

Multiple Agency Fiscal Note Summary

Bill Number: 1127 HB	Title: COVID-19 health data privacy
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Estimated Cash Receipts

Agency Name	2021-23			2023-25			2025-27		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Social and Health Services	0	0	563,000	0	0	346,000	0	0	346,000
Total \$	0	0	563,000	0	0	346,000	0	0	346,000

Estimated Operating Expenditures

Agency Name	2021-23				2023-25				2025-27			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Office of Attorney General	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Health Care Authority	.0	0	0	0	.0	0	0	0	.0	0	0	0
Consolidated Technology Services	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Labor and Industries	.0	0	0	224,000	.0	0	0	0	.0	0	0	0
Department of Social and Health Services	5.5	662,000	662,000	1,225,000	4.0	408,000	408,000	754,000	4.0	408,000	408,000	754,000
Department of Health	4.0	1,114,000	1,114,000	1,114,000	.0	0	0	0	.0	0	0	0
Department of Veterans Affairs	.0	0	0	0	.0	0	0	0	.0	0	0	0
Department of Children, Youth, and Families	.3	55,932	55,932	55,932	.0	0	0	0	.0	0	0	0
Department of Corrections	.0	0	0	0	.0	0	0	0	.0	0	0	0
Employment Security Department	12.5	0	0	1,953,140	.0	0	0	0	.0	0	0	0
Total \$	22.3	1,831,932	1,831,932	4,572,072	4.0	408,000	408,000	754,000	4.0	408,000	408,000	754,000

Estimated Capital Budget Expenditures

Agency Name	2021-23			2023-25			2025-27		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Office of Attorney General	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Consolidated Technology Services	.0	0	0	.0	0	0	.0	0	0
Department of Labor and Industries	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	.0	0	0	.0	0	0	.0	0	0
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Veterans Affairs	.0	0	0	.0	0	0	.0	0	0
Department of Children, Youth, and Families	.0	0	0	.0	0	0	.0	0	0
Department of Corrections	.0	0	0	.0	0	0	.0	0	0
Employment Security Department	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Danielle Cruver, OFM	Phone: (360) 522-3022	Date Published: Final 2/24/2021
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Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 100-Office of Attorney General
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Bruce Turcott	Phone: (360) 586-2738	Date: 02/03/2021
Agency Approval: Diana Arens	Phone: 3605869346	Date: 02/03/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 02/03/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

No fiscal impact. This legislation is not expected to generate any costs or savings for the Attorney General's Office (AGO). The AGO completed an analysis for legal services and fiscal impact from the most likely state agencies.

The AGO Agriculture & Health Division (AHD) has reviewed this bill and determined it will not increase or decrease the division's workload in representing the Department of Health (DOH). This bill will impose certain privacy protection obligations on covered organizations that collect COVID-19 health data. DOH is excluded from the definition of "covered organization," so they will not require legal advice on the implementation of or compliance with the bill. Costs are not included in this request.

The AGO Consumer Protection Division (CPD) has reviewed this bill and determined it will not significantly increase or decrease the division's workload. The exemptions contained in the definition of "covered entity" in the bill will likely exempt the largest entities who collect, use, or disclose COVID-19 health data (e.g., Google and Apple). Investigations relating to any covered entities will therefore be rare, and result in minimal legal services. The act's expiration date of December 31, 2022 limits the number of investigations and related legal actions taken by the division. New legal services are nominal and costs are not included in this request.

The AGO Social & Health Services-Olympia Division (SHO) has reviewed this bill and determined it will not significantly increase the division's workload in representing the Health Care Authority (HCA), the Department of Social & Health Services (DSHS) or the Department of Children, Youth, & Families (DCYF). Since HCA is a covered entity and this bill does not apply to it, SHO assumes that there will be no additional legal services required and no fiscal impact. DSHS identified a fiscal impact (primarily related to software changes to segregate different types of information to comply with this bill). SHO will provide any associated legal services with existing resources. DCYF has confirmed that they do not think this legislation will have a fiscal impact on the provision of legal services to the agency. At the very most, this bill will require ten hours of legal services per year. New legal services are nominal and costs are not included in this request.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*
NONE

III. D - Expenditures By Program (optional)
NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures
NONE

IV. B - Expenditures by Object Or Purpose
NONE

IV. C - Capital Budget Breakout
Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods
NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*
NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 107-Washington State Health Care Authority
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
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- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Kathryn Kingman	Phone: 360-725-0455	Date: 02/04/2021
Agency Approval: Michael Paquette	Phone: 360-725-0875	Date: 02/04/2021
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 02/05/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

See attached narrative

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

See attached narrative

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

See attached narrative

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

See attached narrative

Part V: New Rule Making Required

HCA Fiscal Note

Bill Number: 1127 HB

HCA Request #: 21-55

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

This bill addresses how covered organizations may collect, use or disclose Coronavirus Disease 2019 (COVID-19) health data with affirmative consent as necessary for and limited to a good faith COVID-19 public health purpose. It specifies prohibited purposes for collecting, using or disclosing COVID-19 health data and exempts it from disclosure under the Public Records Act.

