SB 21-039

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0463	**Date:**	March 01, 2021
Prime Sponsors:	Sen. Zenzinger; Hisey Rep. Caraveo; Pelton	**Bill Status:**	Senate Business
		Fiscal Analyst:	Max Nardo | 303-866-4776 Max.Nardo@state.co.us

Bill Topic: **ELIMINATION OF SUBMINIMUM WAGE EMPLOYMENT**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☐ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill phases out subminimum wage employment for private businesses; creates a buy-in option and modifies services offered through the Developmental Disabilities Medicaid waiver program; and continues the Employment First Advisory Partnership indefinitely. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires appropriations of $520,205 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-039

New Impacts		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	-	$11,502	$11,502
	Total Revenue	**-**	**$11,502**	**$11,502**
Expenditures	General Fund	$120,853	($1,145,438)	($909,727)
	Cash Funds	$8,277	$1,225,885	$1,225,885
	Federal Funds	$391,075	$30,815	$266,525
	Centrally Appropriated	$30,467	$32,992	$32,992
	Total Expenditures	**$550,672**	**$144,254**	**$615,675**
	Total FTE	**1.5 FTE**	**1.6 FTE**	**1.6 FTE**
Continuing Impacts				
Revenue		-		-
Expenditures	General Fund	$12,016	$12,016	$12,016

Table 1 shows the new impacts resulting from numerous changes under the bill and the continuing impacts from extending the Employment First Advisory Partnership beyond its current repeal date. The continuing program impacts will end if the bill is not passed and the program is allowed to repeal.

Summary of Legislation

The bill phases out sub-minimum wage employment for private businesses; creates a buy-in option for the Developmental Disabilities Medicaid waiver program; makes additional changes to the services offered through the waiver program; and continues the Employment First Advisory Partnership, and as discussed below.

Employer phase-out of subminimum wage. The bill phases out subminimum wage employment for employers that hold a special certificate from the U.S. Department of Labor authorizing them to pay employees less than minimum wage if their earning capacity is impaired by age, physical or mental disability, or injury.

Employers with a special certificate as of June 30, 2021, may continue to pay qualifying employees subminimum wages until June 30, 2025. These employers must submit a transition plan to the Department of Labor and Employment (CDLE) by June 30, 2022, that describes the employer's plans to phase out subminimum wage employment and support their subminimum wage employees in pursuing competitive employment, supported employment, or integrated community activities related to each individual's employment goals. The plan must include measurable benchmarks, be informed by evidence-based practices and effective employment models, and be updated annually and resubmitted to the CDLE until the employer is no longer paying subminimum wages. CDLE must collaborate with employers to create a process for approving transition plans.

Employers without a special certificate as of June 30, 2021, may not employ individuals for less than the minimum wage after that date. Regardless of special certificate, employers may not hire any new employees at subminimum wages after June 30, 2021. On and after July, 1 2025, an employer cannot pay an employee less than the applicable federal or state minimum wage, whichever is higher.

Employment First Advisory Partnership recommendations. The bill requires the Employment First Advisory Partnership to develop actionable recommendations for addressing barriers to phasing out subminimum wage employment, and to deliver these recommendations to the General Assembly by April 1, 2022. The recommendations must address:

- payment reform for employment-related services;
- adequate reimbursement rates for employment-related services to ensure high-quality support services;
- unit caps on employment-related services; and
- federal Medicaid waiver and state regulatory barriers.

In addition, the partnership, which is scheduled to repeal on September 1, 2021, is continued indefinitely, and its 2021 sunset review is cancelled.

Changes to state Medicaid programs. By January 1, 2023, the Department of Health Care Policy and Financing must seek federal approval for additional Medicaid waiver services for adults with intellectual and developmental disabilities to support their ability to gain competitive employment. These services include support to provide line-of-sight supervision and ongoing benefits counseling to support higher earnings. In addition, HCPF must seek to remove job coaching and job development from the service plan authorization limits, allowing these services to be authorized without regard to an individual's service limit.

