

**STATE
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 10, 2008)

Drafting Number: LLS 08-0784	Date: April 15, 2008
Prime Sponsor(s): Sen. Boyd Rep. Ferrandino	Bill Status: House Appropriations Fiscal Analyst: Amy Larsen (303-866-3488)

TITLE: CONCERNING LICENSURE OF HOME CARE AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
Cash Funds		
Home Care Agency Cash Fund*	\$517,500	\$1,125,000
Fees – Background Checks	17,085	18,865
Fees – Pass-through Fees to FBI	7,935	9,315
State Expenditures		
Cash Funds		
Home Care Agency Cash Fund*	\$184,389	\$913,873
Fees – Background Checks	10,235	15,780
Fees – Pass-through Fees to FBI	7,935	9,315
FTE Position Change	2.9 FTE	14.0 FTE
Effective Date: Unless a referendum petition is filed, the bill is effective August 6, 2008, assuming that the General Assembly adjourns as scheduled on May 7, 2008.		
Appropriation Summary for FY 2008-2009: See State Appropriations section of the fiscal note.		
Local Government Impact: See Local Government Impact section of the fiscal note.		

* Fees are set to cover both the direct and indirect costs of a program's implementation. Pursuant to JBC policy, the fiscal note does not include all costs incurred under the bill. See *Expenditures Not Included* section of the fiscal note for these costs.

This fiscal note is revised to reflect the reengrossed bill as amended by the House Health and Human Services Committee and to include additional information about name-based background checks.

Summary of Legislation

The bill establishes licensing requirements for home health agencies providing both skilled and personal care services. The bill includes the following provisions:

- ▶ beginning June 1, 2009, home care agencies that provide skilled services must apply for licensure with the Department of Public Health and Environment, and home care placement agencies must notify the department in writing if they provide referrals for skilled home health services;

- ▶ beginning June 1, 2009, home care agencies must require a criminal history record check of new employees, and home care placement agencies must require the check for persons seeking placement;
- ▶ beginning January 1, 2010, home care agencies that provide in-home personal care must apply for licensure with the department;
- ▶ the State Board of Health must promulgate rules providing for the minimum standards for operating agencies including inspections, educational requirements, enforcement remedies, and annual license fees;
- ▶ the Home Care Advisory Committee is established to make recommendations to the department and the board;
- ▶ persons operating home care agencies that do not comply with licensing requirements are guilty of a misdemeanor and may be subject to a civil penalty; and
- ▶ the Department of Regulatory agencies is required to review the licensing of Home Care Agencies prior to the program's repeal in 2014.

The bill limits fees paid by home care agencies that are certified Medicare or Medicaid providers to \$1,500 for the first two years of the program. Also, the department is required to issue a report with information about the direct and indirect costs associated with home care agency licensure no later than January 1, 2011.

State Revenue

State cash funds revenue is expected to increase by \$542,520 in FY 2008-09 and by \$1,153,180 in FY 2009-10. Revenue is expected from license fees and background check fees paid by home health agencies.

Department of Public Health and Environment - Licenses Fees. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. The bill requires the State Board of Health to establish annual license fees for home health agencies. Fees are to be set to cover both the direct and indirect costs of the program. In addition, the fee schedule must be tiered to reflect the differences in type and volume of services of home care agencies including participation in Medicaid.

At this time, the fee schedule is unknown. The fiscal note assumes that fees will be collected from about 230 agencies providing skilled services in FY 2008-09 and from about 500 agencies providing skilled and personal care services in FY 2009-10, and that the *average* fee will be \$2,250 to cover the costs of the program averaged over a three-year period. Actual license fees will vary substantially from the average included here due to the limit on license fees for Medicare and Medicaid certified agencies (\$1,500) and the differences in type and volume of services of various agencies.

Table 1. Fee Impact on Home Health Agencies			
Type of License Fee	Average Fee	Number Affected	Total Fee Impact
FY 2008-09 Home Health Agency	\$2,250	230	\$517,500
FY 2009-10 Home Health Agency	\$2,250	500	\$1,125,000

Department of Public Health and Environment - Penalties. The bill includes both misdemeanor and civil penalties for violations. The penalty for the misdemeanor is a fine of \$50 to \$500. Civil penalties, up to \$10,000, may also be assessed. Penalty revenue is deposited into the Home Care Agency Cash Fund. For FY 2008-09, no revenue is anticipated because provisions go into effect June 1, 2009. For FY 2009-10, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

Department of Public Safety – Background Check Fees. The Colorado Bureau of Investigations (CBI) will receive \$18,170 in FY 2008-09 from owners of home health agencies for criminal history checks. Fingerprint-based criminal history checks are \$39.50 each and will be completed for about 460 owners (2 per agency) in FY 2008-09 and about 540 in FY 2009-10. Of the \$39.50, \$22.00 passes through to the FBI to cross-check criminal histories against the national criminal database. The total pass-through amount to the FBI is \$7,935 in FY 2008-09. The remaining \$17.50 is retained by the CBI to cover background check costs, totaling \$10,235 in FY 2008-09.