NEW SECTION. Section 2 defines terms used in the bill including Covered Organization which is identified in Section 2(4)(b)(iv) to specifically exclude a covered entity as defined in Title 45 C.F.R.

The Washington State Health Care Authority (HCA) is a covered entity under Title 45 C.F.R.

Other sections:

NEW SECTION. Section 3 requires covered organizations to provide a privacy policy to individuals whose personal data pertaining to COVID-19 has been collected/received and ensure they receive affirmative express consent before using the individual's data.

NEW SECTION. Section 4 defines how a covered organization may collect, use or disclose COVID-19 health data.

NEW SECTION. Section 5 establishes data security requirements for covered organizations COVID-19 health data.

NEW SECTION. Section 6 requires covered organizations that collects, uses or discloses COVID-19 health data from at least 30,000 individuals over 60 calendar days shall issue a public report at least once every 90 days.

NEW SECTION. Section 7 states that nothing in this act limits or prohibits a public health agency from administering programs or conducting research, outreach, development, manufacture or distribution of a drug, biological product or vaccine that relates to COVID-19.

NEW SECTION. Section 8 states that a violation of this act constitutes a violation of the Consumer Protection Act, RCW 19.86.

II. B - Cash Receipts Impact

No impact

II. C - Expenditures

No impact

As a covered entity HCA is exempt from the requirements in this bill.

Part IV: Capital Budget Impact

None

Part V: New Rule Making Required

None

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 163-Consolidated Technology Services
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

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Check applicable boxes and follow corresponding instructions:

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- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Christina Winans	Phone: 360-407-8908	Date: 02/04/2021
Agency Approval: Tim Gallivan	Phone: (360) 407-8215	Date: 02/04/2021
OFM Review: Tyler Lentz	Phone: (360) 790-0055	Date: 02/08/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

HB 1127 amends RCW 42.56.360 and adds a new chapter to Title 70 RCW. This bill provides guidelines and regulations for entities that handle COVID-19 health information which are not public health agencies, health care providers, or health care facilities. It establishes clear consumer protections for citizens and defines their right to privacy when entities that are not public health agencies, health care providers, or health care facilities possess or manage their COVID-19 related health care data. The provisions in this bill would only apply to government agencies other than the department of health. This bill also amends the Public Records Act.

Section 2 defines covered organizations and COVID-19 public health data related to COVID-19. Covered entities as any person, including government entities, that collects, uses discloses COVID-19 data, or develops or operates technology for responding to COVID-19. Exempted from this section are entities that transmit deidentified data for the purpose of digital notification.

Section 3 outlines the requirements for covered organizations to provide privacy policies to individuals. Individuals must give affirmative express consent in order for the covered organization to collect, use or disclose COVID-19 data related to that individual.

Section 4 details the acceptable uses of COVID-19 data by covered organizations and establishes data administration principles for the covered organization.

Section 9 makes changes to the public records act, exempting COVID-19 data as defined in the act from public disclosure.

The bill has an emergency clause and takes effect immediately upon signature by the governor. The bill also has an expiration clause and expires December 31, 2022.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

This bill has no impact on cash receipt.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Per description in section 2, it is assumed that Consolidated Technology Services (WaTech) would be a covered organization. It is further assumed that based on our health screening activities related to data center operations, WaTech would collect COVID-19 health data as defined in this bill. As such, WaTech would need to establish processes to ensure that the data is protected in such a way that it complies with the regulations in this bill. WaTech would also need to establish processes to ensure that this data is destroyed or rendered un-linkable within 30 days after collection.

WaTech is already in compliance with the requirements of this bill and would not need to take any additional

steps to comply with the retention, deletion and security requirements laid out in the bill. Additionally, the Office of Privacy and Data Protection (OPDP*) can absorb the requirement to establish a privacy policy within existing resources.

*OPDP is a division of the Office of the Chief Information Officer (OCIO) in Consolidated Technology Services (WaTech)

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 235-Department of Labor and Industries
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
Account					
Accident Account-State 608-1	106,000	6,000	112,000	0	0
Medical Aid Account-State 609-1	106,000	6,000	112,000	0	0
Total \$	212,000	12,000	224,000	0	0

Estimated Capital Budget Impact:

NONE

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- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Donald Jenson Jr	Phone: 360-902-6981	Date: 02/04/2021
Agency Approval: Trent Howard	Phone: 360-902-6698	Date: 02/04/2021
OFM Review: Anna Minor	Phone: (360) 790-2951	Date: 02/05/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This bill relates to protecting the privacy and security of Covid-19 health data collected by entities other than public health agencies, health care providers, and health care facilities.

