

**STATE
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 22, 2011)

Drafting Number: LLS 11-0122

Date: April 12, 2011

Prime Sponsor(s): Sen. Newell
Rep. Fields

Bill Status: Senate Finance

Fiscal Analyst: Bill Zepernick (303-866-4777)

TITLE: CONCERNING THE CONTINUATION OF THE REGULATION OF MENTAL HEALTH PROFESSIONALS, AND, IN CONNECTION THEREWITH, CONTINUING THE STATE BOARDS OF PSYCHOLOGIST EXAMINERS, SOCIAL WORK EXAMINERS, MARRIAGE AND FAMILY THERAPIST EXAMINERS, AND LICENSED PROFESSIONAL COUNSELOR EXAMINERS AND THE STATE GRIEVANCE BOARD, CREATING THE STATE BOARD OF ADDICTION COUNSELOR EXAMINERS, AND IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE SUNSET REVIEW AND REPORT OF STATE-REGULATED MENTAL HEALTH PROFESSIONALS.

| Fiscal Impact Summary | FY 2011-2012 | FY 2012-2013 |
|--|------------------------|------------------------|
| State Revenue | | |
| General Fund | Potential fine revenue | Potential fine revenue |
| Cash Funds | | |
| Division of Registrations Cash Fund* | \$503,858 | \$1,939,916 |
| Custodial Funds** | 366,580 | 125,880 |
| State Expenditures | | |
| Cash Funds | | |
| Division of Registrations Cash Fund* | \$443,937 | \$1,674,848 |
| Custodial Funds** | 240,000 | 240,000 |
| FTE Position Change | 3.5 FTE | 7.2 FTE |
| Effective Date: July 1, 2011. | | |
| Appropriation Summary for FY 2011-2012: See State Appropriations section. | | |
| Local Government Impact: None. | | |

* Revenue exceeds expenditures to account for costs shown in the Expenditures Not Included section.

** Custodial funds are not subject to Section 20 of Article X of the State Constitution.

Summary of Legislation

The bill, *as amended by the Senate Health and Human Services Committee*, implements many of the recommendations of the 2010 sunset review and continues and modifies state regulation of mental health professions. Specifically, the bill does the following:

- continues the state Boards of Psychologist Examiners, Social Work Examiners, Marriage and Family Therapist Examiners, Licensed Professional Counselor Examiners, and the State Grievance Board;

- creates the state Board of Addiction Counselor Examiners and eliminates the regulatory authority of the director of the Division of Registrations in the Department of Regulatory Agencies (DORA) over addiction counselors; and
- establishes a new sunset date of September 1, 2020, for all the oversight boards.

Among other changes in regulation of mental health professions, the bill includes the following:

- indefinitely continues the ability of the oversight boards to issue provisional licenses to candidates who meet the education requirements but have not yet fulfilled the experience requirements;
- changes the name of "unlicensed psychotherapists" to "registered psychotherapists";
- creates a registry for marriage and family therapists and licensed professional counselor candidates who are working towards full licensure;
- allows for computer-based examinations of marriage and family therapists, licensed professional counselors, social workers, psychologists, and registered psychotherapists;
- makes modifications to the prohibited activities for licensed mental health professionals;
- authorizes the oversight boards to impose an administrative fine of up to \$5,000 per violation on regulated mental health professional for certain violations;
- authorizes the oversight boards to enter into confidential agreements to restrict the practice of a mental health professional who has a mental or physical illness that affects his or her ability to practice the professional and specifies that such an agreement is not a disciplinary action and does not mean that unprofessional conduct has occurred;
- allows oversight boards to order a mental health evaluation of regulated professionals to determine ability to continue practicing under a confidential agreement or restricted license;
- requires the oversight boards to create peer assistance networks to provide mental health services, counseling, and other services to regulated mental health professions and select an administrating entity to manage the network;
- authorizes the boards to collect a fee of up to \$25 from all regulated professionals seeking licensure or relicensure to pay administrating entities to operate the peer assistance networks;
- eliminates the exemption from regulatory oversight provided to a mental health professional acting as a court-appointed child and family investigator in cases involving child custody and child abuse/domestic violence; and
- modifies the membership on the oversight boards to replace a member of the public with a representative of the regulated profession.