The bill also requires HCPF to seek federal authorization to implement a buy-in program for the Developmental Disabilities waiver by January 1, 2023, and must implement the buy-in program within three months of receiving approval. Services currently included in the developmental disabilities waiver program include:

- behavioral services;
- day habilitation services;
- dental;
- home delivered meals;
- non-medical transportation;
- peer mentorship;
- prevocational services;
- residential habilitation services and supports;
- specialized medical equipment and supplies;
- supported employment;
- transition set up; and
- vision.

Assumptions

The fiscal note assumes that HCPF will receive federal authorization for the waivers required under the bill, including the addition of competitive employment services to the developmental disabilities waiver and the developmental disabilities waiver buy-in program.

Continuing Program Impacts

Based on the department's FY 2021-22 budget request, the CDLE is expected to have General Fund expenditures of $12,016 to continue the Employment First Advisory Partnership. These costs include travel reimbursement and facilitation services for partnership meetings. If this bill is enacted, current expenditures will continue for the program starting in FY 2021-22. If this bill is not enacted, the program will end on September 1, 2021, and state expenditures will decrease starting in FY 2021-22 by the amounts shown in Table 1.

State Revenue

The bill will increase state revenue to the Medicaid Buy-In Cash Fund in HCPF by an estimated $11,502 beginning in FY 2022-23 from individuals paying premiums to participate in the newly created buy-in program for the Medicaid developmental disabilities waiver. This assumes 28 people will pay $410.80 annually to buy into the program. Revenue from premium payments is subject to TABOR.

State Expenditures

On net, the bill increases state expenditures by $550,672 and 1.5 FTE in FY 2021-22, $144,254 and 1.6 FTE in FY 2022-23, and by $615,675 and 1.6 FTE in FY 2023-24. Expenditures are in HCPF and the CDLE, and paid from the General Fund, cash funds, and federal funds. These amounts are shown in Table 2 and discussed below.

Table 2
Expenditures Under SB 21-039

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Health Care Policy and Financing			
Personal Services	$65,801	$71,783	$71,783
Operating Expenses	$1,350	$1,350	$1,350
Capital Outlay Costs	$6,200	-	-
Computer Programming	$400,364	-	-
Developmental Disabilities Buy-in[1]	-	($5,751)	($5,751)
Developmental Disabilities Employment Services[2]	-	-	($567,650)
Service Plan Authorization Limit Changes	-	-	$1,039,071
Centrally Appropriated Costs[3]	$20,894	$23,095	$23,095
HCPF Subtotal	**$494,609**	**$90,477**	**$561,898**
HCPF FTE	**0.9 FTE**	**1.0 FTE**	**1.0 FTE**
Department of Labor and Employment			
Personal Services	$39,480	$43,070	$43,070
Operating Expenses	$810	$810	$810
Capital Outlay Costs	$6,200	-	-
Centrally Appropriated Costs[3]	$9,573	$9,897	$9,897
CDLE Subtotal	**$56,063**	**$53,777**	**$53,777**
CDLE FTE	**0.6 FTE**	**0.6 FTE**	**0.6 FTE**
Total	**$550,672**	**$144,254**	**$615,675**
Total FTE	**1.5 FTE**	**1.6 FTE**	**1.6 FTE**

[1] *Total cost for the buy-in program are estimated to be $1.2 million. This figure represents the net change after accounting for current services and changes in fund sources.*
[2] *This figure is the net change after accounting for reduced costs from greater use of line-of-sight supervision and higher costs for benefit counseling.*
[3] *Centrally appropriated costs are not included in the bill's appropriation.*

Department of Health Care Policy and Financing. To implement the bill, HCPF will hire staff, update computer systems, and see changes in medical services utilization, as discussed below.

