



Legislative Council Staff
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Final Fiscal Note

Drafting Number: LLS 23-0840 Date: July 5, 2023
Prime Sponsors: Sen. Winter F.; Will Rep. Gonzales-Gutierrez Bill Status: Signed into Law
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Bill Topic: BOARD OF NURSING REGULATE CERTIFIED MIDWIVES

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

The bill requires the Board of Nursing in the Department of Regulatory Agencies to regulate certified midwives. The bill increases state expenditures starting FY 2023-24, and increases state revenue starting in FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$15,393 to the Department of Public Health and Environment.

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

Table 1
State Fiscal Impacts Under SB 23-167

Table with 5 columns: Category, Sub-category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. 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

Starting July 1, 2024, the bill requires midwives who are certified by the American Midwifery Certification Board to obtain a license from the State Board of Nursing in the Department of Regulatory Agencies (DORA) to practice as a certified midwife. This licensure also requires payment of a required fee and submission of a criminal history record check. Once licensed, a certified midwife can apply to obtain provisional and full prescriptive authority if certain experience and liability insurance requirements are met.

The bill also adds certified midwives to the list of professions subject to a class 2 misdemeanor for practicing without an active license and makes it a class 6 felony for a person to intentionally misrepresent themselves as a licensed certified midwife. The bill also authorizes certified midwives to report data into the immunization tracking system and be a medical supervisor in clinical settings.

The bill expands the duties of the State Board of Nursing to include the regulation of certified midwives, including enforcing disciplinary actions and investigating complaints. It also adds a member to the State Board of Nursing and updates its membership requirements to include a certified midwife.

Background and Assumptions.

Currently, direct-entry midwives and certified nurse midwives are regulated by DORA. Certified midwives are not currently licensed by the State Board of Nursing in Colorado. The fiscal note assumes that around 175 individuals will be licensed as certified midwives in FY 2024-25, and around 25 per year thereafter will enter the profession.

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 creates a new factual basis for an existing crime. Using Judicial Department data, the following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill adds practicing as a certified midwife without a license to the list of unauthorized practices, a class 2 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of unauthorized practice of acupuncturists as a comparable crime. From FY 2019-20 to FY 2021-22, one offender (white, male) has been sentenced and convicted for this existing offense.

The bill also makes fraudulently representing oneself and practicing as a licensed certified midwife a class 6 felony. To form an estimate of the prevalence of this new crime, the fiscal note analyzed the existing offense of practicing medicine as a physician assistant or anesthesiologist assistant using false or forged evidence to obtain a license as a comparable crime. From FY 2019-20 to FY 2021-22, zero offenders have been sentenced and convicted for this existing offense.

Assumptions. Based on the low number of sentences for each offense, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note.

State Revenue

State revenue to the Professions and Occupations Cash Fund in DORA is estimated to increase by \$70,000 in FY 2024-25 and \$10,000 in FY 2025-26. Revenue to the Professions and Occupation Cash Fund is subject to the state’s TABOR limit.

Fee impact on certified midwives. 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, based on the assumed costs and regulated population in this fiscal note, which will result in fees of \$400 for a two-year license for certified midwives. However, actual fees will be set administratively by DORA based on cash fund balance, program costs, and the number of persons seeking licensure under the bill. The table below identifies the fee impact of this bill through FY 2026-27

**Table 2
 Fee Impact on Certified Midwives**

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2023-24		-	-	-
FY 2024-25	Initial License	\$400	175	\$70,000
	FY 2024-25 Total			\$70,000
FY 2025-26	Initial License	\$400	25	\$10,000
	FY 2025-26 Total			\$10,000
FY 2026-27	Initial License	\$400	25	\$10,000
	Renewal	\$400	175	\$70,000
	FY 2026-27 Total			\$80,000

Fee impact on direct-entry midwives and certified nurse midwives. Preliminarily, the fiscal note assumes that certified midwives under the bill will be new professionals in the state who have relevant experience and education and who will seek a license under the bill. However, some people who qualify for the new license type may currently be practicing as a direct entry-midwife. Others who are certified nurse midwives may choose to switch to the new license if it allows them to practice midwifery while no longer meeting other requirements of being a registered nurse. On an ongoing basis, some persons interested in practicing as a midwife may forego becoming a certified nurse midwife once the new license type is available. To the extent midwives shift to the new license type away from these other licenses, the population of direct entry midwives and certified nurse midwives may decrease, which could result in higher fees on the remaining population to cover the costs of regulation. These impacts cannot be estimated at this time. The fiscal note may be updated if additional information on the interaction between the three types of midwife credentials become available.