Fiscal impact of programs set to expire. This bill continues a program in the Division of Registrations in the DORA that is set to repeal, effective July 1, 2011. Under current law, state agencies may be appropriated funds to wind up the affairs of an expiring program for 12 months following the repeal date. To account for the wind-up period, the impact of extending the program beyond the current repeal date is shown as beginning in FY 2012-13, one year after the repeal date. There is no need for an appropriation of the division's base funding in FY 2011-12, since the program's authorization has not yet expired, and ongoing funding for the program is included in the department's base budget request for FY 2011-12. The fiscal note indicates new costs for FY-2011-12 that are in addition to the current base budget.

The state revenue and state expenditures impact for FY 2012-13 reflect the program's anticipated fee revenue and base budget request, as well as new costs resulting from changes in the bill. The DORA's request for the regulation of mental health professionals in FY 2012-13 is \$1,495,829 and 5.3 FTE. The anticipated revenue is \$1,726,542.

State Revenue

The bill is expected to increase cash fund revenue by \$503,858 in FY 2011-12 and by \$1,939,916 in FY 2012-13. The bill also creates a new fee to fund peer assistance programs for mental health professionals that is passed through as custodial funds to the administering entities. Revenue to DORA and the peer assistance programs are from fees paid by regulated mental health professionals and are described below.

Fees to DORA. Revenue to the Division of Registrations Cash Fund will increase by \$503,858 in FY 2011-12 and by \$1,939,916 in FY 2012-13. This revenue is from license, registration, and renewal fees paid by mental health professionals and supports the regulation of mental health professions in DORA and the oversight boards. Of these amounts, the entire \$503,858 in revenue to DORA in FY 2011-12 and \$213,374 in FY 2012-13 are from increased fees to support changes to the regulation of mental health professionals made by the bill, and \$1,726,542 in FY 2012-13 is the continuation of existing fee revenue from extending the sunset date of the program.

Custodial funds. The bill authorizes the oversight boards to set a fee to pay for an outside entity to operate a peer assistance network for mental health professionals. The fiscal note assumes a fee of \$20 for each license, registration, and renewal will be set by the oversight boards, which will generate revenue of \$366,580 in FY 2011-12 and \$125,880 in FY 2012-13. This revenue constitutes custodial funds and is exempt from the constitutional requirements under TABOR. The actual fee amount will depend on the contract negotiated by the board. The fee can be set up to \$25.

Fee impact on individuals, families or business. 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. Tables 1 and 2 below identify the estimated fee impact of this bill. Actual fees may vary based on the number of professionals seeking licensure/certification and other factors.

| Table 1. Fee Impact on Individuals, Families or Business - FY 2011-12 | | | | | |
|--|--------------------|---------------------|-------------------|------------------------|-------------------------|
| Type of Fee | Current Fee | Proposed Fee | Fee Change | Number Affected | Total Fee Impact |
| <i>Original License</i> | | | | | |
| Addiction counselor | \$200-225 | \$241-266 | \$41 | 363 | \$14,883 |
| Professional counselor | 160 | 221 | 61 | 444 | 27,084 |
| Marriage and family therapist | 160 | 221 | 61 | 37 | 2,257 |
| Psychologist | 160 | 232 | 75 | 136 | 10,200 |
| Social worker | 160 | 240 | 80 | 502 | 40,160 |
| Psychotherapist | 160 | 216 | 56 | 1,170 | 65,520 |
| Marriage and family therapist candidate | N/A | 61 | 61 | 500 | 30,500 |
| Professional counselor candidate | N/A | 61 | 61 | 500 | 30,500 |
| <i>License Renewal</i> | | | | | |
| Addiction counselor | \$137 | \$154 | \$17 | 2,589 | \$44,013 |
| Professional counselor | 127 | 146 | 19 | 3,966 | 75,354 |
| Marriage and family therapist | 302 | 322 | 20 | 570 | 11,400 |
| Psychologist | 221 | 242 | 21 | 2,283 | 47,943 |
| Social worker | 107 | 128 | 21 | 3,948 | 82,908 |
| Psychotherapist | 137 | 153 | 16 | 1,321 | 21,136 |
| <i>Other Fees</i> | | | | | |
| Peer assistance (all MH professions) | N/A | 20 | 20 | 18,329 | 366,580 |
| FY 2011-12 TOTALS | | | | | |
| Division of Registrations Cash Fund | | | | | 503,858 |
| Custodial Funds | | | | | 366,580 |