Sections 2, 3, and 4 of the bill stipulate that the Department of Labor and Industries (L&I) is required to obtain affirmative express consent from workers before we collect, use, or disclose Covid-19 health data. L&I must also provide our privacy policy, allow workers to revoke consent, and destroy or render unlinkable Covid-19 data no later than 30 days after collection. This data may not be used in the claim appeal process is.

This will require numerous system changes, new forms and letters, training, and new processes related to claim adjudication and bill payment.

Section 11 states that the bill expires December 31, 2022.

Section 12 states that the bill takes effect immediately.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

Non-appropriated State Fund Premiums

As an insurance entity, (L&I) premium rates are intended to match premiums to claims cost projections.

Therefore, for this fiscal analysis it is assumed that any incremental costs or savings will equal the incremental revenue collected.

Non-Appropriated Premium Impact to Employers

Individual changes to the Accident and Medical Aid fund do not change rate assumptions by themselves. Cost increases are only one of many components in determining rates. The high-level strategy that is used to determine if a rate change is necessary is as follows:

- Review of liabilities, or costs of the Worker Comp System.
- Investment earnings.
- Adequate revenue (premiums + investments) based on projected costs (actuarial estimates) will determine need for a premium change.

Non-appropriated Self-Insured Employers

If an employer chooses to be self-insured, they are responsible to pay for overall claim costs and a portion of administration costs of L&I's Self-Insurance Program and other costs of related support functions. The administrative assessment is an amount per dollar of claim benefit costs. If benefit costs are increased due to the change in new processes related to this bill, self-insured employers would be assessed by L&I for their appropriate portion of administrative costs based on the increase. Incremental costs or savings will equal the incremental revenue collected from assessments.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Non-appropriated – State Fund Benefits Costs

There is non-appropriated impact to the Accident Account, fund 608, and Medical Aid Account, fund 609. (Non-appropriated costs are not included in the Fiscal Note Summary.) The impact of this bill on non-appropriated costs is indeterminate for the following reasons:

- For those claimants who revoke consent to use their Covid-19-related data, claim costs are expected to increase as the unavailable information will cause many delays and complications in adjudication. However, it is difficult to estimate how large these delays might be, and how this may impact the resolution of the claim. This makes it difficult to estimate the impact on non-appropriated claim costs.
- It will be more difficult to litigate appeals where consent has been revoked, due to the inability to use relevant claim information in the appeal. This is expected to increase claim costs for the claims on appeal, but it is difficult to estimate the extent of the additional non-appropriated claim costs.
- Currently expert estimates of Covid-19 infection rates are changing dramatically, as the trends in infections may be changing. So, estimates of the size of the potential number of Covid-19 claims have been changing as well. This adds additional uncertainty to any estimate of the financial impact of this bill on non-appropriated costs.

Appropriated -Operating Costs

This bill increases expenditures to the Accident Fund, fund 608, and the Medical Aid Fund, fund 609. The following assumptions were used to estimate the resources requested to implement this bill.

Information Technology New Applications/Systems

Contract developers will be required to modify and enhance multiple internal systems, with the biggest impact to the Claims and Account Center (CAC) and Orion systems. Other claims oriented systems are also impacted. Data collection will be separated into its own fields and flagged as Covid-19 in order to support affirmation and consent options. Quality Assurance, hardware, and software costs are also required for this effort.

A total of \$223,736 is needed in the 2021-23 biennium for the information technology changes. This includes:

- Contractor costs – \$168,400 is needed for 1,330 contractor hours
- Quality Assurance – \$48,000
- Hardware – \$1,836
- Software – \$5,500

Other costs

Other operational costs associated with the bill such as printing new forms and letters; staff training; and process changes dealing with bill payment and claims adjudication, will be implemented with existing resources.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
608-1	Accident Account	State	106,000	6,000	112,000	0	0
609-1	Medical Aid Account	State	106,000	6,000	112,000	0	0
Total \$			212,000	12,000	224,000	0	0

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	212,000	12,000	224,000		
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	212,000	12,000	224,000	0	0

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact**IV. A - Capital Budget Expenditures**

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 300-Department of Social and Health Services
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2022	FY 2023	2021-23	2023-25	2025-27
General Fund-Federal 001-2	390,000	173,000	563,000	346,000	346,000
Total \$	390,000	173,000	563,000	346,000	346,000

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	7.0	4.0	5.5	4.0	4.0
Account					
General Fund-State 001-1	458,000	204,000	662,000	408,000	408,000
General Fund-Federal 001-2	390,000	173,000	563,000	346,000	346,000
Total \$	848,000	377,000	1,225,000	754,000	754,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
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- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Teresa Elliott	Phone: 360-902-8177	Date: 02/17/2021
Agency Approval: Dan Winkley	Phone: 360-902-8236	Date: 02/17/2021
OFM Review: Jason Brown	Phone: (360) 742-7277	Date: 02/24/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 4 - This bill regulates the collection, use, and disclosure of COVID-19 health data. A covered organization must provide a privacy policy to any individual from whom it collects COVID-19 health data, and only collect and use it with the person's consent, which may be revoked at any time. The data may not be redisclosed to law enforcement, in legal proceedings without patient consent, or to any governmental entity unless the entity is a public health agency. The bill prohibits the use of COVID-19 health data for commercial purposes, for providing insurance or financial services, and in connection with public accommodations.