In addition, the CBI will receive an estimated \$6,850 in FY 2008-09 and subsequent years from name-based background checks for new employees of home care agencies and persons seeking placement from home care placement agencies. The fee for a name-based check is \$6.85 through the CBI website, and the fiscal note assumes that 1,000 checks will be requested each year.

State Expenditures

Total expenditures are \$202,559 and 2.9 FTE in FY 2008-09 and \$935,203 and 14.0 FTE for FY 2009-10. Expenditures are primarily in the Department of Public Health and Environment, with background check costs in the Department of Public Safety.

Department of Public Health and Environment. The department is responsible for the registration, regulation, and enforcement of home health agencies. Table 2 and the discussion that follows detail the costs.

Table 2 — Department of Public Health and Environment Costs under SB08-153			
	FY 2008-09	FY 2009-10	FY 2010-11
Personal Services	\$ 167,543	\$ 813,338	871,845
<i>FTE</i>	2.9	14.0	15.0
Operating Expenses and Capital Outlay	13,965	55,205	22,005
Mileage and Travel	0	39,568	45,648
Legal Services	<u>2,881</u>	<u>5,762</u>	<u>5,762</u>
Total	\$ 184,389	\$ 913,873	\$945,260

Staff will be responsible for the following:

- ▶ license application processing and applicant technical assistance;
- ▶ general program oversight and rule development;
- ▶ applicant review, including verification of the background check;
- ▶ on-site inspections, plan of correction review, and related follow up; and
- ▶ addressing complaints and representing the program in disciplinary proceedings.

In FY 2008-09, staff will focus on gathering stakeholder input, developing rules and fee schedules, providing technical assistance, and processing license applications for skilled home care agencies. The department is expected to receive 229 applications in May 2008 and perform the initial review for about one-half of them. Application review includes not only processing the application but also reviewing background check information and compliance history.

In FY 2009-10, workload for the program increases once inspections begin for skilled home care agencies and license applications are received and inspections begin for personal care agencies. Inspections involve assessing the agency's policies and procedures as well as the delivery of care. Revisits are assumed for one-half of the agencies to allow for correction of any deficiencies. About 300 inspections are anticipated with 40 percent requiring out-of-town travel. The department will also assess and investigate about 100 complaints and reported occurrences, such as falls and unexpected deaths. Costs are included for personal services (14.0 FTE across multiple positions), standard operating expenses, and travel expenses for on-site inspections and investigations.

In addition, the department is expected to place license conditions on about 25 agencies. The conditions will provide a means to address serious and/or repeated violations before proceeding to license revocation or denial. At this time, only 1 license denial is expected in FY 2009-10. Legal services will be required for these enforcement actions.

In FY 2010-11, workload for the department is expected to increase further due to additional agency inspections. Approximately 320 inspections are anticipated based on a risk based schedule as well as about 100 complaints and occurrence report investigations. Additional information about FY 2010-11 costs is available in the Legislative Council Staff, Fiscal Notes Section.

Department of Law. Legal services will be provided by the Department of Law at a rate of \$72.03 per hour. In FY 2008-09, 40 hours of legal services are for rulemaking. For FY 2009-10, 80 hours are anticipated for enforcement activities.

Department of Public Safety, Colorado Bureau of Investigations (CBI). The CBI will process fingerprint-based criminal history checks. Of the \$18,170 from background checks fees, \$10,235 is for state costs and \$7,935 will be passed through to the FBI in FY 2008-09. For FY 2009-10, the total cost increases to \$21,330 based on the anticipated number of fingerprint-based background checks.

The fiscal note assumes that criminal background checks for new employees of home health agencies and persons seeking placement to provide home health services will be conducted through the internet based system on the CBI website. This is a name-based check of felony arrest records for Colorado only. Since the system is fully automated, additional spending authority is not required.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program. For FY 2008-09, these costs total \$65,150 in the Department of Public Health and Environment.

- group health, life and dental insurance (\$18,267)
- short-term disability (\$218)
- amortization equalization disbursements (\$2,681)
- supplemental amortization equalization disbursements (\$838)
- indirect costs (\$43,147 - 23.4%)
- inflation
- leased space

State Appropriations

For FY 2008-09, the fiscal note indicates that the Department of Public Health and Environment should receive a cash funds appropriation of \$184,389 and 2.9 FTE from the Home Care Agency Cash Fund. Of this amount, the Department of Law should receive an appropriation of \$2,881 (reappropriated funds).

Also for FY 2008-09, the Department of Public Safety requires a cash funds appropriation of \$18,170, with \$7,935 passed through to the FBI.

Departments Contacted

Public Health and Environment
Human Services
Personnel and Administration
Public Safety

Health Care Policy and Financing
Regulatory Agencies
Judicial Branch