

  
*Colorado Legislative Council Staff Fiscal Note*  
**FINAL**  
**FISCAL NOTE**

**Drafting Number:** LLS 08-0055  
**Prime Sponsor(s):** Rep. Labuda  
 Sen. Williams

**Date:** August 14, 2008  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** David Porter (303-866-4375)

**TITLE:** CONCERNING THE REGULATION OF NATUROPATHIC DOCTORS.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
Cash Funds		
Division of Registrations Cash Fund*	\$ 171,000	\$ 163,000
Fines Collection Cash Fund	< 5,000	< 5,000
<b>State Expenditures</b>		
Cash Funds		
Division of Registrations Cash Fund	\$ 141,605	\$ 136,664
<b>FTE Position Change</b>	1.5 FTE	1.7 FTE
<b>Effective Date:</b> The bill was postponed indefinitely by the House Health and Human Services Committee on March 10, 2008.		
<b>Appropriation Summary for FY 2008-2009:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government Impact section.		

\* 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.

**Summary of Legislation**

HB08-1064 creates a licensure program for naturopathic doctors in the Division of Registrations, Department of Regulatory Agencies. The regulatory program sunsets on July 1, 2012.

**Licensing of Naturopathic Doctors (ND).** HB08-1064 requires all NDs be licensed with the division by July 1, 2008. To become licensed, a practitioner must successfully complete an approved naturopathic medical program and pass an approved competency exam. Alternatively, a ND holding a license from a state with similar standards may become licensed in Colorado through endorsement. Title protection is extended to NDs. No one may practice as a ND without first becoming licensed and carrying liability insurance. Practicing without a license is a class 2 misdemeanor on the first offense and a class 6 felony on second and subsequent offenses.

The bill defines the scope of practice for NDs, establishes boundaries between the practice of a naturopathic doctor and a medical doctor, stipulates prohibited activities, and establishes professional standards. The bill establishes a committee and council to further define the practice. An advisory committee will assist the director of the division in creating rules and in bill implementation . A Naturopathic Formulary Council is created to recommend the naturopathic formulary to the director. The formulary is the list of medicines approved for use by naturopathic doctors. Naturopathic doctors cannot dispense controlled substances.

**Regulatory Responsibilities.** The director of the Division of Registrations is to oversee the implementation of this licensing program. The director is responsible for the following:

- ▶ developing rules, licensure standards, and application procedures;
- ▶ working with the advisory committee and formulary council to determine practice standards and the formulary;
- ▶ issuing licenses, including licenses obtained by endorsement for NDs licensed in other states;
- ▶ investigating complaints; and
- ▶ disciplining practitioners.

### State Revenue

**Total state revenue under HB08-1064 is \$171,000 in FY 2008-09 and \$163,000 in FY 2009-10.** Revenue is from licensure fees and will be credited to the Division of Registrations Cash Fund.

**Fee Impact from Naturopathic Doctor Licensure.** 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. Table 1 identifies the fee impact of this bill.

<b>Table 1. Fee Impact on Naturopathic Doctors</b>			
<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2008-09 Initial Licensure	\$1,900	90	\$171,000
FY 2009-10 Initial Licensure	1,900	10	19,000
FY 2009-10 Renewal	1,600	90	144,000
<b>TWO-YEAR TOTAL</b>			<b>\$334,000</b>

Fees are estimated based on the following assumptions:

- ▶ fees must offset the direct and indirect costs associated with the regulatory program;
- ▶ 90 naturopathic doctors will register in the first year, the field will grow by 10 licensees each year;
- ▶ annual renewals are required;
- ▶ initial fees are higher to offset one-time costs in establishing the program;
- ▶ fees are subject to adjustment by the division based on the number of licenses and workload.

In addition to fees paid to the Division of Registrations, initial applicants are required to pay for the competency examination required for licensure. The cost of this examination is unknown at this time.

**Fines.** Per Section 18-1.3-501, C.R.S., the penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Per Section 18-1.3-401 (III) (A), C.R.S., the penalty for a class 6 felony is 12 to 18 months in state prison, a fine of \$1,000 to \$100,000, or both. Fine revenue not otherwise appropriated is deposited into the Fines Collection Cash Fund. All unexpended balances of the cash fund to revert the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, the impact to state revenue cannot be determined. However, a minimal amount of fine revenue (< \$5,000 per year) is assumed under the bill.