Section 5 - A covered organization or service provider shall establish and implement reasonable data security policies, practices, and procedures to protect the security and confidentiality of COVID-19 health data.

Section 6 - A covered organization that collects COVID-19 health data from more than 30,000 individuals in more than 60 days must issue a report detailing what data it collected at least every 90 days.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

The staffing costs for the agency would be supported by federal funding and calculated based on the Department of Social and Health Services (DSHS) Administrations ability to earn that funding governed by federal requirements. The Federal funding would be Title XIX Medicaid.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Residential Care Services (RCS) collects COVID-19 information from long-term care facilities and providers regarding their residents and staff as part of our provider practice compliance work. RCS conducts investigations and inspections both as state and federal agents depending on the facility/provider designation. The reports are provided to law enforcement, attorneys for legal proceedings, other state agencies, advocacy groups and the public. Protected Health Information (PHI) is redacted in some cases but in others, including law enforcement and information provided to the courts, un-redacted documents are provided. With the amount of redactions the bill requires it will constrain the ability for law enforcement, other agencies, or legal proceedings to interpret the provider practice justifications of RCS. The Health Information Portability Accountability Act (HIPAA) requires RCS to redact identifiable medical information. This bill goes beyond HIPAA as it applies not only to identifiable information, but COVID-19 data related to individuals not necessarily identifiable on their own (i.e. proximity data, geolocation data, demographic data, testing data, etc).

If RCS is determined to be a “covered organization,” they would be required to destroy or “unlink” documentation within 30 days after collection. Most of RCS’s investigations/inspections are not concluded within 30 days. RCS would be required to destroy/unlink some of their evidence of compliance/noncompliance even before completion of their work. Therefore, the data would not be available to explain and defend the Statement of Deficiency (SOD) reports during the dispute resolution process or adjudicative proceedings. In addition, there would be a substantial workload for public records staff to determine whether individuals have

given consent or not to the disclosure of their COVID-19 data. Every data set would have to be heavily scrutinized and purging the data within seven days after receipt by a revocation would be immensely challenging.

RCS working papers and other documents are kept for 6 calendar years and are the subject of hundreds of public disclosure requests each year. RCS working papers, including facility SOD reports, have COVID-19 information scattered throughout. Ensuring all COVID-19 data is redacted would add significant time to the work.

Aging and Long Term Services Administration (AL TSA) will need three IT positions, one IT Business Analyst – Journey, one IT Data Management – Journey, and one IT APP Development – Journey for one year to provide the required business changes to TIVA. TIVA will require an update to separate COVID-19 health data from other confidential data.

When it comes to sharing our confidential information, which we do under RCW 74.34.095(2) and (3), we would need to spend extra time to ensure we separate out any COVID-19 health data prior to sharing other confidential information. Adult Protective Services (APS) is not covered by HIPAA, and would be required to adhere to the additional new requirements of the bill.

Administrative Services will need two Paralegal 1's, one Forms & Records Analyst 2, and one Forms & Records Analyst 3 on an on-going basis to meet the requirements of this legislation. The Paralegal positions are responsible for the redaction of APS information through public records requests that come from the public or DSHS employees. In addition to public records, they would be responsible for discovery requests for hearings, litigation or lawsuits. Discovery would include our APS hearings, administrative, board of appeals and superior court cases, torts and litigation. It could also include employee investigations and redacting the investigatory reports and documents when requested by parties of an investigation. The Forms & Records Analyst positions are needed to process Public Disclosure requests, discovery requests, and file all our hardcopy records.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	458,000	204,000	662,000	408,000	408,000
001-2	General Fund	Federal	390,000	173,000	563,000	346,000	346,000
Total \$			848,000	377,000	1,225,000	754,000	754,000

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	7.0	4.0	5.5	4.0	4.0
A-Salaries and Wages	531,000	235,000	766,000	470,000	470,000
B-Employee Benefits	200,000	100,000	300,000	200,000	200,000
C-Professional Service Contracts					
E-Goods and Other Services	43,000	24,000	67,000	48,000	48,000
G-Travel	1,000	1,000	2,000	2,000	2,000
J-Capital Outlays	42,000		42,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service	3,000	2,000	5,000	4,000	4,000
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	28,000	15,000	43,000	30,000	30,000
9-TZ					
Total \$	848,000	377,000	1,225,000	754,000	754,000

