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Fiscal Note

Drafting Number: LLS 21-0967 Date: April 27, 2021
Prime Sponsors: Rep. Young; Holtorf Bill Status: House HHS
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Bill Topic: OCCUPATIONAL THERAPY INTERSTATE COMPACT

- Summary of Fiscal Impact:
[X] State Revenue (conditional) [] TABOR Refund
[X] State Expenditure (conditional) [] Local Government
[] State Transfer [] Statutory Public Entity

The bill enters Colorado into the Occupational Therapy Licensure Interstate Compact to allow occupational therapists and occupational therapy assistants to practice in multiple states. The bill conditionally increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Table 1
State Fiscal Impacts Under HB 21-1279

Table with 4 columns: Category, Budget Year FY 2021-22, Out Year FY 2022-23, Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

The bill enters Colorado into the Occupational Therapy Licensure Interstate Compact, pending its adoption by ten or more states. The compact requires that member states recognize licenses for occupational therapists or occupational therapy assistants issued by any other member state, including practicing telehealth services, and establishes minimum criteria for such licenses, including that all practitioners in member state must obtain a background check. Credentialed practitioners in a member state can apply for the privilege to practice in another member state, and the compact grants member states the authority to charge a fee for such privilege.

The bill grants the Department of Regulatory Agencies (DORA) the authority to promulgate rules to implement the compact, to appoint members to the compact's governing commission, and to report data to the commission, as determined by rule.

Background and Assumptions

The fiscal note assumes that the compact will take effect by October 2022. The compact requires adoption by at least ten states to take effect. As of April 2021, 3 states have adopted it, and 12 additional states are considering adoption, including Colorado. The fiscal note further assumes that the compact setup process will require 12 to 14 months to complete and that compact privileges will be available beginning January 2024. Some revenue and expenditure impacts could shift fiscal years if the compact is implemented sooner or later than this date.

Occupational therapist and occupational therapy assistant licenses require renewal every two years, by December 31 of even-numbered years. The fiscal note assumes that these practitioners will be required to complete fingerprint-based background checks at their first licensure renewal after the compact takes effect, in December 2022.

The fiscal note assumes that 6,000 practitioners from other member states would apply to use compact privileges in Colorado and that this uptake would occur gradually, with 4,000 applicants in FY 2023-24 and 2,000 in the subsequent year. Initial fees are estimated based on this assumption, although fees are expected to decrease as more states join the compact, and costs are spread across more practitioners.

State Revenue

The bill increases state cash fund revenue from fees by \$284,400 in FY 2022-23 and \$222,830 in FY 2023-24. This revenue is from fees on occupational therapists and occupational therapy assistants seeking compact privileges in Colorado charged by DORA, and background check fees paid by occupational therapists and occupational therapy assistants licensed in Colorado to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (CDPS). Revenue to state agencies and fee impact to practitioners are described below and summarized in Table 2.

Fee impact on occupational therapists and occupational therapy assistants. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Compact privilege fee amounts are estimates only, actual fees will be set administratively by DORA based on cash fund balance, estimated program costs, and the estimated number of compact privilege applications subject to the fee. The table below identifies the fee impact of this bill.

Table 2
Fee Impact on Occupational Therapists and Occupational Therapy Assistants

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2022-23	Background Check Fee	\$39.50	7,200	\$284,400
	FY 2021-22 Total			\$284,400
FY 2023-24	Background Check Fee	\$39.50	500	\$19,750
	Compact Privilege (Initial)	\$50.77	4,000	\$203,080
	FY 2022-23 Total			\$222,830

Department of Regulatory Agencies. Cash fund revenue to DORA is estimated to be \$203,080 in FY 2023-24. This revenue is deposited into the Division of Professions and Occupations Cash Fund. Revenue is generated from a fee on occupational therapists and occupational therapy assistants in other member states applying to use compact privileges in Colorado. The fee is estimated to be \$50.77 for initial compact privilege and \$25.71 for compact privilege renewal.

Fingerprint-based background checks – CDPS. This bill increases state cash fund revenue from fingerprint-based criminal history background checks to the CBI Identification Unit Cash Fund in the CDPS by \$284,400 in FY 2022-23 and \$19,750 in FY 2023-24. This assumes 7,200 checks will be conducted in FY 2022-23, when existing licenses must be renewed, and 500 in FY 2023-24 for new occupational therapy practitioners. The current fee for background checks is \$39.50, which includes \$11.25 for a Federal Bureau of Investigation (FBI) fingerprint-based check, which is passed on to that federal agency. The federal portion of this fee is excluded from the state TABOR limit. The background check is required only upon initial licensure and is not required for renewal.

