <u>2.9 FTE</u> |

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

Department of Public Health and Environment. The CDPHE will have costs of \$72,135 and 0.5 FTE in FY 2019-20, \$185,423 and 1.5 FTE in FY 2020-21, \$415,515 and 2.6 FTE in FY 2021-22, and \$707,086 and 6.9 FTE in FY 2022-23. Costs will further increase in future years as additional licensing functions are transferred from the DHS to the CDPHE. Details on these impacts are provided below.

- *Planning and committee costs.* The CDPHE requires \$45,078 and 0.5 FTE in FY 2019-20 for a policy advisor to assist the committee and plan for the transfer of certain licensing functions. Starting in FY 2020-21, a health professional is required to begin implementation of the new program and supervise additional staff. Assuming the advisory committee meets twelve times per year, travel reimbursements are estimated to be \$14,194 per year beginning in FY 2019-20. The CDPHE will also have expenses to hold stakeholder meetings.

- *Information technology costs.* Based on the rules adopted, the CDPHE will have costs of \$85,000 for information technology system modifications in FY 2021-22. These costs, which include business analyst and contract computer programming, are necessary to ensure that CDPHE systems can accommodate the new licensing types required under the bill.
- *Licensing, inspections, and enforcement.* The CDPHE will adopt rules for the new license requirement, set up application and renewal procedures, review applications, and conduct inspections. Initial inspections will begin in FY 2020-21, and renewal inspections will occur on a three-year basis to spread out the workload. This workload is expected to require 1.1 FTE for a health professional in FY 2021-22 and 0.4 FTE in FY 2022-23. Inspection-related travel costs include hotel, mileage, and per diem reimbursement. The CDPHE will also require legal services provided by the Department of Law, related to general counsel, rulemaking, and enforcement actions.

Department of Human Services. Under this bill, the mental health, substance and alcohol use disorder treatment, and behavioral health licensing functions in the Division of Community Behavioral Health in the DHS will be consolidated and moved to the CDPHE. Beginning in FY 2020-21, staff from the Office of Behavioral Health will transfer to the CDPHE to help establish the consolidated licensing program and work with facilities on the licensure process. This will decrease expenditures in DHS by \$80,099 and 1.0 FTE in FY 2020-21 and FY 2021-22 and \$385,780 and 5.0 FTE in FY 2022-23. Reduction in costs will further increase in future years as these licensing functions are transferred to the CDPHE. These FTE are funded through the federal Mental Health and Substance Abuse Prevention and Treatment block grant. They will continue to be federally funded when they move over to the CDPHE. The DHS will retain certain functions related to substance use disorder treatment.

Department of Public Safety. The Division of Fire Prevention and Control in the DPS will have costs of \$117,540 and 1.0 FTE in FY 2021-22 and \$112,321 and 1.0 FTE in FY 2022-23 to conduct fire inspections of behavioral health entities that are not currently required to have such inspections under the current licensing system. In addition, beginning in FY 2021-22, the Colorado Bureau of Investigations in DPS will have a minimal increase in workload to provide background checks to certain employees of behavioral health entities. This impact is assumed to be minimal and can be accomplished within existing appropriations.

Health Care Policy and Financing. Beginning in FY 2021-22, HCPF may be required to make computer programming modifications to the Medicaid Management Information System (MMIS) depending on rules adopted by the CDPHE. A 90-percent federal match is available for this work. At this time, any modifications are assumed to be minimal and can be accomplished within existing appropriations; however, if more significant changes are required, additional funding may be sought through the annual budget process.

Judicial Department. Beginning in FY 2022-23, workload will minimally increase for the trial courts in the Judicial Department. This bill imposes a misdemeanor penalty for failure to obtain a behavioral health entity license. This unclassified misdemeanor is punishable by a fine of between \$50 and \$500. The fiscal note assumes a high rate of compliance and therefore the impact is expected to be minimal and absorbable within existing resources.

Office of Administrative Courts. Starting in FY 2021-22, the bill may increase workload to the Office of Administrative Courts in the Department of Personnel and Administration (DPA) related to civil penalties and other enforcement actions against licensed behavioral health entities. It is assumed that any funding adjustments to the administrative courts or to the CDPHE as the referring agency, if necessary, will be made through the annual budget process based on actual changes in caseload.

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 \$20,663 in FY 2019-20, \$41,880 in FY 2020-21, \$127,673 in FY 2021-22, and \$180,428 in FY 2022-23 on net, including increases for CDPHE staff and decreases for DHS staff.

Local Government Impact

Beginning in FY 2021-22, this bill may minimally increase local government revenue and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

District attorneys. The bill may minimally increase workload and costs for district attorneys to prosecute a new misdemeanor offense. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Denver County Court. The bill may minimally increase revenue and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill.

Effective Date

Sections 1 through 4 of this bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed. Sections 6 through 9 of this bill take effect July 1, 2021, and Sections 10 through 25 take effect July 1, 2022.

State Appropriations

The bill requires a General Fund appropriation of \$51,472 to the Department of Public Health and Environment with an allocation of 0.5 FTE for FY 2019-20.

State and Local Government Contacts

District Attorneys
Information Technology
Personnel

Human Services
Judicial
Public Safety

Health Care Policy and Financing
Public Health and Environment
Regulatory Agencies