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Fiscal Note

Drafting Number:	LLS 22-0550	Date:	March 22, 2022
Prime Sponsors:	Rep. Young; Pelton Sen. Lee; Simpson	Bill Status:	House HHS
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Bill Topic: **BEHAVIORAL HEALTH ADMINISTRATION**

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

The bill creates the Behavioral Health Administration in the Department of Human Services. It will increase state expenditures and divert revenue from the General Fund on an ongoing basis. It also transfers programs between state agencies, resulting in no net change in costs for those functions.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$4.3 million to multiple state agencies. See State Appropriations section for detail.

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

Table 1
State Fiscal Impacts Under HB 22-1278

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	Total Revenue	-	-
Expenditures	General Fund	\$3,925,529	\$5,453,943
	Cash Funds	\$142,766	\$130,366
	Federal Funds	\$246,399	\$251,583
	Centrally Appropriated	\$105,535	\$153,706
	Total Expenditures	\$4,420,229	\$5,989,598
	Total FTE	32.1 FTE	45.9 FTE
Diversions	General Fund	(\$174,250)	(\$161,850)
	Cash Funds	\$174,250	\$161,850
	Net Diversion	\$0	\$0
Other Budget Impacts	General Fund Reserve	\$588,829	\$818,091

Summary of Legislation

The bill creates the Behavioral Health Administration (BHA) in the Department of Human Services (CDHS) and charges it with creating a coordinated, cohesive, and effective behavioral health system in Colorado. Any state agency that administers a behavioral health program (state agency) is required to collaborate with the BHA.

Part 1: Behavioral Health Administration

Commissioner and board authority. The bill establishes the role of the BHA commissioner, to be appointed by the Governor, and outlines the commissioner's duties and privileges, which include the ability to set commissioner rules. The bill establishes the State Board of Human Services as the primary rulemaking authority and Type 1 board for the BHA.

Transfer of functions to the BHA. The BHA is required to administer a variety of existing programs, most of which are currently administered by the Office of Behavioral Health in CDHS (See Section 27-50-105 starting on page 9 of the introduced bill for a list of programs and services). Of the programs to be administered by the BHA, the regulation of recovery residences and the licensing of behavioral health entities are transferred from the Department of Public Health and Environment (CDPHE). Specifically, CDPHE will continue issuing and renewing behavioral health entity licenses until June 30, 2023, and continue compliance monitoring and enforcement activities through June 30, 2024. The BHA will begin licensing functions on July 1, 2023. As of July 1, 2024, all CDPHE rules transfer to the BHA and all behavioral health entities must be licensed by, and in compliance with the rules and orders of, the State Board of Human Services. The Behavioral Health Entity Cash Fund in CDHPE repeals July 1, 2024, and the state treasurer is required to transfer all funding to CDHS.

Block grant administration. The BHA is required to formulate a comprehensive state plan for substance use disorder treatment and mental health services programs for the purpose of receiving designation to administer federal block grant funding

System-wide behavioral health grievance system. The BHA is required to create a behavioral health grievance system by July 1, 2024, with stakeholder input, and publish an annual grievance report. To facilitate this process, the BHA is required to execute formal data sharing agreements with, at a minimum, the Department of Health Care Policy and Financing (HCPF), CDPHE, and the Child Protection Ombudsman.

Part 2: Behavioral Health System Monitoring

Behavioral health performance monitoring. By July 1, 2024, the BHA is required to establish a performance monitoring system to track capacity and performance of all behavioral health providers; set minimum performance standards in collaboration with state agencies administering behavioral health programs; and collaborate with HCPF to establish data collection and reporting requirements. Compliance with these requirements must be enforced through the development of a universal contract for contracting with behavioral health providers, designation of behavioral health administrative service organizations, and licensing. The BHA is required to create public-facing system accountability platforms to provide performance reporting.

