

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

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| Drafting Number: LLS 15-0329 | Date: May 26, 2015 |
| Prime Sponsor(s): Rep. Humphrey; Ransom Sen. Lundberg | Bill Status: Postponed Indefinitely Fiscal Analyst: Kerry White (303-866-3469) |

BILL TOPIC: PROTECT HUMAN LIFE AT CONCEPTION

| Fiscal Impact Summary* | FY 2015-2016 | FY 2016-2017 |
|---|--------------------------|---------------------------|
| State Revenue | | |
| Cash Funds | <\$5,000 | <\$5,000 |
| State Expenditures | at least \$63,014 | at least \$100,331 |
| General Fund | 26,095 | 53,789 |
| Federal Funds | 27,171 | 33,029 |
| Centrally Appropriated Costs** | 9,748 | 13,513 |
| FTE Position Change | 0.8 FTE | 1.0 FTE |
| Appropriation Required: \$53,266 for the Department of Health Care Policy and Financing; \$88,272 for the Department of Corrections. See the State Appropriations section. | | |

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill prohibits licensed physicians from performing abortions except when:

- the physician makes reasonable medical efforts to preserve both the life of the woman and her unborn child, but an abortion is necessary to preserve the life of the woman; or
- the physician provides medical treatment to a woman that results in the accidental or unintentional injury or death of the unborn child.

Offenses under the bill are punishable criminally as a class 3 felony and a conviction constitutes unprofessional conduct for the purposes of physician licensing.

Background

Federal law requires that state health programs receiving federal funding provide coverage for abortion services if the pregnancy is the result of rape, if the pregnancy is the result of incest, or if continuing the pregnancy would put the woman's life in danger. Colorado's Medicaid and Children's Health Plan Plus (CHP+) programs are subject to these requirements.

According to the Guttmacher Institute, there were approximately 14,710 abortions performed in Colorado in 2011, the most recent year for which data were available.

State Revenue

Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 3 felony is \$3,000 to \$750,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000. To the extent that a person incarcerated as a result of this bill would otherwise be paying income taxes on wages and/or sales taxes on purchases, some of the increased fine revenue will be offset by reduced income and sales tax revenue. Most income and sales tax revenue is credited to the General Fund.

State Expenditures

This bill will increase state expenditures by at least \$63,014 and 0.8 FTE in FY 2015-16 and by at least \$100,331 and 1.0 FTE in FY 2016-17. Costs are in the Department of Health Care Policy and Financing and the Department of Corrections. Workload and costs will also increase for agencies within the Judicial Department and the Department of Regulatory Agencies.

| Table 1. Expenditures for the Department of Health Care Policy & Financing (HCPF) Under HB15-1041 | | |
|--|-------------------|-------------------|
| Cost Components | FY 2015-16 | FY 2016-17 |
| Personal Services | \$47,850 | \$63,800 |
| FTE | 0.8 | 1.0 |
| Operating Expenses and Capital Outlay Costs | 5,416 | 950 |
| Centrally Appropriated Costs* | 9,748 | 13,513 |
| TOTAL | \$63,014 | \$78,263 |

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

Assumptions. HCPF will be required to develop and submit a Section 1115 demonstration waiver to the federal Centers for Medicare and Medicaid Services (CMS) in order to comply with federal requirements. The fiscal note assumes that staff must be in place by September 1, 2015, in order to prepare and submit a waiver application by December 1, 2015. Staff will be required through the end of FY 2016-17 to work with the CMS to resolve questions and modify the waiver request as necessary, and to conduct outreach and stakeholder education. If the waiver application is approved, costs for FY 2016-17 would continue in FY 2017-18 and beyond to manage the waiver program.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

| Cost Components | FY 2015-16 | FY 2016-17 |
|--|-------------------|-------------------|
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$6,039 | \$8,053 |
| Supplemental Employee Retirement Payments | 3,709 | 5,460 |
| TOTAL | \$9,748 | \$13,513 |

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

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$22,068 per year beginning in FY 2016-17 for the Department of Corrections (DOC). This increase assumes at least one offender will be sentenced to prison for a class 3 felony every five years and have an average length of stay of 64.6 months. Because legal abortions are currently performed by licensed physicians, the fiscal note assumes a high rate of compliance with the provisions of the bill. However, should additional convictions occur, the fiscal note assumes the Department of Corrections will request additional appropriations through the annual budget process.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 3 shows the estimated cost of the bill over the next five fiscal years.

| Fiscal Year | Inmate Bed Impact | Construction Cost | Operating Cost | Total Cost |
|--------------------|--------------------------|--------------------------|-----------------------|-------------------|
| FY 2015-16 | 0.0 | \$0 | \$0 | \$0 |
| FY 2016-17 | 1.0 | \$0 | \$22,068 | \$22,068 |
| FY 2017-18 | 1.0 | \$0 | \$22,068 | \$22,068 |
| FY 2018-19 | 1.0 | \$0 | \$22,068 | \$22,068 |
| FY 2019-20 | 1.0 | \$0 | \$22,068 | \$22,068 |
| Total | | | | \$88,272 |

Judicial Department. The bill is anticipated to result in new case filings against licensed physicians, which will increase workload for the trial courts. The expected increase in the courts' workload is minimal and can be accomplished within existing appropriations.

Office of the State Public Defender (OSPD). In the unlikely event that a licensed physician would be determined to be indigent, workload and costs for the OSPD may increase in order to provide representation. To the extent this occurs, this analysis assumes the OSPD will request additional appropriations through the annual budget process.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be similar to those described for the OSPD.

Department of Regulatory Agencies. Under the bill, a conviction for providing unauthorized abortion services constitutes unprofessional conduct by a licensed physician. The bill may result in additional complaints or disciplinary procedures for the department. This increase in workload is anticipated to be minimal and will not require an increase in appropriations.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 changes an element of the existing crime that creates a new factual basis for the offense. The behavior prohibited under HB15-1041 is currently legal. For this reason, no information about the likely offenders or victims is available. Due to the professional nature of providers performing abortion services, the fiscal note assumes a high rate of compliance with the provisions of this bill.

Local Government Impact

This bill will increase workload and costs for district attorneys that investigate and prosecute offenses under the bill. The fiscal note assumes that these increases will be minimal.

TABOR Impact

This bill increases state revenue from fines, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund in the year following the excess collections.

Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on February 26, 2015.

Departmental Differences

The Department of Corrections identified a five-year cost of \$220,680, rather than the \$88,272 shown in the fiscal note. The department's calculation assumes one conviction per year under the bill. The fiscal note assumes a higher rate of compliance and assumes one conviction every five years.

State Appropriations

For FY 2015-16, the Department of Health Care Policy and Financing requires an appropriation of \$53,266, including \$26,095 General Fund and \$27,171 federal funds; and an allocation of 0.8 FTE. The Department of Corrections requires the five-year appropriations shown in Table 3, above.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Public Health and Environment

District Attorneys
Judicial
Regulatory Agencies