| Table 2. Fee Impact on Individuals, Families or Business - FY 2012-13* | | | | | |
|---|--------------------|---------------------|-------------------|------------------------|-------------------------|
| Type of Fee | Current Fee | Proposed Fee | Fee Change | Number Affected | Total Fee Impact |
| <i>Original License</i> | | | | | |
| Addiction counselor | \$200-225 | \$236-261 | \$36 | 363 | \$13,068 |
| Professional counselor | 160 | 196 | 36 | 444 | 15,984 |
| Marriage and family therapist | 160 | 196 | 36 | 37 | 1,332 |
| Psychologist | 160 | 196 | 36 | 136 | 4,896 |
| Social worker | 160 | 196 | 36 | 502 | 18,072 |
| Psychotherapist | 160 | 196 | 36 | 1,170 | 42,120 |
| Marriage and family therapist candidate | N/A | 36 | 36 | 500 | 18,000 |
| Professional counselor candidate | N/A | 36 | 36 | 500 | 18,000 |
| <i>License Renewal</i> | | | | | |
| Addiction counselor | \$137 | \$168 | \$31 | 1,321 | \$40,951 |
| Professional counselor | 127 | 158 | 31 | 1,321 | 40,951 |
| <i>Other Fees</i> | | | | | |
| Peer assistance (all MH professions) | N/A | 20 | 20 | 6,294 | 125,880 |
| FY 2012-13 TOTALS | | | | | |
| Division of Registrations Cash Fund | | | | | 213,374 |
| Custodial Funds | | | | | 125,880 |

*Excludes fees that are continued but not expected to be changed by SB 11-187.

Fine revenue. The bill authorizes the DORA to impose administrative fines of up to \$5,000 per violation by regulated mental health professionals. However, as the rules establishing a fine schedule and treatment of various violations have not been made, it is unknown how often fines will be imposed and at what level. Therefore, the amount of increased fine revenue cannot be estimated at this time. Fine revenue is assumed to go to the General Fund.

State Expenditures

The bill increases costs in DORA by \$443,937 and 3.5 FTE in FY 2011-12 and \$1,674,848 and 7.2 FTE in FY 2012-13. Of the expenditures in FY 2012-13, \$179,019 and 1.9 FTE are new costs and \$1,495,829 and 5.3 FTE are costs to continue the existing program. The bill also increases the expenditure of custodial funds passed through to outside organizations for management of peer assistance programs for mental health professionals. Table 3 and the discussion below provide details on the costs of the bill.

| Table 3. Expenditures Under SB11-187 | | |
|---|-------------------|--------------------|
| Cost Components | FY 2011-12 | FY 2012-13 |
| Personal Services | \$135,608 | \$79,638 |
| FTE | 3.5 | 7.2 |
| Operating Expenses and Capital Outlay | 9,409 | 2,066 |
| Legal Services | 176,088 | 66,033 |
| Examination Software and Consultant | 80,000 | 0 |
| Board Per Diem and Expenses | 15,900 | 4,350 |
| Travel | 682 | 682 |
| Mental Health Examinations | 26,250 | 26,250 |
| Continuation of Base Funding | 0 | 1,495,829 |
| TOTAL | \$443,937 | \$1,674,848 |