III. C - Operating FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
FORMS & RECORDS ANALYST 2	51,000	1.0	1.0	1.0	1.0	1.0
FORMS & RECORDS ANALYST 3	58,000	1.0	1.0	1.0	1.0	1.0
IT APP DEVELOPMENT - JOURNEY	97,000	1.0		0.5		
IT BUSINESS ANALYST - JOURNEY	97,000	1.0		0.5		
IT DATA MANAGEMENT - JOURNEY	102,000	1.0		0.5		
PARALEGAL 1	125,000	2.0	2.0	2.0	2.0	2.0
Total FTEs		7.0	4.0	5.5	4.0	4.0

III. D - Expenditures By Program (optional)

Program	FY 2022	FY 2023	2021-23	2023-25	2025-27
AGING & LONG TERM SERVICES ADMINISTRATION (050)	848,000	377,000	1,225,000	754,000	754,000
Total \$	848,000	377,000	1,225,000	754,000	754,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

New rules will likely be needed.

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 303-Department of Health
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	5.3	2.6	4.0	0.0	0.0
Account					
General Fund-State 001-1	743,000	371,000	1,114,000	0	0
Total \$	743,000	371,000	1,114,000	0	0

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Heidi Kuykendall	Phone: 360-236-4537	Date: 01/22/2021
Agency Approval: Carl Yanagida	Phone: 360-789-4832	Date: 01/22/2021
OFM Review: Danielle Cruver	Phone: (360) 522-3022	Date: 01/24/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Sec. 1.3 The legislature intends to establish privacy and security standards for digital tools developed for reducing the spread of COVID-19, to provide protections for all Washingtonian's COVID-19 health data.

Sec. 6.1 Requires a covered organization that collects, uses or discloses COVID-19 health data of at least 30,000 individuals over 60 calendar days to issue a public report at least once every 90 days.

Sec. 6.3 Requires covered organizations to provide a copy of the public report to the department of health and for the department of health to publish all received reports on its public website.

Sec. 11 The act expires on December 31, 2022.

Sec. 12 The act is necessary and takes effect immediately.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The Department of Health (the department) must collect and publish the reports that have been created and submitted from covered organizations. The department will develop reporting requirements, including reporting schedules, formats, definitions, guidelines. The department will create a reporting form, make the form available on existing platforms, and communicate with covered organizations about where to find the reporting form.

The department will identify covered organizations and ensure they are reporting per requirements. The department will develop internal systems to collate and track covered organizations and their submitted reports. The department will work with covered organizations to ensure reports are complete and accurate. The department will answer questions from and provide technical assistance to covered organizations.

Every ninety days, the department will publish the reports gathered from covered organization on a public-facing web page. The web page will be created and maintained for this purpose.

Starting in FY21, estimated costs will include 1.0 FTE Health Services Consultant 4 to provide program management oversight, leadership, and supervision of the new section needed to implement these activities. 2.0 FTE Health Services Consultant 3 to develop reporting requirements, schedules, formats, definitions, guidelines, and create reporting forms. 2.0 FTE Health Services Consultant 2 to field questions and provide technical assistance to covered organizations. 0.25 FTE Epidemiologist to create and manage a public-facing web page.

The department assumes that the reports will be collected and published on existing reporting platforms and the system costs would be absorbed within current resources.

For the purpose of this fiscal note, the department assumes a start date of April 1, 2021. The end date will be December 31, 2022.

SFY21 covers April 1, 2021-June 30, 2021, 3 months of costs. SFY22 covers July 1, 2021-June 30, 2022, 12 months of costs. SFY23 covers July 1, 2022-December 31, 2022, 6 months of costs.

Total costs to implement this bill:\$1,325,000

FY21 costs 1.30 FTE \$211,000

FY22 costs 5.25 FTE \$743,000

FY23 costs 2.60 FTE \$371,000

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	743,000	371,000	1,114,000	0	0
Total \$			743,000	371,000	1,114,000	0	0

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	5.3	2.6	4.0		
A-Salaries and Wages	473,000	236,000	709,000		
B-Employee Benefits	183,000	92,000	275,000		
E-Goods and Other Services	33,000	16,000	49,000		
T-Intra-Agency Reimbursements	54,000	27,000	81,000		
9-					
Total \$	743,000	371,000	1,114,000	0	0

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
EPIDEMIOLOGIST 2 (NON-MEDICAL)	95,484	0.3	0.1	0.2		
HEALTH SERVICES CONSULTANT 2	64,332	2.0	1.0	1.5		
HEALTH SERVICES CONSULTANT 3	72,756	2.0	1.0	1.5		
HEALTH SERVICES CONSULTANT 4	80,292	1.0	0.5	0.8		
Total FTEs		5.3	2.6	4.0		0.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

None

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 305-Department of Veterans Affairs
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Terri Goddard	Phone: (360) 725-2165	Date: 02/04/2021
Agency Approval: Terry Westhoff	Phone: 306-725-2171	Date: 02/04/2021
OFM Review: Danielle Cruver	Phone: (360) 522-3022	Date: 02/08/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