State Expenditures

The bill increases state cash fund expenditures by \$385,708 and 1.6 FTE in FY 2022-23 and \$214,148 and 0.4 FTE in FY 2023-24. These costs, in CDPS and DORA’s Division of Professions and Occupations, are summarized in Table 3 and discussed below.

**Table 3
 Expenditures Under HB 21-1279**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Regulatory Agencies			
Personal Services	-	\$17,566	\$23,423
IT System Interfaces	-	\$60,000	\$43,000
Commission Membership Dues	-	\$15,000	\$15,000
Travel	-	\$4,000	\$2,000
Legal Services	-	-	\$89,326
Centrally Appropriated Costs ¹	-	\$13,764	\$21,530
FTE – Personal Services	-	0.3 FTE	0.3 FTE
DORA Subtotal	-	\$110,330	\$194,279
Department of Public Safety			
Personal Services	-	\$73,049	\$6,251
Operating Expenses	-	\$1,755	-
Capital Outlay Costs	-	\$6,200	-
FBI Pass-Through	-	\$81,000	\$5,625
Background Check Costs	-	\$67,592	\$4,555
Centrally Appropriated Costs ¹	-	\$45,782	\$3,438
FTE – Personal Services	-	1.3 FTE	0.1 FTE
CDPS Subtotal	-	\$275,378	\$19,869
Total	-	\$385,708	\$214,148
Total FTE	-	1.6 FTE	0.4 FTE

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

Department of Regulatory Agencies. Costs in the Division of Professions and Occupations will increase by \$110,330 and 0.3 FTE in FY 2022-23 and \$194,279 and 0.3 FTE in FY 2023-24. These expenditures, which will be paid from the Division of Professions and Occupations Cash Fund, are described below.

Staffing and administration. DORA will require 0.3 FTE to establish program rules for operation of the compact in Colorado, handle compact privilege to practice requests, respond to inquiries from other states, communicate with compact officials, investigate complaints related to Colorado and out-of-state occupational therapists and occupational therapy assistants practicing under the compact, and other tasks. DORA staff will have expenses of \$4,000 in FY 2022-23 and \$2,000 in FY 2023-24 for compact-related travel. Other costs include dues paid to the compact commission, which are estimated at \$15,000 per year.

Information technology systems. In FY 2022-23 and FY 2023-24, costs of \$40,000 will be incurred for the Office of Information Technology to install data interfaces between the state licensing system and the compact data system. Further costs of \$20,000 will be incurred in FY 2022-23 to install data interfaces between the state licensing system and the CBI. Ongoing maintenance costs are estimated at \$3,000 per year starting in FY 2023-24.

Legal services. In FY 2022-23, the division will require legal services from Department of Law for rulemaking, which can be absorbed within existing appropriations. Beginning in FY 2023-24, about 840 hours of legal services will be required to adjudicate cases involving provider misconduct and complaints that could not be resolved within DORA. This is based on 12 additional complaints per year against occupational therapists and occupational therapy assistants practicing under the compact, which will generate 3 formal investigations and 1 case referred to the Attorney General's Office for further action.

Department of Public Safety. This bill increases overall expenditures from the CBI Identification Unit Cash Fund in CDPS by \$275,378 and 1.3 FTE in FY 2022-23 and \$19,869 and 0.1 FTE in FY 2023-24.

Personal services. In FY 2022-23, CDPS will require 0.9 FTE Fingerprint Examiner II and 0.4 FTE Data Specialist to process the 7,200 fingerprint background applications that the fiscal note assumes the bill will generate from occupational therapists and occupational therapy assistants. This falls to 0.1 FTE Fingerprint Examiner II only in FY 2023-24. A Fingerprint Examiner II can process 8,250 requests per year, and a Data Specialist 16,500. These employees will undertake a one-time training session that costs \$1,000 per person.

FBI pass-through. CDPS passes \$11.25 of every application on to the federal government. With approximately 7,700 applications, this equates to \$86,625 for the two-year period.

Other costs. There are the following costs associated with each background check application: \$6.10 dedicated to equipment maintenance; \$1.55 for print digitization; \$0.88 to access the Colorado Crime Information Center for information pertinent to the background check; and \$0.58 printing and postage costs.

Office of Administrative Courts and trial courts. Disciplinary actions by DORA under the compact may result in additional cases being heard by administrative law judges in the Office of Administrative Courts in the Department of Personnel and Administration. Some of these cases may be appealed to the trial courts in the Judicial Department for further review. Because the compact is inter-jurisdictional, the fiscal note assumes that most cases will be held in federal courts and that any state workload increase will be minimal and can be accomplished within existing appropriations.

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 \$59,546 in FY 2022-23 and \$24,968 in FY 2023-24.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State and Local Government Contacts

Information Technology
Public Safety

Judicial
Regulatory Agencies

Law