Personal services. HCPF will require 1.0 FTE to perform the following tasks required by the bill: implement and manage the new employment-related services under the developmental disabilities waiver; complete the regulatory process to move the existing individual job coaching and development services outside of the service plan authorization limits and eliminate the unit caps for these services; manage the addition of the buy-in program to the developmental disabilities waiver; and engage with stakeholders, including providers, case management agencies, and members. Staff funding is split evenly between the General Fund and federal funds, and first-year costs are prorated to reflect the General Fund paydate shift.

Computer programming. The bill requires changes to both the Colorado Benefits Management System (CBMS) and the Medicaid Management Information System (MMIS) to implement the new buy-in program for the developmental disabilities waiver. CBMS programming cannot be achieved within existing CBMS pool hours and will cost $129,858 (assuming 941 hours of programming at a rate of $138 per hour). CBMS programming costs qualify for a blended 87.19 percent federal funding match. MMIS programming will cost $270,506 (assuming 2,105 hours of programming at an average rate of $129 per hour). MMIS programming costs qualify for a 90 percent federal funding match.

Developmental disabilities buy-in. The creation of the buy-in program is expected to shift participants from the developmental disabilities waiver program to the buy-in program. On net, this shift is expected to decrease costs by $5,751 starting in FY 2022-23, when it is assumed that HCPF will begin enrolling individuals in the buy-in program. While the developmental disabilities waiver program is financed with the General Fund, the new buy-in program will be funded through the Healthcare Affordability and Sustainability (HAS) Fee Cash Fund. Premiums for the buy-in program are not eligible for the 50 percent federal funds match. As such, the shift to a buy-in program with premiums results in a decrease in use of General Fund and federal funds, and an increase in HAS cash fund beginning in FY 2022-23.

Employment services. HCPF must seek federal approval to add additional employment-related services to the developmental disabilities waiver program. Taking effect in FY 2023-24, benefit counseling expenditures are estimated at about $200,000, and line of sight supervision, which replaces more costly individual job coaching when appropriate, reduces expenditures by about $770,000, resulting is a net decrease in costs of $567,650. Greater savings are anticipated in future years. This net reduction in expenditures is split evenly between General Fund and federal funds.

Service plan authorization limit changes. The bill removes individual job coaching and individual job development services from the service plan authorization limit (SPAL) under the developmental disabilities Medicaid waiver program. This is expected to increase costs by about $1.0 million per year starting in FY 2023-24. By moving these services outside the SPAL, case managers can authorize additional services without the need to balance an individual's SPAL by cutting other services. This change is expected to drive additional General Fund and federal expenditures as individuals will be able to increase utilization of other services within their SPAL.

Department of Labor and Employment. The bill increases workload in the CDLE to support the Employment First Advisory Partnership, review transition plans, conduct rulemaking, and respond to additional complaints and inquiries from the public and other state agencies regarding the change in law. CDLE will require an additional 0.6 FTE beginning in FY 2021-22 to accomplish these tasks. Standard operating and capital outlay costs are included, and first year costs are prorated to reflect the General Fund paydate shift.

Other state agencies. In FY 2021-22, the bill increases state workload for the Employment First Advisory Partnership, which includes representation from HCPF, the CDLE, the Department of Education, the Department of Higher Education, and the Department of Human Services to make recommendations related to eliminating subminimum wage employment. No changes in appropriations are required.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be $30,467 in FY 2021-22 and $32,992 in FY 2022-23 and future years.

TABOR refunds. Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Effective Date

This bill takes effect July 1, 2021, and applies to wages paid on or after this date.

State Appropriations

For FY 2021-22, the bill requires the following appropriations:

- $473,715 and 0.9 FTE to the Department of Health Care Policy and Financing, including $74,363 General Fund, $8,277 HAS fee cash fund, and $391,075 federal funds; and

- $46,490 General Fund and 0.6 FTE to the Department of Labor and Employment.

In addition, the Office of Information Technology requires a reappropriation of $129,858 from the Department of Health Care Policy and Financing for CBMS system changes.

State and Local Government Contacts

Health Care Policy and Financing
Public Health and Environment
Counties
Labor