HB 20-1263

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 20-0445	**Date:**	July 16, 2020
Prime Sponsors:	Rep. Caraveo; Pelton Sen. Gonzales	**Bill Status:**	Deemed Lost
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Bill Topic: **ELIMINATE SUB-MINIMUM WAGE EMPLOYMENT**

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☐ Local Government
- ☐ Statutory Public Entity

The bill would have phased out sub-minimum wage employment for private businesses; created a buy-in option for the Developmental Disabilities Medicaid waiver program; and made additional changes to the services offered through the waiver program. The bill would have increased state revenue beginning in FY 2021-22, and would have increased state expenditures beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, the bill would have required an appropriation of $589,449 to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the introduced bill as amended by the House Business Affairs and Labor Committee. 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 20-1263

		FY 2020-21	FY 2021-22	FY 2022-23
Revenue	Cash Funds	-	$11,502	$11,502
	Total	**-**	**$11,502**	**$11,502**
Expenditures	General Fund	$154,948	($1,143,722)	($578,881)
	Cash Funds	$8,022	$1,260,684	$1,261,392
	Federal Funds	$426,479	$67,350	$632,899
	Centrally Appropriated	$38,984	$42,338	$42,338
	Total	**$628,433**	**$226,650**	**$1,357,747**
	Total FTE	**2.4 FTE**	**2.6 FTE**	**2.6 FTE**
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

The bill phases out sub-minimum wage employment for private businesses; creates a buy-in option for the Developmental Disabilities Medicaid waiver program; and makes additional changes to the services offered through the waiver program, as discussed below.

Employer phase-out of sub-minimum wage. The bill phases out sub-minimum wage employment for employers that hold a special certificate from the U.S. Department of Labor that authorizes employers to pay employees less than minimum wage if their earning capacity is impaired by age, physical or mental deficiency, or injury.

Employers with a special certificate as of June 30, 2020, may continue to pay qualifying employees sub-minimum wages until June 30, 2024. These employers must also submit a transition plan to the Department of Labor and Employment (CDLE), by June 30, 2021, that describes the employer's plans to phase out sub-minimum wage employment and support their sub-minimum wage employees in pursuing competitive employment, supported employment, or integrated community activities related to each individual's employment goals. The plan must include measurable benchmarks, be informed by evidence-based practices and effective employment models, and be updated annually until the employer is no longer paying sub-minimum wages. CDLE must collaborate with employers to create a process for approving transition plans.

Employers without a special certificate as of June 30, 2020, may not employ individuals for less than the minimum wage after that date. Regardless of special certificate, employers may not hire any new employees at sub-minimum wages after June 30, 2020. On and after July, 1 2024, an employer cannot pay an employee less than the federal or state minimum wage.

Recommendations from the Employment First Advisory Partnership. The bill requires the Employment First Advisory Partnership to develop actionable recommendations for addressing barriers to phasing out sub-minimum wage employment, and to deliver these recommendations to the Joint Budget Committee and the business committees of the General Assembly by April 1, 2021. The recommendations must address:

- payment reform for employment-related services;
- adequate reimbursement rates for employment-related services to ensure high-quality support services;
- unit caps on employment-related services; and
- federal Medicaid waiver and state regulatory barriers.

Federal Medicaid waiver approval for competitive employment and buy-in programs. By January 1, 2022, HCPF must seek federal approval for additional Medicaid waiver services for adults with developmental or intellectual disabilities to support their ability to gain competitive employment. These services include:

- support for individuals to develop social capital and skills related to their employment goals;
- support to provide line-of-sight supervision; and
- ongoing benefits counseling to support higher earnings.

The bill requires HCPF to remove certain services from the service plan authorization limits, including individual job coaching and individual job development.

The bill also requires HCPF to seek federal authorization to implement a buy-in program for the Developmental Disabilities waiver by January 1, 2021, and must implement the buy-in program within three months of receiving approval. Services currently included in the developmental disabilities waiver program include:

- behavioral services;
- day habilitation services;
- dental;
- home delivered meals;
- non-medical transportation;
- peer mentorship;
- prevocational services;
- residential habilitation services and supports;
- specialized medical equipment and supplies;
- supported employment;
- transition set up; and
- vision.

Assumptions

The fiscal note assumes that HCPF will receive federal authorization for the waivers required under the bill, including the addition of competitive employment services to the developmental disabilities waiver and the developmental disabilities waiver buy-in program.

State Revenue

The bill will increase state revenue to the Medicaid Buy-In Cash Fund in HCPF by an estimated $11,502 beginning in FY 2021-22 from individuals paying premiums to participate in the newly created buy-in program for the Medicaid developmental disabilities waiver. This assumes 28 people will pay $410.80 annually to buy into the program. Additional revenue from premium payments are subject to TABOR.

