

  
*Colorado Legislative Council Staff Fiscal Note*  
**STATE**  
**FISCAL IMPACT**

**Drafting Number:** LLS 12-0531

**Date:** January 24, 2012

**Prime Sponsor(s):** Sen. Boyd

**Bill Status:** Senate Health and Human Services

**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING PROTECTION FOR EMPLOYEES OF LICENSED HEALTH CARE FACILITIES WHO EXERCISE THEIR OWN JUDGMENT.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
<b>State Revenue</b>		
<b>State Expenditures</b>	See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2012-2013:</b> None required.		
<b>Local Government Impact:</b> None.		

**Summary of Legislation**

This bill prohibits a licensed health care facility or its agent from retaliating against an employee when the employee is using the best available practices and acting in the best interests of the patient; or when the employee is following a patient's directive. The bill defines retaliation to include: demotion, reassignment of duties, discharge from employment, or loss of pay or benefits.

**State Expenditures**

This bill may affect costs for state agencies, but is not anticipated to require an increase in appropriations for any state agency.

First, the bill may reduce the number of employees who are terminated and make a claim for unemployment compensation under the Colorado Department of Labor of Employment. These reductions have not been estimated but are anticipated to be minimal. Second, it could increase state expenditures in the Judicial Branch and the Departments of Corrections, Human Services, Personnel and Administration, and Public Health and Environment, as discussed below.

**Judicial Branch.** To the extent that employees of licensed health-care facilities experience employer-based retaliation and choose to file a lawsuit, costs for the Judicial Branch increase. These costs have not been estimated, but are anticipated to be minimal.

***Department of Corrections (DOC).*** Prison-based clinics operated by the DOC are licensed as community clinics and, as such, are subject to the requirements under this bill. Under department rules, state employees may be disciplined, up to and including termination, for failure to perform competently. This bill would either penalize or prevent the DOC from taking corrective action against any employees who cite their actions as resulting from the patient's directive. Depending on the outcome of any employee actions, the bill could increase state expenditures for the DOC to respond to and investigate claims of employment retaliation.

***Department of Human Services (DHS).*** The DHS operates mental health institutes that serve persons who have high medical needs or are developmentally disabled. These facilities operate as hospitals and as such, must adhere to federal rules that dictate specific procedures for the care of patients. In addition, in some cases, patients have a third-party appointed to make medical and other decisions. In other cases, patients may not be competent to make medical decisions. This bill could result in situations where an employee's actions and judgment are in conflict with federal rules or an order authorizing someone other than the patient to give medical directives. To the extent that either of these situations occur, the DHS could be penalized or prevented from taking corrective action against any employees. Depending on the outcome of any employee actions, the bill could increase state expenditures for the DHS to respond to and investigate claims of employment retaliation.

***Department of Personnel and Administration.*** This bill could also increase the number of cases from the DOC or DHS that are brought forward to the State Personnel Board for resolution. These costs have not been estimated, but are anticipated to be minimal.

***Colorado Department of Public Health and Environment (CDPHE).*** The CDPHE inspects licensed health care facilities for licensure purposes. Under current practice, individual employees are often held accountable by the facility for certain issues identified during the inspection. To the extent this continues to occur, it may result in more time taken by facilities to comply with inspection findings and require additional follow up by the CDPHE. This analysis assumes any such increase will be minimal.

**Departments Contacted**

Corrections	Health Care Policy & Financing	Higher Education
Human Services	Judicial	Labor
Personnel	Public Health and Environment	Regulatory Agencies