

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5271 SB	<b>Title:</b> DOH facilities/enforcement	<b>Agency:</b> 303-Department of Health
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## Part I: Estimates

No Fiscal Impact

### Estimated Cash Receipts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.2	7.6	3.9	9.7	9.7
<b>Account</b>					
General Fund-State 001-1	58,000	318,000	376,000	926,000	926,000
General Fund-Private/Local 001-7	0	1,040,000	1,040,000	3,236,000	3,236,000
Health Professions Account-State 02G-1	0	220,000	220,000	440,000	440,000
OTHER 1-State NEW-1	0	17,000	17,000	48,000	48,000
<b>Total \$</b>	<b>58,000</b>	<b>1,595,000</b>	<b>1,653,000</b>	<b>4,650,000</b>	<b>4,650,000</b>

### 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

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

SB 5271 strengthens patient safety protection by extending the enforcement provisions for acute and psychiatric hospitals to the other types of health care facilities regulated by the department.

#### Birthing Centers

Section 1: Amends RCW 18.46.010 (Definitions) and 2000 c 93 s 30 to add the definition of “Immediate Jeopardy.”

Section 2: Amends RCW 18.46.050 (Actions Against License) to allow the Department of Health (department) to adopt rules to impose reasonable conditions and to assess a civil fine on a birthing center license when the licensee has the same or similar types of violations of statute or rule, the same or similar types of statements of deficiencies of statute or rule, or failed to correct noncompliance with statute or rule. It gives the department the ability to suspend a specific category or categories of services within the birthing center related to the violation by imposing a limited stop service if the department finds that noncompliance results in immediate jeopardy, and allows the department to suspend new admissions to the birthing center by imposing a stop placement if the department finds that noncompliance results in immediate jeopardy and is not confined to a specific category or categories of care. This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department.

Section 3: Adds a new chapter to 18.46 RCW (Birthing Centers) to allow the department to give written notice to cease and desist to any person whom the department believes is engaging in unlicensed practice of a birthing center. This section provides the right to an adjudicative procedure act and allows the department to assess a civil fine and outlines the requirements for the licensee and the department for these actions.

Section 4: Allows for the department to assess a civil penalty if a person violates and injunction issued under this chapter.

#### Medical Test Sites

Section 5: Amends RCW 70.42.010 (Definitions) and 1989 s 386 c 2 to add the definition of “Immediate Jeopardy.”

Section 6: Allows the department to adopt standards or rules for regulating medical test sites.

Section 7: Adds a new section to 70.42 RCW (Medical Test Sites) to allow the department to adopt rules to impose a limited stop service for noncompliance that results in immediate jeopardy and outlines when the limited stop service shall be terminated. This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department.

Section 8: Adds a new section to 70.42 RCW (Medical Test Sites) to allow the department to give written notice to cease and desist to any person whom the department believes is engaging in unlicensed practice of a medical test site. This section provides the right to an adjudicative procedure act and allows the department to assess a civil fine and outlines the requirements for the licensee and the department for these actions.

Section 9: Allows for the department to assess a civil penalty if a person violates and injunction issued under this chapter.

#### Home Care Services

Section 10: Amends RCW 70.127.010 (Definitions) and 2011 c 89s 13 to add the definition of “Immediate Jeopardy.”

Section 11: Allows the department to adopt standards or rules for regulating in-home services agencies.

Section 12: Adds a new chapter to 70.127 RCW (In-Home Services Agencies) to allow the department to adopt rules to impose reasonable conditions and to assess a civil fine on an in-home services license when the licensee has the same or similar types of violations of statute or rule, the same or similar types of statements of deficiencies of statute or rule or failed to correct noncompliance with statute or rule. It gives the department the ability to suspend a specific category or categories of services provided by the in-home service agency, related to the violation, by imposing a limited stop service if the department finds that noncompliance results in immediate jeopardy. It also allows the department to suspend new admissions to the in-home services agency by imposing a stop placement if the department finds that noncompliance results in immediate jeopardy and is not confined to a specific category or categories of care.

Section 13: This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department for these actions.

Section 14: Amends RCW 70.127.213 (Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines) and 2000 c 175 s 19 to allow the department to give written notice to cease and desist to any person whom the department believes is engaging in unlicensed practice of an in-home services agency. This section provides the right to an adjudicative procedure act and allows the department to assess a civil fine and outlines the requirements for the licensee and the department for these actions.