Formal agreements. By July 1, 2023, the BHA must collaborate with state agencies and tribal governments in order to implement formal agreements to provide the structure for implementing behavioral health standards. Agreements must be reviewed annually and updated as necessary, and may be expanded to other state agencies and branches of government as needed.

Universal contract. The BHA is required to collaborate with state agencies to develop a universal contract to be used when contracting for behavioral health services.

Behavioral Health System Plan. The BHA is required to prepare and submit an annual report, the Behavioral Health System Plan, to the legislature beginning October 1, 2022, and as part of its SMART Act hearing beginning January 1, 2023.

Part 3: Behavioral Health Safety Net System

Behavioral health safety net system and provider network. By July 1, 2024, the BHA, in collaboration with HCPF and CDPHE, must establish a behavioral health safety net system to ensure access to services, as outlined in the bill. The BHA must ensure that each state region includes a network of providers that offer the continuum of behavioral health services and provide technical assistance.

Part 4: Behavioral Health Administrative Services Organizations

Behavioral Health Administrative Services Organizations. By July 1, 2024, the BHA commissioner is required to establish regionally based Behavioral Health Administrative Services Organizations (BHASOs). At least once every five years, the commissioner must solicit applications from organizations to become BHASOs through a competitive bid process, following selection criteria outlined in the bill. The bill also outlines contract requirements, a process for stakeholder input, and reporting requirements.

Part 5: Behavioral Health Entities

Behavioral health entity licensing and penalties. Effective July 1, 2023, behavioral health licensing moves under the purview and enforcement of the BHA from CDPHE. The existing unclassified misdemeanor for any person or entity that is unlicensed, punishable by a criminal fine of \$50 to \$500, is relocated under BHA statutes. In addition to criminal fines, the BHA may assess a civil penalty of \$50 to \$100 per violation day, credited to the General Fund, for each day of the violation.

Minimum standards. By April 30, 2023, the BHA must promulgate rules regarding minimum standards for behavioral health entities including, but not limited to: consumer health and safety rules, service-specific requirements, inspection procedures and corrective actions, acceptable criminal histories for employment, and compliance timelines. The bill also outlines the criteria for the commissioner's approval or rejection of behavioral health safety net providers, hospitals, and other facilities. The BHA may promulgate rules regarding additional competencies for serving priority populations.

Inspections. The BHA is required to inspect all licensee facilities and, as in current law, must require all owners and managers to submit fingerprints to the Colorado Bureau of Investigation for a criminal history record check. Applicants for employment with a behavioral health entity are also required to submit to a criminal history record check paid for by the entity, not to be conducted more than 90 days prior to employment.

Fees and cash fund. By April 30, 2023, the BHA must establish a licensing fee schedule. Licensing fees are credited to the newly created Behavioral Health Licensing Cash Fund. The BHA may use fee revenue to provide or contract for the provision of technical assistance and education to behavioral health entities regarding legal compliance and regulatory and administrative functions. The money in the cash fund is subject to annual appropriation and remains in the fund at the end of any state fiscal year.

Licensure denials and revocations. The BHA may deny, suspend, revoke, or refuse to renew any license that is out of compliance with state law and BHA rule, following a hearing. The bill outlines intermediary restrictions that may be placed on a licensee, including civil fines up to \$2,000 in a calendar year.

Purchase of behavioral health services and mill levy allowance. The bill permits licensed providers to enter into agreements with courts, counties, municipalities, school districts, and other political subdivisions. To purchase behavioral health services, the bill permits boards of county commissioners and city and county councils to levy a tax not to exceed two mills upon real property subject to voter approval.

Mandatory reports. The bill outlines incident reporting that must be submitted to the BHA.

Part 6: Network Standards

State agency network standards requirements. All state agencies administering community-based behavioral health programs, including HCPF, must align all community-based behavioral health programs and networks with the behavioral health continuum of care, safety net services, and care coordination provider standards, and are required to have all providers sign the universal contract. While assessing and standardizing provider networks, the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA), is also directed to align those with the behavioral health continuum of care, safety net services, and care coordination provider standards.

