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Final Fiscal Note

Drafting Number:	LLS 22-0004	Date:	September 14, 2022
Prime Sponsors:	Sen. Danielson Rep. McCormick; Lindsay	Bill Status:	Signed into Law
		Fiscal Analyst:	Annie Scott 303-866-5851 Annie.Scott@state.co.us

Bill Topic: **INCREASING SAFETY IN ASSISTED LIVING RESIDENCES**

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

This bill establishes new requirements for assisted living residences, directs the State Board of Health to promulgate rules, and specifies enforcement action that can be taken against these residences. The bill increases state expenditures and may increase revenue on an ongoing basis beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$74,509 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 22-154**

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-	-
Expenditures	General Fund	\$74,509	\$135,653	\$237,536
	Centrally Appropriated	\$7,151	\$24,862	\$38,637
	Total Expenditures	\$81,660	\$160,515	\$276,173
	Total FTE	0.3 FTE	1.4 FTE	2.3 FTE
Transfers		-	-	-
Other Budget Impacts	General Fund Reserve	\$11,176	\$20,348	\$35,630

Summary of Legislation

The bill establishes new requirements for assisted living residences (ALRs), directs the State Board of Health to promulgate rules, and specifies enforcement action that can be taken against these residences, including an increase in penalties that may be levied. The Colorado Department of Public Health and Environment (CDPHE) licenses and regulates ALRs.

Involuntary discharge notice and grievance process. An ALR must provide specific written notice of an involuntary discharge of a resident at least 30 calendar days in advance of the discharge to the resident, or their designee, except in certain circumstances, and provide the notice to the state long-term care and local ombudsmen. A resident who has been given notice of an involuntary discharge, or their designee, has the right to file a grievance to challenge the discharge with the ALR. The designee of the ALR is required to provide a response, and if the resident, or their designee, are unsatisfied with the response from the ALR, the decision may be appealed to the CDPHE. An ALR is prohibited from retaliating against a resident for the filing of a grievance or appeal. If the reason for the involuntary discharge is nonpayment and it is determined that the discharge was in error, the ALR is required to allow the resident to return. If any of the parties are dissatisfied with the findings of the CDPHE, a hearing may be requested.

State Board of Health. The State Board of Health in the CDPHE must promulgate rules, in conjunction with the Assisted Living Residences Advisory Committee, as applicable, including those that:

- implement the grievance process outlined under the bill by January 1, 2024;
- implement minimum education and experience standards for ALR administrators by January 1, 2024;
- require a check of the Colorado Adult Protective Services data system for all employees;
- require compliance with laws concerning involuntary discharge of a resident; and
- establish a range of fines for violations by January 1, 2024, after receiving recommendations from the CDPHE.

Fines and licensing. The bill creates a \$10,000 limit per violation on civil fines, except in certain circumstances. The CDPHE is allowed to impose intermediate restrictions or conditions on an ALR, and suspend, revoke or fail to renew a license, as specified in the bill.

Assumptions

This fiscal note assumes that State Board of Health rule-making will be completed in calendar year 2023, and that the subsequent provisions of the bill cannot be implemented until this is complete. In addition, this fiscal note assumes that, annually;

- 1,300 individuals will receive notices of involuntary discharge;
- 225 individuals will appeal the involuntary discharge; and
- three cases will require a hearing.

State Revenue

To the extent that ALRs are assessed fines or penalties, funds in the Assisted Living Residence Improvement Fund will increase. Fee revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures in the CDPHE by \$81,660 in FY 2022-23, \$160,515 in FY 2023-24, and \$276,173 in FY 2024-25 from the General Fund. Although the CDPHE receives fees for licensing ALRs, the Assistance Living Residence Cash Fund does not have sufficient funds to cover the provisions in the bill and fee increases are limited. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under SB 22-154**

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25
Department of Public Health and Environment			
Personal Services	\$24,772	\$100,233	\$164,437
Operating Expenses	-	\$1,620	\$2,700
Capital Outlay Costs	-	\$6,200	\$6,200
Technology Costs	\$49,737	-	-
Legal Services Costs	-	\$27,600	\$55,199
Office of Administrative Courts	-	-	\$9,000
Centrally Appropriated Costs ¹	\$7,151	\$24,862	\$38,637
FTE – Personal Services	0.3 FTE	1.2 FTE	2.0 FTE
FTE – Legal Services	-	0.2 FTE	0.3 FTE
Total	\$81,660	\$160,515	\$276,173
Total FTE	0.3 FTE	1.4 FTE	2.3 FTE

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

Department of Public Health and Environment. In FY 2022-23, the CDPHE requires 0.3 FTE to conduct stakeholder engagement, support the Board of Health rule-making activities, and assist with computer system updates. In FY 2023-24, 1.2 FTE, increasing to 2.0 FTE in FY 2024-25, are required to engage in rule-making, review appeals and conduct hearings, and monitor ALRs for compliance. It is assumed that positions will be hired at the current average salary. Standard operating and capital outlay costs are included, and personal services costs are adjusted for the General Fund paydate shift in the first year.

- **Technology costs.** In FY 2022-23, the CDPHE will require 320 hours of IT staff time to create a system to track fines and penalties. The fines and penalties system created under the bill is more robust than under current law, and necessitates the addition of six data points, flags to trigger the prevention of license issuance, and the ability to override flags. This work will be conducted by the Office of Information Technology.
- **Legal Services.** In FY 2023-24, the CDPHE requires 280 hours of legal services, billed at a rate of \$98.57 per hour, to assist in processing appeals cases. Beginning in FY 2024-25 and ongoing, 560 hours of legal services will be required. These services will be provided by the Department of Law and require 0.2 FTE in FY 2023-24 and 0.3 FTE in FY 2024-25.
- **Office of Administrative Courts.** Beginning in FY 2024-25, it is assumed that 90 hours of time from the Office of Administrative Courts in the Department of Personnel and Administration will be required to prepare and review documentation, hear the involuntary discharge case and issue a decision.

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

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 shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Effective Date

This bill was signed into law by the Governor and took effect on June 2, 2022.

State Appropriations

For FY 2022-23, the bill requires and includes a General Fund appropriation of \$74,509 to the Department of Public Health and Environment and 0.3 FTE. Of this amount, \$47,680 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Information Technology
Human Services

Health Care Policy and Financing
Public Health and Environment