Background check fees. The bill will also increase cash fund revenue to the Department of Public Safety by a minimal amount for additional background checks for less than 50 certified midwife applicants starting in FY 2024-25. The current fee for a finger-print based background check is \$39.50, of which \$12 is passed through to the federal government.

State Expenditures

In FY 2023-24, the bill increases state expenditures in Department of Public Health and Environment (CDPHE) by about \$19,000, paid from the General Fund. After implementation of the new license type, the bill increases expenditures in DORA by \$57,000 in FY 2024-25 and \$36,000 in FY 2025-26 and future years, paid from the Professions and Occupations Cash Fund. Expenditures are shown in Table 3 and detailed below. In addition, workload to the Judicial Department and Department of Public Safety will increase, as described below.

**Table 3
Expenditures Under SB 23-167**

	Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Department of Regulatory Agencies			
Personal Services	-	\$10,939	\$5,470
Legal Services	-	\$42,296	\$26,435
Board Member Reimbursement	-	\$900	\$900
Consultant Costs	-	-	\$1,200
Centrally Appropriated Costs ¹	-	\$3,227	\$1,614
FTE – Personal Services	-	0.2 FTE	0.1 FTE
FTE – Legal Services	-	0.3 FTE	0.2 FTE
DORA Subtotal	-	\$57,362	\$35,619
Dept. of Public Health & Environment			
Personal Services	\$15,393	-	-
Centrally Appropriated Costs ¹	\$3,645	-	-
FTE – Personal Services	0.2 FTE	-	-
CDPHE Subtotal	\$19,038	-	-
Total	\$19,038	\$57,362	\$35,619
Total FTE	0.2 FTE	0.5 FTE	0.3 FTE

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

Department of Regulatory Agencies. Starting in FY 2024-25, DORA will have increased expenditures to regulate certified midwives, as described below.

- **Staffing costs.** DORA will require 0.2 FTE in FY 2024-25 and 0.1 FTE in following fiscal years to create application forms and update interfaces, provide outreach to certified midwife licensees, assist the board in promulgating rules, respond to complaints, process applications, and answer any questions when it comes to licenses. Any initial workload occurring in FY 2023-24 is assumed to be absorbable.
- **Legal services.** DORA will require 150 hours of legal services for rulemaking in FY 2024-25 only, and 250 hours annually for legal counsel regarding complaints and investigations starting in FY 2024-25. This assumes there will be one additional case referred to the Attorney General Office every year. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.
- **Consultant costs.** Starting in FY 2025-26, expenditures will increase for DORA to contract with an expert consultant to assist in cases that enter formal investigation. The fiscal note assumes that 20 hours of contract work is required annually at \$60 per hour.
- **Board member reimbursement.** Starting in FY 2024-25, expenditures in DORA will increase to provide per diem and travel reimbursements for an additional board member. The fiscal note assumes a per diem of \$50 per day for 16 meetings a year, and mileage and travel costs of \$100 per year.

Department of Public Health and Environment. In FY 2023-24 only, CDPHE will require 0.2 FTE to update regulations for birth centers and Emergency Medical Services to allow certified midwives to provide medical supervision in clinical settings, as allowed by the bill. This includes preparing, facilitating, and providing subject matter expertise for stakeholder and board hearings.

Workload will also increase to provide onboarding to certified midwives reporting immunization and exemption data into the Immunization Information System. The fiscal note assumes this workload is absorbable; however, depending on the number of certified midwives that require onboarding and impact on workload, additional funding may be required and will be requested through the budget process.

Judicial Department. Starting in FY 2024-25, workload to the trial courts may increase to the extent certified midwives appeal any disciplinary decisions by the Board. The fiscal note assumes any workload will be minimal and does not require a change in appropriations.

Department of Public Safety. The bill increases workload for the Department of Public Safety to handle additional criminal history checks. No change in appropriations is required.

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 the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. 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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Effective Date

The bill was signed into law by the Governor on May 25, 2023, and takes effect on August 7, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires and includes a General Fund appropriation of \$15,393 to the Department of Public Health and Environment, and 0.2 FTE.

State and Local Government Contacts

Human Services

Public Health and Environment

Information Technology

Public Safety

Law

Regulatory Agencies