Part 7: Behavioral Health Administration Advisory Council

The BHA Advisory Council is created to assist and advise the commissioner in the development and administration of the BHA.

Membership. The council consists of 15 to 20 members appointed by the commissioner and representing lived behavioral health experience, rural communities, each tribal government, county governments, persons with disabilities, the Judicial Department, behavioral health safety net providers, and nontraditional integrated primary care and behavioral health safety net providers.

Committees. The BHA may create committees within the advisory council to meet other state and federal board or advisory council requirements.

Part 8: Mental Health Programs

Veteran suicide prevention pilot program. The BHA is required to establish a Veteran Suicide Prevention Pilot Program to provide individualized treatment plans and services for 700 veterans in El Paso county and, subject to available appropriations, additional veterans in other areas of the state. The BHA must report on the program during its annual SMART Act hearing. The program repeals June 30, 2025.

Community Prevention and Early Intervention Programs

The bill transfers the following community prevention and early intervention programs—including employees, property, furniture, books, records, funds; and rules and orders—to the CDPHE effective July 1, 2022:

- alcohol and drug abuse prevention programs;
- contracted prevention and treatment programs for alcohol and drug abuse or substance use disorders;
- rural alcohol and substance abuse prevention and treatment program; and
- the Colorado Substance Use Disorders Prevention Collaborative.

Conforming Amendments

From Section 3 of the bill onward, the bill makes conforming amendments.

Background

House Bill 21-1097 required the CDHS to submit a plan for the creation of the BHA to the state legislature by November 1, 2021. This report and other information is available on the BHA implementation website at: <https://cdhs.colorado.gov/about-cdhs/featured-initiatives/behavioral-health-reform/change-management>.

The fiscal impacts included in this fiscal note were initially proposed as budget items from each agency. The Joint Budget Committee requested that appropriations for creating the BHA be included in this bill, rather than in the Long Bill, and thus are described in the fiscal note.

State Revenue

Beginning in FY 2023-24, about \$225,000 in licensing revenue currently received by the CDPHE will instead be received by the BHA in the newly created Behavioral Health Licensing Cash Fund. On net, no change in revenue is expected.

State Diversions and Transfers

The bill diverts \$174,250 in FY 2022-23 and \$161,850 in FY 2023-24 from the General Fund. This revenue diversion results from increased costs in the DOI in DORA, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

In addition, at the end of FY 2023-24, any unspent and unencumbered funds remaining in the Behavioral Health Entity Cash Fund in the CDPHE will be transferred to the Behavioral Health Licensing Cash Fund in the BHA. The potential amount of this transfer has not been estimated at this time.

State Expenditures

The bill increases state expenditures in four state departments—CDHS, CDPHE, HCPF, and DORA—on an ongoing basis, primarily from the General Fund, as well as the DOI Cash Fund and federal funds. These costs are shown in Table 2 and further detailed in Tables 3 and 4.

**Table 2
 Expenditures Under HB 22-1278**

	FY 2022-23	FY 2023-24
Department of Human Services (GF)	\$3,709,239 25.9 FTE	\$5,139,032 38.0 FTE
Department of Public Health and Environment (GF)	(\$41,992) (0.3 FTE)	\$90,896 0.9 FTE
Department of Health Care Policy and Financing (GF/FF)	\$578,731 4.5 FTE	\$597,819 5.0 FTE
Department of Regulatory Agencies (DOI Cash Fund)	\$174,250 2.0 FTE	\$161,850 2.0 FTE
Grand Total	\$4,420,229	\$5,989,598
Total FTE	32.1 FTE	45.9 FTE

¹ Pursuant to common policies, the CDHS' centrally appropriated costs are included in the bill's appropriation because they require more than 20.0 FTE.

