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Fiscal Note

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Prime Sponsors: Sen. Zenzinger; Cooke Bill Status: Senate HHS
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Bill Topic: LICENSE SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES

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

This bill establishes a regulatory structure for supplemental health care staffing agencies in the Department of Public Health and Environment. The bill increases state expenditures and revenue beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$393,627 to the Department of Public Health and Environment.

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

Table 1
State Fiscal Impacts Under SB 22-210

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), and Other Budget Impacts (TABOR Refund, General Fund Reserve).

Summary of Legislation

The bill establishes a regulatory structure for supplemental health care staffing agencies in the Department of Public Health and Environment.

Licensing. By April 1, 2023, an individual conducting or maintaining a supplemental health care staffing agency (staffing agency) is required to obtain a license from the Department of Public Health and Environment (CDPHE). Failure to obtain a license is a civil infraction and a civil penalty may be assessed by the CDPHE for each day of violation. Among its provisions, the bill requires:

- each location of a staffing agency to follow certain procedures for being licensed by the Board of Health (board);
- the CDPHE to investigate and approve each application for an initial or renewal license, and prohibits issuance or renewal of a license in the case of certain criminal history or other conduct of the controlling person that may pose a risk to residents of a health care facility, as determined by the board by rule;
- each controlling person for a staff agency to undergo a fingerprint-based background check;
- the CDPHE to provide mailed notice to the applicant in the case of a license denial; and
- the board to establish, by rule, a schedule of license fees sufficient to meet the CDPHE's direct and indirect administration costs, which may be used to provide compliance-related technical assistance and education to staffing agencies.

A license is effective for one year, except in certain circumstances. The CDPHE may impose intermediate restrictions or conditions on the staffing agency's license as determined by the board by rule, and must provide timely notice of the restrictions or conditions.

Minimum standards. The board is required to promulgate rules establishing minimum standards for the operation of staffing agencies by January 1, 2023, including requirements regarding licensing and training standards for health-care workers placed in a health-care facility, and must promulgate rules to define a process for the CDPHE to receive and investigate complaints relating to compliance.

Reporting. Beginning with the quarter ending June 30, 2023, and quarterly thereafter, each staffing agency must submit a report to the CDPHE concerning the services provided to a health-care facility participating in Medicare or Medicaid. The information is subject to CORA and must be posted on the CDPHE's website. The CDPHE may assess a civil penalty, revoke a staffing agency's license or fail to renew the staffing agency's license for failure to provide the information, as outlined in the bill.

By December 31, 2023, the CDPHE, after conducting a stakeholder process, must submit a report to the legislature, the Joint Budget Committee, and the Governor concerning recommendations for determining caps and other limitations on service rates and the amount that a staffing agency may charge health-care facilities annually. This requirement is repealed July 1, 2024.

Fund. The bill creates the Supplemental Health Care Staffing Agency Cash Fund consisting of fee revenue and all interest and income derived from the deposit and investment of money in the fund, including penalties. Subject to annual appropriation by the General Assembly, CDPHE may expend money from the fund to carry out its duties under this article.

Assumptions

The fiscal note assumes that there are 113 staffing agency locations requiring licensure under the bill and that each staffing agency has 3 controlling persons who will require a background check.

State Revenue

The bill increases state cash fund revenue by \$546,977 in FY 2023-24, and by around \$534,000 per year thereafter from licensing fees and criminal history background checks. These impacts are discussed below.

Fee impact on staffing agencies. 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 Department of Public Health and Environment based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee. The fiscal note assumes that license fees will be collected beginning in FY 2023-24, as licensing will not be implemented until the end of FY 2022-23. The table below identifies the fee impact of this bill. To the extent that staffing agencies are assessed civil penalties, funds in the Supplemental Health Care Staffing Agency Cash Fund will increase. Civil penalty revenue is subject to TABOR.

Fee impact on controlling persons of staffing agencies. This bill increases state cash fund revenue from fingerprint-based criminal history background checks to the CBI Identification Unit Cash Fund in the DPS by \$13,391 in FY 2023-24. This assumes there will be 339 checks conducted in the year that licensing begins. 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, meaning \$9,577 is subject to TABOR. The background check is required only upon initial licensure; to the extent controlling persons change or new staffing agencies are formed, a minimal amount of background check revenue will continue in future years.

**Table 2
 Fee Impact on SB 22-210**

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2023-24	Background Check Fee	\$39.50	339	\$13,391
	Initial License	\$4,722	113	\$533,586
FY 2023-24 Total				\$546,977

State Expenditures

The bill increases state expenditures in the Department of Public Health and Environment by \$440,058 in FY 2022-23 from the General Fund, and \$553,563 in FY 2023-24 from the Supplemental Health Care Agency Cash Fund. It will also increase workload in the Department of Public Safety and the Judicial Department. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under SB 22-210**

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$186,075	\$297,694
Operating Expenses	\$3,510	\$4,995
Capital Outlay Costs	\$18,600	-
Legal Services	\$59,142	\$73,928
Technology Costs	\$126,300	\$23,459
Centrally Appropriated Costs ¹	\$46,431	\$153,487
FTE – Personal Services	2.2 FTE	3.7 FTE
FTE – Legal Services	0.3 FTE	0.4 FTE
Total Cost	\$440,058	\$553,563
Total FTE	2.5 FTE	4.1 FTE

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

Department of Public Health and Environment. The CDPHE will have costs to establish and then administer the new licensing program, as described below.

- **Staffing.** In FY 2022-23, the CDPHE requires 2.2 FTE to engage in a stakeholder process and rule development, and other tasks associated with starting the new program. In FY 2023-24 and future years, a total of 3.7 FTE are required to support application completion and processing, ensure that applicants meet the minimum requirements, conduct data analysis and reporting, recommend and report on rate caps, receive and investigate complaints, facilitate informal dispute resolution, and provide program oversight. First-year costs assume an October 1, 2022, start date and personal services reflect the General Fund paydate shift.
- **Legal services.** In FY 2022-23, the CDPHE requires 600 hours of legal services for assistance with rule making and program implementation. In FY 2023-24 and ongoing, 750 hours will be required to assist with program administration, and representation of the CDPHE in the case of regulatory action. Legal services are provided by the Department of Law at a rate of \$98.57 per hour.
- **Technology costs.** In FY 2022-23 only, \$126,300 in information technology services will be required to modify the Colorado Health Facilities Resource Interactive to incorporate the new licensing type. In FY 2023-24 and ongoing, \$23,259 will be required for system maintenance.

Department of Public Safety. The bill increases workload in the Department of Public Safety to conduct additional fingerprint-based criminal history background checks. Given the small number of background checks, this workload will be minimal and addressed through the annual budget process as necessary. Costs for conducting background checks are paid from the CBI Identification Unit Cash Fund.

Judicial Department. Workload in the Judicial Department may minimally increase in the trial courts due to appeals of administrative action by the CDPHE, and associated state revenue from court fees may increase minimally. The number of cases are expected to be minimal and no additional appropriations are required. State revenue from court fees is subject to TABOR.

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 increase the amount of state revenue required to be refunded to taxpayers by \$543,163 in FY 2023-24. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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.

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 \$59,044 in FY 2022-23 only, which will decrease the amount of General Fund available for other purposes.

Effective Date

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

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of \$393,627 to the Department of Public Health and Environment and 2.2 FTE. Of this amount, \$59,142 is reappropriated to the Department of Law with an additional 0.3 FTE, and \$117,942 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Health Care Policy and Financing
Information Technology
Law
Regulatory Agencies

Human Services
Judicial
Public Health and Environment
Treasury