

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

**Drafting Number:** LLS 12-0579  
**Prime Sponsor(s):** Rep. Stephens  
 Sen. Cadman

**Date:** June 12, 2012  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Bill Zepernick (303-866-4777)

**TITLE:** CONCERNING THE ENCOURAGEMENT OF A STATE AGENCY TO PURSUE COLORADO-SPECIFIC SOLUTIONS IN LIEU OF FEDERAL REGULATION WHENEVER POSSIBLE, AND, IN CONNECTION THEREWITH, REQUIRING A STATE AGENCY TO REPORT ANNUALLY REGARDING OPPORTUNITIES FOR WAIVER FROM NEWLY ADOPTED FEDERAL REGULATIONS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
<b>State Expenditures</b>	Increased costs. See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Effective Date:</b> The bill was postponed indefinitely by the Senate Health and Human Services Committee on March 22, 2012.		
<b>Appropriation Summary for FY 2012-2013:</b> None required.		
<b>Local Government Impact:</b> None.		

**Summary of Legislation**

The bill encourages state agencies that are affected by, or charged with, implementing federal regulations to seek a waiver from the federal government and instead promulgate its own rules. Agencies are encouraged to seek a waiver only if it is permitted by federal law and would not be administratively impractical or economically unsound to do so. Agencies are required to report annually to the General Assembly on the following information:

- federal rules directly affecting the agency promulgated in the prior 12 months and from which the state agency could seek a waiver; and
- whether the agency applied for or sought a waiver from these federal regulations, the reasoning for seeking or not seeking a waiver, and the results of any waiver application.

**State Expenditures**

The bill will increase workload and costs across all state agencies affected by federal rules. These costs are described in the sections below.

***Tracking and reporting.*** While it is assumed that state agencies track rules affecting their agency, the bill will, at a minimum, require state agencies to also track which rules can potentially be waived and to prepare the annual report to the General Assembly on these rules, waivers sought, and the results. These duties will increase workload in state agencies; however, this analysis assumes that these tasks can be accomplished within existing resources and that no new appropriations are required at this time.

***Seeking waivers.*** The process of seeking waivers from federal regulations will increase costs in state agencies. However, the bill *encourages* agencies to seek waivers from new federal regulations when possible and practical, but *does not require* agencies do so. This analysis assumes that federal regulations that can be waived will be identified by agencies as part of federal rule tracking process. If a potential waiver opportunity is identified, it is assumed that agencies will 1) apply for waivers if they have the resources to do so, or 2) seek additional funding through the annual budget process to pursue the waiver. The process of seeking federal waivers will likely be time-consuming and require additional staff and resources. The costs and time commitment of seeking a waiver will vary based on the nature and complexity of the federal regulation. For informational purposes, applying for a Medicaid waiver can have costs of about \$60,000 over a two-year period for contract staff to prepare the waiver application and respond to questions and concerns from the federal government.

***Promulgating rules.*** Agencies may be required to conduct additional or more complicated rulemaking if a waiver from federal regulation is received. Without a waiver, agencies will likely be able to codify any required federal regulation into state rule as necessary. If Colorado-specific rules are to be made in place of the federal regulations, a full rulemaking process will likely be required. These costs will vary by agency and program area and are not estimated here. It is assumed that required funding will be sought through the annual budget process if an agency pursues and receives a federal waiver.

## **Departments Contacted**

All Departments