Department of Human Services

Creation the BHA will increase General Fund costs in the CDHS by \$3.7 million and 25.9 FTE in FY 2022-23 and \$5.1 million and 38 FTE in FY 2023-24. As shown in Table 3 below, these costs include new staff in the BHA itself, as well as support and central services in the CDHS. Out year costs for the program will also be addressed through the annual budget process as implementation of the BHA proceeds. Costs during the first two years are discussed in more detail below by subject area.

Table 3
CDHS Expenditures Under HB 22-1278

Cost Components	FY 2022-23	FY 2023-24
Behavioral Health Administration – CDHS		
Personal Services	\$2,134,381	\$2,996,555
Operating Expenses	\$31,050	\$39,150
Capital Outlay Costs	\$179,800	\$6,200
Legal Services (1.0 FTE in Dept. of Law)	\$177,426	\$177,426
Employee Insurance and Supplemental Retirement	\$405,991	\$559,545
FTE – Personal Services	21.4 FTE	29.0 FTE
BHA Subtotal	\$2,928,648	\$3,778,876
Central Services – CDHS		
Personal Services	\$479,380	\$911,689
Operating Expenses	\$7,290	\$12,150
Capital Outlay Costs	\$55,800	-
Employee Insurance and Supplemental Retirement	\$88,121	\$172,007
FTE – Personal Services	4.5 FTE	9.0 FTE
DHS Central Subtotal	\$630,591	\$1,095,846
Other Operating – CDHS		
Travel and Contractors	\$150,000	\$10,000
Leased Space	-	\$92,400
Information Technology Indirect	-	\$161,910
DHS Other Operating Subtotal	\$150,000	\$264,310
Total	\$3,709,239	\$5,139,032
Total FTE	25.9 FTE	38.0 FTE

Behavioral Health Administration. Costs in the BHA include a number of new functional areas and duties, as described below.

- **Finance.** Finance includes a variety of functions including budgeting, accounting, contracting, grants, and provider rate analysis. Current OBH staff with related functions would transition to this functional area of the BHA. Of these functions, provider rate analysis represents a new responsibility not currently performed within Community Behavioral Health at CDHS. This new function is necessary for the BHA to understand and direct multi-payer fiscal policy and utilization trends and to make recommendations to changes in policy to promote improved access and quality. Other positions such as budget, accounting, and contracting would provide support. A total of 6.0 new FTEs will support these finance-related duties, including a chief financial officer (1.0 FTE), a rate and financial analyst (1.0 FTE), a contract administrator (1.0 FTE), accountants (2.0 FTE), and legislative/policy budget analysts (1.0 FTE).
- **Quality and standards.** In addition to the current staff at OBH that supports oversight of several aspects of the behavioral health system, the BHA will require additional resources focused on evaluating and promoting the use of clinical best practices statewide. Additionally, the BHA will have dedicated resources focused on ensuring managed care practices in the state support access to high-quality services. These resources would collaborate extensively with HCPF and DOI to ensure data-informed decision making and stakeholder input is reflected in state policy related to the oversight of managed care entities. A total of 6.0 new FTEs would support these quality and standard duties, including a director (1.0 FTE), program assistants (2.0 FTE), a clinical behavioral specialist (1.0 FTE), a compliance specialist (1.0 FTE), and a liaison (1.0 FTE).
- **Statewide programs, technical assistance, and innovation.** Building on the community behavioral health programs currently administered by OBH, the BHA will also add dedicated resources with a focus on workforce development, providing technical assistance throughout the behavioral health delivery system, and providing system navigation support for individuals that are unable to successfully connect to services through their current payer source. A total of 5.0 new FTEs would support these new initiatives, including a director (1.0 FTE), managers (2.0 FTE), liaison staff (1.0 FTE), and a community and economic development specialist (1.0 FTE).
- **Strategy, planning, and engagement.** This area primarily supports new state functions added to the BHA, including statewide grievance support (analysis, resolution, and future policy recommendations to remediate trends in grievances), stakeholder and community engagement to gather local and consumer perspectives, and interagency liaisons to ensure cohesive collaborative strategy development and implementation across the many agencies that interact with the behavioral health system. A total of 2.0 new FTEs would support these strategy, planning, and engagement functions, including a director (1.0 FTE) and a program assistant (1.0 FTE).
- **Data strategy and analytics.** The BHA will enhance data and analytics capabilities that currently exist in OBH and requires a data manager (1.0 FTE) to inform and support the statewide behavioral health data strategy.