### State Expenditures

HB08-1064 requires total state expenditures of \$141,605 and 1.3 FTE in FY 2008-09 and \$136,664 and 1.3 FTE in FY 2009-10. Table 2 and the discussion that follows address the cost components of the bill.

<b>Table 2. Total Costs under HB08-1064</b>		
<b>Cost Components</b>	<b>FY 2008-09</b>	<b>FY 2009-10</b>
Personal Services	\$ 65,828	\$ 65,828
<i>FTE</i>	<i>1.5</i>	<i>1.7</i>
Contract Services	14,372	2,500
Operating Expenses	7,526	8,973
Capital Outlay and Registration System	16,568	0
Council and Committee Expenses	12,100	4,620
Legal Services	25,211	54,743
<b>Division of Registrations Cash Fund Total</b>	<b>\$ 141,605</b>	<b>\$ 136,664</b>

**Department of Regulatory Agencies, Division of Registrations.** Establishing the new program requires managerial and administrative staff. The following are the staff requirements:

- ▶ managerial staff (*0.3 FTE General Professional V and 0.5 FTE Program Assistant II*) will work with the advisory committee and council to develop the formulary, rules for licensure, and fees;
- ▶ administrative staff (*0.3 FTE Administrative Assistant III*) is required to process applications and complaints, answer questions about licensure requirements and procedures, and assist with committee and council meetings; and
- ▶ a *0.2 FTE Criminal Investigator I* will be required to follow up on some complaints.

Contract services are required to provide assistance with substance abuse evaluations, evaluation of the assessment exam, and other matters requiring technical expertise. Contract services will also help in the initial processing of applications.

**Department of Law.** The department provides legal services to the Division of Registrations. Legal services are required for the following:

- ▶ *Rule-making (350 hours in FY 2008-09 and 100 hours in FY 2009-10)* - legal services assist the committee, council, and director in establishing rules and procedures for the practice; and
- ▶ *Injunctive and enforcement activities (660 hours beginning in FY 2009-10)* - 11 injunctive actions requiring 60 hours are anticipated each year.

The Department of Law will require 0.3 FTE in FY 2008-09 and 0.4 FTE in FY 2009-10 to provide these services.

**Felony Offense.** Second and subsequent offenses by NDs for practicing without a license are a class 6 felony. Per Section 18-1.3-401, C.R.S. the penalty for a class 6 felony may include a fine between \$1,000 and \$100,000, or 12 to 18 months imprisonment at a state correctional facility, or both. Information from the Judicial Branch indicates that no second offenses have been filed as either misdemeanors or felonies related to professions and occupations in the last five years. Thus, the number of cases filed against NDs is expected to be small, and convictions extremely infrequent. The fiscal note assumes that this bill will not create the need for additional prison space.

**Other costs considered.** The licensure of NDs is not expected to create any new costs to either Medicaid, the Children's Basic Health Plan (CBHP), or state employee insurance. While Medicaid does reimburse for services provided by non-physician practitioners, NDs are not currently on the list of approved non-physician practitioners, nor does the bill require their addition. Under the bill, insurance providers for both the Children's Basic Health Plan and the state's employee insurance plans would be able to use NDs to provide some medical services. However, since the licensure of NDs does not create new types of medical services, no costs are anticipated. The bill simply adds another profession to the list of potential providers. Additionally, NDs will receive the same reimbursement rates currently set for services provided.

### **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 this bill, these total at least \$24,827 each year.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- indirect costs

### **Local Government Impact**

The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$49.69 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

### **State Appropriations**

The Department of Regulatory Agencies requires a cash funds appropriation of \$141,605 from the Division of Registrations Cash Fund and 1.3 FTE in FY 2008-09. Of this amount, the Department of Law will require \$25,211 in reappropriated funds and 0.2 FTE.

### **Department Differences**

Due to the new class 6 felony, the Department of Corrections (DOC) anticipates a fiscal impact of \$149,034 General Fund over the next five years for one felony conviction during that period. Rather than defaulting to a general assumption of one in every five years for this new felony offense, this analysis relies on historical rates of convictions for the regulation of professions and occupations. Please refer to the State Expenditures section of the fiscal note for more detail.

### **Departments Contacted**

Regulatory Agencies	Judicial	Law
Personnel and Administration	District Attorney's	Corrections
Health Care Policy and Financing	Human Services	