

**STATE
FISCAL IMPACT**

Drafting Number: LLS 11-0619
Prime Sponsor(s): Rep. McKinley

Date: January 18, 2011
Bill Status: House Health and Environment
Fiscal Analyst: Bill Zepernick (303-866-4777)

TITLE: CONCERNING THE REPEAL OF THE AUTHORITY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES TO SELL THE TRINIDAD STATE NURSING HOME.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue Cash Funds Central Fund for State Nursing Homes	See State Revenue Section	
State Expenditures General Fund Cash Funds Central Fund for State Nursing Homes	See State Expenditures Section	
FTE Position Change	161.5 FTE	161.5 FTE
Effective Date: August 10, 2011, assuming the General Assembly adjourns May 11, 2011, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: None required.		
Local Government Impact: None.		

Summary of Legislation

The bill repeals the authority of the Department of Human Services (DHS) to sell the Trinidad State Nursing Home.

If passed and signed by the Governor, the bill takes effect August 10, 2011. However, the sale of the Trinidad nursing home is scheduled to be complete on February 1, 2011. Taking into account the intent of the bill, this fiscal note is based on the bill becoming law immediately upon signature of the Governor before February 1, 2011.

Background

State and Veterans Nursing Homes. The Division of State and Veterans Nursing Homes in the DHS oversees 5 state-owned facilities that provide skilled nursing care, primarily to honorably discharged veterans and their spouses or widows. The Trinidad nursing home is the only

non-veterans nursing home operated by the state. In general, the nursing homes are funded through patient, pension, Medicaid, and U.S. Veteran's Administration payments. Section 26-12-110, C.R.S., provides that the state and veterans nursing homes shall constitute an enterprise under TABOR, which limits the amount of state funding that can be used to support their operations.

Authority to sell Trinidad State Nursing Home. Senate Bill 09-056 gave the department the authority to sell the Trinidad nursing home and was signed into law on April 22, 2009. The department has taken the following steps to sell the nursing home:

- issued a Request for Proposal (RFP) to divest in January 2010;
- closed the RFP in March 2010;
- reached an agreement to transfer the deed from the local community colleges in May 2010, because the colleges held the deed for the land and buildings;
- accepted the bid of C & G Health Care on November 4, 2010; and
- published a layoff plan for staff of the Trinidad nursing home on November 4, 2010.

The contract to purchase with C & G Health Care was signed by all parties on January 10, 2011. The official transfer of operations and ownership of the home to C & G Health Care is scheduled to occur at 11:59 PM on January 31, 2011. This bill would end this process and the department would maintain ownership of the nursing home, if enacted prior to this date.

Financial status of Trinidad State Nursing Home. The Trinidad nursing home has average annual costs of \$7.1 million and revenue of \$6.7 million from payments made by or on behalf of residents, resulting in an annual operating loss of about \$400,000 per year. This operating loss is subsidized by the veterans nursing homes in the enterprise. Based on the current cost structure, revenue, and staffing requirements, the department does not expect the Trinidad nursing home to become self-sufficient.

State Revenue

This bill eliminates the one-time revenue increase of \$3.92 million from the sale of the Trinidad nursing home in the Central Fund for State Nursing Homes.

Keeping the nursing home under state control will maintain the current level of revenue to the Central Fund for State Nursing Homes from payments made by or on behalf of residents. This revenue is estimated to be \$6.7 million per year.

State Expenditures

The bill is expected to impact state expenditures in several areas, as described below.

Costs associated with sale of the Trinidad State Nursing Home. The bill requires the department to maintain ownership and control of the Trinidad State Nursing Home. Therefore, the costs to operate the nursing home will continue at current levels. In addition, the state will save \$335,000 that would be paid to employees leaving the state personnel system for accrued leave time when the nursing home is sold. This cost would have been paid with proceeds from the sale of the nursing home.

Potential loss of federal funds. The bill could result in the loss of more than \$10 million in federal funds if changes to the funding of the Trinidad nursing home are not made. Federal rules of the U.S. Department of Veterans Affairs prohibit using moneys dedicated to the veterans nursing homes for other purposes, and the department must make a good faith effort to repay the approximately \$3.7 million that has been diverted to the Trinidad nursing home over the last several years. Selling the Trinidad nursing home would generate revenue to repay the veterans nursing homes at least a portion of the moneys used to subsidize the Trinidad home. Divesting the Trinidad nursing home would also stop the ongoing transfer of funds from the veterans nursing homes to support the Trinidad facility.

Ongoing operating costs. Preventing the sale of the Trinidad nursing home would require the department to maintain its current staffing of 161.5 FTE and incur annual operating expenses of \$7.1 million. Under current law, this funding would come from the Central Fund for State Nursing Homes. Because of the potential loss of federal funding discussed above, this analysis assumes that \$400,000 from the General Fund would be required to fund the ongoing operations at the Trinidad nursing home each year and end the subsidy from the veterans nursing homes. To provide this funding, a statutory change would likely be required to remove the Trinidad nursing home from enterprise status so that increased state funding does not violate TABOR requirements. State funding to cover the ongoing operating loss at the Trinidad nursing home will allow the veterans nursing homes to maintain federal funding.

Legal costs. The department has already entered into a contractual agreement to sell the Trinidad nursing home. If this bill were to stop the sale of the Trinidad nursing home, the department could be found to have breached its contract with the buyer and be liable for certain costs incurred by the buyer. In addition, a layoff plan for state employees at the Trinidad nursing home has been implemented and employees who acted on reliance of the plan could bring a lawsuit against the department. Potential legal costs cannot be estimated at this time.

Funding

No appropriation is required at this time. This analysis assumes that decisions on future funding for the Trinidad State Nursing Home will be addressed through the annual budget process if the Trinidad nursing home continues to be operated by the state.

Technical/Mechanical Defects

As mentioned previously, the bill takes effect on August 10, 2011, and ownership of the Trinidad nursing home is scheduled to be transferred on February 1, 2011. This discrepancy would render the bill moot. The bill requires an effective date prior to February 1, 2011, in order for it to have an impact on the scheduled sale of the Trinidad State Nursing Home.

Departments Contacted

Human Services

Law