- **Leadership and operations.** The BHA leadership team and critical support staff such as marketing and outreach, legal, and administrative support for the Advisory Council are included in this area. A total of 9.0 new FTEs are included for leadership and operations, including the commissioner (1.0 FTE), the deputy commissioner of children and youth services (1.0 FTE), an operations director (1.0 FTE), a communications manager (1.0 FTE), a legislative liaison (1.0 FTE), a community engagement specialist (1.0 FTE), an advisory council coordinator (1.0 FTE), a marketing and communications specialist (1.0 FTE), and a human resources specialist (1.0 FTE).
- **Legal services.** The BHA requires 1,800 hours of legal services per year provided by the Department of Law at the blended rate of \$98.57. The Department of Law requires 1.0 FTE for this work.

Other CDHS costs. The CDHS will have costs for additional central services and other operating expenses to support the BHA, as describe below.

- **CDHS central services staff support.** As the BHA will be housed in CDHS initially and will be supported with some central CDHS functionality, additional staff in the CDHS are needed to support the new BHA. The additional functions span a variety of functions, from human resources support to contracting. A total of 9.0 new FTEs are included in the CDHS Office of Administrative Solutions for this purpose, including human resources specialists (2.0 FTE), a performance management analyst (1.0 FTE), an auditor (1.0 FTE), a project manager (1.0 FTE), a program administrator (1.0 FTE), a program manager (1.0 FTE), a budget analyst (1.0 FTE), and a marketing and communications specialist (1.0 FTE).
- **Other operating.** Other operating costs for CDHS includes travel costs estimated at \$10,000 ongoing; as well as one-time contractors in FY 2022-23, including a stakeholder engagement contractor estimated at \$35,000 and a program alignment contractor estimated at \$60,000. In FY 2023-24, the fiscal note includes leased space for half of the staff at a rate of \$6,600 per staff and indirect technology costs for all staff estimated at \$161,445.

Other Agencies

In addition to CDHS, the bill impacts costs in the CDPHE, HCPF, and DOI beginning in FY 2022-23, as shown in Table 4 and detailed below. Costs in FY 2024-25 will depend on implementation decisions by the BHA and will be addressed through the annual budget process.

Table 4
Other Department Expenditures Under HB 22-1278

Cost Components	FY 2022-23	FY 2023-24
Department of Public Health and Environment (GF)		
Personal Services	(\$30,110)	\$62,112
Operating Expenses	-	\$1,215
Centrally Appropriated Costs ¹	(\$11,882)	\$27,569
FTE – Personal Services	(0.3 FTE)	0.9 FTE
CDPHE Subtotal	(\$41,992)	\$90,896
Department of Health Care Policy and Financing (GF/FF Split)		
Personal Services	\$455,048	\$496,416
Operating Expenses	\$6,750	\$6,750
Capital Outlay Costs	\$31,000	\$0
Centrally Appropriated Costs ¹	\$85,933	\$94,653
FTE – Personal Services	4.5 FTE	5.0 FTE
HCPF Subtotal	\$578,731	\$597,819
Division of Insurance (DOI Cash Fund)		
Personal Services	\$127,666	\$127,666
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	-
Centrally Appropriated Costs ¹	\$31,484	\$31,484
FTE – Personal Services	2.0 FTE	2.0 FTE
DOI Subtotal	\$174,250	\$161,850
Total	\$710,989	\$850,565
Total FTE	6.2 FTE	7.9 FTE