HB 1127 protects the privacy and security of COVID-19 health data collection by entities other than public health agencies, health care providers, and health care facilities. This bill also ensures COVID-19 health data that is collected will not be used for law enforcement or immigration purposes. The Washington Department of Veterans Affairs (WDVA) is considered a fully covered Health Insurance Portability and Accountability Act (HIPAA) entity and meets the definition of Health care facility in the bill. WDVA, therefore, assumes no fiscal impact.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 307-Department of Children, Youth, and Families
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.5	0.0	0.3	0.0	0.0
Account					
General Fund-State 001-1	55,932	0	55,932	0	0
Total \$	55,932	0	55,932	0	0

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Chris Conn	Phone: 360 725-4441	Date: 02/11/2021
Agency Approval: Tula Habb	Phone: 3609028004	Date: 02/11/2021
OFM Review: Rayanna Williams	Phone: (360) 902-0553	Date: 02/11/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 explains the need to protect the privacy and security of COVID-19 health data collected by entities other than public health agencies, health care providers, and health care facilities.

Section 2 provides definitions. "Covered organization" is defined, in part, as a government entity that collects, uses, or discloses COVID-19 health data of Washington residents electronically or through communication by wire or radio.

Section 3 provides requirements on privacy policy requirements.

Section 4 provides requirements for covered organizations and how COVID-19 data is collected and handled.

Section 5 provides requirements for security policies.

Section 6 provides requirements for creating a public report if data was collected on at least 30,000 individuals over 60 calendar days.

Section 7 establishes that this act does not limit or prohibit public health agencies from administering some programs related to COVID-19.

Section 8 finds that the practices in this chapter are affecting public interest for the purpose of applying public interest for the purpose of applying the consumer protection act.

Section 9 amends RCW 42.56.360, adding that COVID-19 health data is exempt from disclosure.

Section 10 establishes that sections 1 - 10 constitute a new chapter in Title 70 RCW.

Section 11 states that the act expires December 31, 2022.

Section 12 establishes that the act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and takes effect immediately.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Section 3. Total costs in FY22 are \$55,932.

FTE SALARIES AND BENEFITS: For FY22, 0.5 FTEs costing \$55,932, comprised of 0.25 Social and Health Program Consultant (SHPC) 4 and 0.25 Management Analyst (MA) 4.

The SHPC position will develop policies and procedures for the Child Welfare division of DCYF.

The Management Analyst position will develop update new policies and procedures for the Early Learning division of DCYF.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
001-1	General Fund	State	55,932	0	55,932	0	0
Total \$			55,932	0	55,932	0	0

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	0.5		0.3		
A-Salaries and Wages	42,234		42,234		
B-Employee Benefits	13,698		13,698		
C-Professional Service Contracts					
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	55,932	0	55,932	0	0

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
Management Analyst 4	80,292	0.3		0.1		
Social & Health Program Specialist 4	88,644	0.3		0.1		
Total FTEs		0.5		0.3		0.0

III. D - Expenditures By Program (optional)

Program	FY 2022	FY 2023	2021-23	2023-25	2025-27
Child Welfare (010)	29,197		29,197		
Early Learning (030)	26,735		26,735		
Total \$	55,932		55,932		

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

None.

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 310-Department of Corrections
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Part I: Estimates

☒ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact: Kim Weidenaar	Phone: 360-786-7120	Date: 01/19/2021
Agency Preparation: Greg Scott-Braaten	Phone: 360-725-8977	Date: 02/05/2021
Agency Approval: Michael Steenhout	Phone: 360-725-8270	Date: 02/05/2021
OFM Review: Cynthia Hollimon	Phone: (360) 810-1979	Date: 02/05/2021

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

This bill relates to protecting the privacy and security of COVID-19 health data collected by entities other than public health agencies, health care providers, and health care facilities.

Section 2(4)(a) is a new section that defines “covered organization” as any person, including a government entity, that collects, uses, or discloses COVID-19 health data of Washington residents electronically or through communication by wire; or develops or operates a website, web application, mobile application, mobile operating system feature, or smart device application for the purpose of tracking, screening, monitoring, contract tracing, mitigating, or otherwise responding to COVID-19 or the related public health response.

Section 2(4)(b) is a new section that states a “covered health organization is not a health care provider; a health care facility, a public health entity, a person or entity acting as a “covered entity” or “business associate”, a service provider, a person acting in their individual or household capacity, or a person or entity that provides to a public health agency, a mobile application, or mobile operating system feature that transmits de-identified proximity data solely for the purpose of digitally notifying an individual who may have become exposed to COVID-19.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The Department of Corrections (DOC) assumes that DOC is included as part of the definition for a “Covered Organization” as defined in section 2(4)(a) of this bill. The DOC Health Services clinics are excluded as a “Covered Organization” as defined in Section 2(4)(b), therefore DOC has no fiscal impact.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB*

NONE

None.