Personal services. The DORA requires \$135,608 and 2.4 FTE in FY 2011-12 for staff to assist the newly created Board of Addiction Counselor Examiners, process candidate registrations for marriage and family therapists and professional counselors, enact changes and respond to public inquires concerning the registration of psychotherapists, and investigate complaints about mental health professionals acting as child and family investigators. This amount includes 0.9 FTE for temporary staff in the first year to support creation of the marriage and family counselor and professional counselor registries and to conduct the procurement for entities to manage the peer assistance networks for each oversight board. In FY 2012-13, the DORA requires \$79,638 and 1.5 FTE to support the Board of Addiction Counselor Examiners and other new functions on an ongoing basis.

Operating expenses and capital outlay costs. Costs in the DORA for the operating and capital costs for new staff are \$9,409 in FY 2011-12 and \$2,066 in FY 2012-13, which includes standard costs for computers, furniture, and telephone, as well as printing costs for mailing licensing documents and distributing outreach material.

Legal services. The bill increases the costs for legal services in the DORA by \$176,088 in FY 2011-12 and \$66,033 in FY 2012-13. Legal services are required from the Department of Law to establish the Board of Addiction Counselor Examiners, support rule making by the oversight boards, handle appeals concerning the new candidate registries, assist in hearings and litigation involving child and family investigators, and other tasks. These duties in the Department of Law require 2,400 hours of legal services and 1.1 FTE in FY 2011-12 and 900 hours and 0.4 FTE in subsequent years.

Examination software and consultant. Establishing computer-based testing for licensing and registering the various mental health professions will result in a one-time cost of \$80,000 in FY 2011-12 to purchase the required software.

Board per diem and expenses. The bill will increase costs for board member per diem and expense reimbursement by \$15,900 in FY 2011-12 and \$4,350 in FY 2012-13. These costs include the per diem and expenses for the seven new members of the Board of Addiction Counselor Examiners holding nine meetings and training sessions in the first year and three meetings in the second year. It is also assumed that in FY 2011-12 that the five existing oversight boards will conduct an extra meeting for rule making required to implement changes in the bill.

Travel. The DORA will have costs of \$682 per year in travel costs for staff to conduct outreach meetings with mental health professional in various locations in the state.

Mental health evaluations. The DORA will have costs of \$26,250 per year to conduct mental health evaluations of regulated mental health professionals. The oversight boards may order a mental health evaluation to determine if a mental health professional may continue to practice or if it is necessary to enter a confidential agreement to restrict the practice of a regulated professional. On average, the oversight boards receive 21 complaints relating to mental health issues of practitioners, and the fiscal note assumes that these cases will require an evaluation at a cost of \$1,250 per case.

Peer Assistance Program. Each oversight board must establish a peer assistance program using a contracted nonprofit entity to manage the program. The cost of each program will be competitively bid and will vary by type of board. The fiscal note estimates that costs of the peer assistance program could cost about \$240,000, based on available revenue if the oversight boards charge mental health professionals a \$20 fee. All costs for peer assistance are paid using custodial funds passed through to the administering entity, rather than expenditures from DORA itself.

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 4.

| Table 4. Expenditures Not Included Under SB11-187* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2011-12 | FY 2012-13 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$17,040 | \$10,650 |
| Supplemental Employee Retirement Payments | 6,136 | 4,246 |
| Indirect Costs | 16,315 | 10,197 |
| Leased Space | 10,080 | 6,300 |
| TOTAL | \$49,571 | \$31,393 |

*More information is available at: <http://colorado.gov/fiscalnotes>

State Appropriations

The bill requires an appropriation for FY 2011-12 of \$443,937 and 2.4 FTE to the DORA from the Division of Registrations Cash Fund, of which \$176,937 and an additional 1.1 FTE should be reappropriated to the Department of Law.

The costs of the peer assistance program do not require an appropriation.

Departments Contacted

Regulatory Agencies
Corrections

Human Services
Law

Health Care Policy and Financing