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

Department of Public Health and Environment. In FY 2022-23, the bill moves Phase 2 rulemaking authority from CDPHE to the BHA for the substance use disorder portion of the original licensing of behavioral health entities, created by House Bill 19-1237; therefore, a one-time reduction of 0.4 FTE for a policy advisor is included. This reduction is offset by an additional 0.1 FTE for a contract administrator in FY 2022-23, and continuing in future years. For FY 2023-24 and future years, the CDPHE will require 0.8 FTE for a health professional for facility surveying and complaints.

Health Care Policy and Financing. HCPF requires a total of 5.0 FTE beginning in FY 2022-23 for two behavioral health specialists (2.0 FTE), including one to coordinate adult care and the other to coordinate youth care; a regulatory specialist (1.0 FTE) to ensure that all changes specified in the bill and resulting from BHA directives are in alignment with existing state and federal law pertaining to HCPF; a rate analyst (1.0 FTE) to assist the BHA in establishing a Behavioral Health Safety Net System and to assist the BHA and Managed Care Entities in collecting information to form their recommendations for alternative payment models; and a data and research analyst (1.0 FTE) to assist the BHA in the data collection and reporting requirements.

Division of Insurance. The DOI requires 2.0 FTE beginning in FY 2022-23, including one policy advisor who will be responsible for data and policy analysis to support the evaluation and, potentially, coordination with regulated commercial payers, and a rate and financial analyst to coordinate complaints and grievances from the BHA related to providers regulated by the DOI.

Centrally appropriated costs. Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs, which include employee insurance and supplemental employee retirement payments for the CDHS, are detailed in Table 3. For the remaining departments, centrally appropriated costs associated with the bill will be addressed through the annual budget process, as shown in Table 4.

Transfer of Funding Between State Agencies

The bill requires that \$8,837,039 and 11.2 FTE for prevention services be moved from the CDHS to CDPHE, resulting in no net change in expenditures. This includes \$47,167 General Fund, \$608,624 Marijuana Tax Cash Fund, and \$8,181,248 reappropriated funds.

Other Budget Impacts

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 beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by amounts shown in Table 1, which decreases the amount of General Fund available for other purposes.

Local Government

To the extent that counties and city and counties levy a tax to purchase behavioral health services, revenue and expenditures will increase in those local governments.

Effective Date

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

State Appropriations

In total, the bill requires \$4.3 million in appropriations in FY 2022-23 to multiple agencies, as described below.

Department of Human Services. The CDHS requires the following General Fund appropriations, as broken down in Table 3:

- \$2,928,648 and 21.4 FTE for staffing, operating, and related expenses in the Behavioral Health Administration, of which \$177,426 is reappropriated to the Department of Law for legal services with an additional 1.0 FTE;
- \$630,591 and 4.5 FTE for the Office of Administrative Solutions for central services and support; and
- \$150,000 for other operating expenses, including contractors and travel expenses.

Department of Public Health and Environment. The CDPHE requires a reduction in General Fund appropriations of \$30,110 and a reduction of 0.3 FTE.

Health Care Policy and Financing. HCPF requires an appropriation of \$492,798, split evenly between General Fund and federal funds, and 4.5 FTE.

Department of Regulatory Agencies. DORA requires an appropriation of \$142,766 from the Division of Insurance Cash Fund, and 2.0 FTE.

Transfer of funding from CDHS to CDPHE. Lastly, the bill requires an increase in appropriations to the CDPHE of \$8,837,039 and 11.2 FTE for prevention services, and a corresponding decrease to the CDHS. This appropriation should include \$47,167 General Fund, \$608,624 Marijuana Tax Cash Fund, and \$8,181,248 reappropriated funds.

State and Local Government Contacts

Governor	Health Care Policy and Financing
Human Services	Information Technology
Public Health and Environment	Law
Regulatory Agencies	