Part V: New Rule Making Required

Individual State Agency Fiscal Note

Bill Number: 1127 HB	Title: COVID-19 health data privacy	Agency: 540-Employment Security Department
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	25.0	0.0	12.5	0.0	0.0
Account					
Family and Medical Leave Insurance Account-State 22F-1	1,953,140	0	1,953,140	0	0
Total \$	1,953,140	0	1,953,140	0	0

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 includes the statement of intent to establish equitable privacy and security standards for newly developed digital tools that assist local and state public health agencies with contact tracing efforts for COVID-19.

Section 2 creates definitions including “covered organization,” “COVID-19 health data” and “third party.” Effectively Employment Security Department (ESD) is a covered organization that both collects and uses COVID-19 health data including testing and diagnosis of COVID-19 to establish eligibility for unemployment insurance benefits and Pandemic Unemployment Assistance (PUA) benefits. This change will affect the Unemployment Insurance Customer Support (UICS) division, which establishes eligibility for unemployment insurance benefits and PUA benefits using “COVID-19 health data.”

COVID-19 health data is also used to determine eligibility of financial benefits to individuals who take family leave to care for a family member diagnosed with COVID-19 or medical leave to care for their own diagnosis of COVID-19 through the state’s Paid Family and Medical Leave program. This change will negatively impact the Paid Family Medical Leave (PFML) Division’s ability to establish eligibility for the state’s Paid Family and Medical Leave program using “COVID-19 health data,” which includes diagnosis of COVID-19.

Through claimant or employer appeals and audits of our records, COVID-19 health data is disclosed to third parties including employers, the Washington State Auditor’s Office, the Office of Administrative Hearings and the U. S. Department of Labor (USDOL). The new definition of “third party” will impact ESD’s ability to provide due process through appeals, and will prohibit necessary oversight by Washington’s State Auditor’s Office (SAO) and Office of Administrative Hearings (OAH), as well as the USDOL. OAH routinely hears the appeals of claimants and employers who are impacted by benefits eligibility determinations for unemployment. SAO periodically audits unemployment insurance benefit claims. USDOL requires Benefit Accuracy Measurement audits of unemployment insurance benefit claims as well as intended audits of proper payment of PUA benefits, which all involve this COVID-19 health data.

Section 4 places significant limitations on what ESD as a “covered organization” can do with this data. Specifically, 4(1)(a), (b), and (e), ESD can only collect and use the COVID-19 health data for a “COVID-19 public health purpose.” The definition of “COVID-19 public health purpose” in Section 2(7) does not include providing financial assistance to the unemployed or those taking Paid Family and Medical Leave. ESD’s UICS would be prohibited from collecting and using COVID-19 health data to establish eligibility for unemployment insurance and PUA benefits where COVID-19 information is provided. ESD’s PFML Division would be prohibited from collecting and using COVID-19 health data to establish eligibility for Paid Family and Medical Leave benefits where COVID-19 is diagnosed.

ESD would need to communicate these changes to customers and the public. This would impact the Communications Office as well as the Product, Planning, and Performance (PPP) Division’s Customer Experience team.

Section 4(5) requires destruction of the data 30 days after collection or made unidentifiable as to the claimant whom represents. This impacts the UICS and PFML Divisions to perform the destruction or unlinking of the COVID-19 health data previously collected. The removal of information that substantiates payments made

creates federal conformity issues for record retention and audit purposes.

The data removal requirements are in direct conflict with federal programmatic requirements. ESD has received nearly 542,000 initial applications for PUA benefits and each claimant filing for PUA had to first apply for regular UI benefits. ESD would therefore have to manually review over 1 million initial applications for benefits for COVID-19 related health data requiring deletion. Federally required PUA weekly eligibility verification requires claimants to respond with information regarding their COVID health status. This information must be answered every week, must be retained and be available for future actions such as redeterminations or appeals. All benefits paid would be at risk. Stimulus payments of Federal Pandemic Unemployment Compensation and Lost Wages Assistance were dependent upon the claimant qualifying for the underlying benefits, so those stimulus payments are also at risk. Any future PUA payments will be at risk.

Section 4(6) limits disclosures to third parties, which would include employers. Further, Section (4)(1)(e) prohibits disclosure of this data to any other government agency unless it is a public health agency, which Washington's State Auditor's Office (SAO), Office of Administrative Hearings (OAH) and the U.S. Department of Labor (USDOL) are not. Section 4(6) also prohibits ESD from allowing third party, OAH, to hear appeals of claimants and employers in unemployment and paid family and medical leave cases involving COVID-19 health data. It prohibits ESD from adequate participation where COVID-19 health data is involved in SAO audits and mandatory oversight by USDOL of unemployment insurance and PUA benefits. The fiscal impact of not being able to be audited by USDOL jeopardizes ESD's federal funding of regular unemployment insurance and Pandemic Unemployment Insurance benefits.