State Expenditures

On net, the bill increases state expenditures by $628,433 and 2.4 FTE in FY 2020-21, $226,650 and 2.6 FTE in FY 2021-22, and by $1,357,747 and 2.6 FTE in FY 2022-23. Expenditures are in HCPF and the CDLE, and paid from the General Fund, cash funds, and federal funds. These amounts are shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 20-1263

	FY 2020-21	FY 2021-22	FY 2022-23
Department of Health Care Policy & Financing			
Personal Services	$131,544	$143,502	$143,502
Operating Expenses	$2,700	$2,700	$2,700
Capital Outlay Costs	$12,400	-	-
Computer Programming	$396,332	-	-
Developmental Disabilities Buy-In	-	($5,751)	($5,751)
Developmental Disabilities Services Expansion	-	-	$242,175
Service Plan Authorization Limit Changes	-	-	$888,922
Centrally Appropriated Costs*	$29,433	$32,463	$32,463
HCPF (Subtotal)	**$572,409**	**$172,914**	**$1,304,011**
HCPF FTE	**1.8 FTE**	**2.0 FTE**	**2.0 FTE**
Department of Labor and Employment			
Personal Services	$39,463	$43,051	$43,051
Operating Expenses	$810	$810	$810
Capital Outlay Costs	$6,200	-	-
Centrally Appropriated Costs*	$9,551	$9,875	$9,875
CDLE (Subtotal)	**$56,024**	**$53,736**	**$53,736**
CDLE FTE	**0.6 FTE**	**0.6 FTE**	**0.6 FTE**
Total Cost	**$628,433**	**$226,650**	**$1,357,747**
Total FTE	**2.4 FTE**	**2.6 FTE**	**2.6 FTE**

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

Department of Health Care Policy and Financing. Under the bill, HCPF will have increased costs for staff, information technology, and services, as discussed below.

- *Personal services.* HCPF will require 2.0 FTE Administrator to perform the following tasks required by the bill: implement and manage the new employment-related services under the developmental disabilities waiver; complete the regulatory process to move the existing individual job coaching and development services outside of the service plan authorization limits and eliminate the unit caps for these services; manage the addition of the buy-in program to the developmental disabilities waiver; and engage with stakeholders, including providers, case management agencies, and members. Staff funding is 50 percent General Fund and 50 percent federal funds, and first year costs are prorated for the General Fund paydate shift.

- *Computer programming.* The bill requires changes to both the Colorado Benefits Management System (CBMS) and the Medicaid Management Information System (MMIS) to implement the new buy-in program for the developmental disabilities waiver. CBMS programming cannot be achieved within existing CBMS pool hours and will cost $125,826 (assuming 939 hours of programming at a rate of $134 per hour). CBMS programming costs qualify for a blended 87.19 percent federal financial participation. MMIS programming will cost $270,506 (assuming 2,105 hours of programming at an average rate of $129 per hour). MMIS programming costs qualify for a 90 percent federal funding match.

- *Developmental disabilities buy-in.* Expenditures in HCPF will increase to seek federal authorization to create a buy-in program for the developmental disabilities waiver and to implement the buy-in program. HCPF will begin enrolling individuals in the buy-in program starting in FY 2021-22. The creation of the buy-in program is expected to shift participants from the developmental disabilities waiver program to the buy-in program. The developmental disabilities waiver program is funded through the General Fund, however the buy-in program will be funded through the Healthcare Affordability and Sustainability (HAS) Fee Cash Fund. Premiums for the buy-in program are not eligible for the 50 percent federal funds match. As such, the shift to a buy-in program with premiums results in a net General Fund and federal funds decrease, and a HAS cash fund increase beginning in FY 2021-22.

- *Employment services.* The bill requires HCPF to seek federal approval to add additional employment-related services to the developmental disabilities waiver program including: benefit counseling, line of sight supervision (to replace individual job coaching when appropriate), and career exploration services. The addition of these services will increase General Fund and federal fund expenditures in FY 2022-23 by $242,175 to pay for the additional services used by program participants.

- *Service plan authorization limit changes.* The bill removes individual job coaching and individual job development services from the service plan authorization limit (SPAL) under the developmental disabilities Medicaid waiver program. By moving these services outside the SPAL, case managers can authorize additional services without the need to balance an individual's SPAL by cutting other services. This change is expected to drive additional General Fund and federal expenditures as individuals will be able to utilize additional services.

Department of Labor and Employment. The bill will increase workload in the CDLE to respond to additional complaints and inquiries from the public and other state agencies regarding the change in law. CDLE will require an additional 0.6 FTE beginning in FY 2020-21 to accomplish these tasks. Standard operating and capital outlay costs are included. First year costs are prorated for the General Fund paydate shift.

Other state agencies. In FY 2020-21, the bill increases state workload for the Employment First Advisory Partnership, which includes representation from HCPF, the CDLE, the Department of Education, the Department of Higher Education, and the Department of Human Services to make recommendations related to eliminating sub-minimum wage employment. This increase in workload 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 $38,984 in FY 2020-21 and $42,338 in FY 2021-22 and FY 2022-23.

TABOR refund. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Effective Date

The bill was deemed lost on June 16, 2020.

State Appropriations

For FY 2020-21, the bill requires an appropriation of $589,449 as follows:

- Department of Health Care Policy and Financing - 2.0 FTE
  - General Fund - $108,475;
  - Health Care Affordability and Sustainability Fee Cash Fund - $3,869;
  - Children's Basic Health Trust Fund Cash Fund - $4,151; and
  - Federal funds - $426,479.

- Department of Labor and Employment - 0.6 FTE
  - General Fund - $56,024

State and Local Government Contacts

Education	Health Care Policy and Financing	Higher Education
Human Services	Information Technology	Labor