Section 10 identifies Sections 1 through 8 as a new chapter in the Public Health and Safety Title 70 RCW. Section 4 incorporates ESD into this title by its definition of a covered organization.

Section 11 creates an expiration of the act on December 31, 2022. The expiration of this act would again allow the PFML Division's Paid Family and Medical Leave program to once again utilize "information as to whether or not an individual has contracted... a disease or disorder" to determine eligibility for paid leave benefits.

Section 12 Emergency clause that makes the bill effective immediately upon signature of the Governor. This impacts UICS, PFML, IT, and Public Affairs' Communications office.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

There is no revenue as the result of this bill.

However, from the beginning of the Pandemic Unemployment Assistance (PUA) period, February 2, 2020, through the week ending January 30, 2021, Employment Security Department (ESD) has paid \$3.2 billion dollars in benefits to 283,365 individual customers. The requirements of the bill could jeopardize all federal PUA benefits and associated federal stimulus payments, if the US Department of Labor (USDOL) deems them impermissibly paid and the payments made are subject to repayment by the State of Washington.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The changes to the UICS's Unemployment Tax and Benefits (UTAB) system and the PFML Division's AX system required by this bill to stop collecting and using COVID-19 health data are in direct conflict with federal requirements.

To implement this bill the following needs to occur in fiscal year 2022:

- Minor Rulemaking

- Removal of COVID information from PFML's data which would take a year to complete.

- Removal of COVID information from UICS' data which is not technically nor legally feasible.

Operating Cost during FY2022

Rulemaking and Policy Related Cost (one time cost)

- Minor Rulemaking cost = \$30,000

To destroy or unlink approximately 176,000 PFML applications, it would take 2,080 hours for each of the following job classes to scrub the PFML Division's Paid Family and Medical Leave records of COVID-19 related information.

- It is assumed that this could be done over the course of one year.

- It is estimated that 21 Paid Family and Medical Leave Specialist 1's will be needed.

- If implementation starts immediately then 5.25 FTE's will be needed for Fiscal Year 2021 costing \$508,956,

- To finish the work 15.75 FTE's will be needed in Fiscal year 2022 costing \$1,526,867.

- It is estimated that 2 Paid Family and Medical Leave Specialist 3's will be needed.

- If implementation starts immediately then 0.50 FTE's will be needed for Fiscal Year 2021 costing \$57,397.

- To finish the work 1.50 FTE's will be needed in Fiscal year 2022 costing \$172,190.

- It is estimated that 2 WMS band 1's will be needed.

- If implementation starts immediately then 0.50 FTE's will be needed for Fiscal Year 2021 costing \$74,694.

- To finish the work 1.50 FTE's will be needed in Fiscal year 2022 costing \$224,083.

Total PFML Cost for FY2021: $\$508,956 + \$57,397 + \$74,694 = \$641,047$

Total PFML Cost for FY2022: $\$1,526,867 + \$172,190 + \$224,083 = \$1,923,140$

There are more than one million applications for regular UI and PUA wherein COVID-19 health data is recorded. Similarly, PUA claimants are federally required to respond with information regarding their COVID-10 health status in weekly eligibility verification. There are millions of data points embedded within this weekly claim documentation. USDOL requires both initial and weekly claim information to be retained. It is not technically nor legally feasible to remove COVID related health information. The data removal requirements are in direct conflict with federal programmatic requirements.

Total Operating Cost for FY2021: \$641,047

Total Operating Cost for FY2022: $\$30,000 + \$1,923,140 = \$1,953,140$

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2022	FY 2023	2021-23	2023-25	2025-27
22F-1	Family and Medical Leave Insurance Account	State	1,953,140	0	1,953,140	0	0
Total \$			1,953,140	0	1,953,140	0	0

III. B - Expenditures by Object Or Purpose

	FY 2022	FY 2023	2021-23	2023-25	2025-27
FTE Staff Years	25.0		12.5		
A-Salaries and Wages	981,836		981,836		
B-Employee Benefits	392,734		392,734		
C-Professional Service Contracts					
E-Goods and Other Services	314,063		314,063		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	264,507		264,507		
9-					
Total \$	1,953,140	0	1,953,140	0	0

III. C - Operating FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2022	FY 2023	2021-23	2023-25	2025-27
PFML Specialist 1	48,996	21.0		10.5		
PFML Specialist 3	59,688	2.0		1.0		
WMS1	80,411	2.0		1.0		
Total FTEs		25.0		12.5		0.0

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Identify acquisition and construction costs not reflected elsewhere on the fiscal note and describe potential financing methods

NONE

IV. D - Capital FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part IVB

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Minor rulemaking will be needed to update definitions within WAC 192-15 and 192-810.