#### Ambulatory Surgical Facility

Section 15: Amends RCW 70.230.010 (Definitions) and 2011 c 76 s 1 to add the definition of “Immediate Jeopardy.”

Section 16: Amends RCW 70.203.070 (Denial, suspension, or revocation of license—Investigating complaints—Penalties) and 2007 c 273 s 8 to allow the department to adopt rules to impose reasonable conditions and to assess a civil fine on an ambulatory surgical facility license when the licensee has the same or similar types of violations of statute or rule, the same or similar types of statements of deficiencies of statute or rule, or failed to correct noncompliance with statute or rule. It gives the department the ability to suspend a specific category or categories of services within the ambulatory surgical facility related to the violation by imposing a limited stop service if the department finds that noncompliance results in immediate jeopardy, and allows the department to suspend new admissions to the ambulatory surgical facility by imposing a stop placement if the department finds that noncompliance results in immediate jeopardy and is not confined to a specific category or categories of care. This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department.

Section 17: Adds a new section to 70.230 RCW (Ambulatory Surgical Facilities) to allow the department to give written notice to cease and desist to any person whom the department believes is engaging in unlicensed practice of an ambulatory surgical facility. This section provides the right to an adjudicative procedure act and allows the department to assess a civil fine and outlines the requirements for the licensee and the department for these actions.

#### Residential Treatment Facility

Section 18: Amends RCW 71.12.710 (Psychiatric hospitals—Noncompliance—Penalties) and 2020 c 115 s 3 to allow the department to suspend a specific category or categories of service within the private establishment by imposing a limited stop placement, or limited stop service, if the department finds that noncompliance results in immediate jeopardy. This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department.

Section 20: Amends RCW 71.12.500 (Examination of premises as to compliance with the chapter, rules, and license—License changes) and 2000 c 93 s 25 to allow the department to adopt rules to regulate private establishments.

Section 21: Adds a new section to 71.12 RCW (Private Establishments) to allow the department to give written notice to cease and desist to any person whom the department believes is engaging in unlicensed practice of a private facility. This section provides the right to an adjudicative procedure act and allows the department to assess a civil fine and outlines the requirements for the licensee and the department for these actions.

#### Behavioral Health Agency

Section 25: Amends RCW 71.24.025 (Definitions) and 2021 c 302 s 401 to add the definition of “Immediate Jeopardy.”

Section 27: Adds a new section to 71.24 RCW (Community Behavioral Health Services Act) directing the department to review reports and other information alleging a failure to comply, and to annually evaluate each program that admits children to inpatient substance use disorder treatment. This section creates limitations on transferring or selling a behavioral health agency that is in violation of licensing standards to a family member. It directs the department to adopt rules to impose reasonable conditions and to assess a civil fine on a behavioral health agency license when the licensee has the same or similar types of violations of statute or rule, the same or similar types of statements of deficiencies of statute or rule, or failed to correct noncompliance with statute or rule. It gives the department the ability to suspend a specific category or categories of services within the behavioral health facility related to the violation by imposing a limited stop service, or a limited stop placement, if the department finds that noncompliance results in immediate jeopardy. This section provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department.

#### Pharmacy Commission

Section 30: Amends RCW 18.64.011 (Definitions) to include a definition for “Directed Plan of Correction,” “Immediate

Jeopardy,” “Plan of Correction” and “Statement of Deficiency”

Section 32: Adds a new section to 18.64 RCW (Pharmacists) allowing the department to assess a civil fine against a licensee, provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department for these actions.

Section 33: Adds a new section to 18.64 RCW (Pharmacists) allowing the department to assess a civil fine against a licensee or nonresident pharmacy that has the same or similar types of violations of statute or rule, the same or similar types of statements of deficiencies of statute or rule, or failed to correct noncompliance with statute or rule. This section allows the department to impose a limited stop service if the department finds that noncompliance results in immediate jeopardy, and provides the right to an adjudicative procedure act and outlines the requirements for the licensee and the department for these actions.

## II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

### Civil Fines

Fines will be assessed during the enforcement process. The department estimates taking 175 enforcement actions each fiscal year. Fines collected will be used to provide training or technical assistance to the respective facility type and to offset costs associated with licensing facilities. While the department estimates taking 175 formal enforcement actions, the value of revenue collected from civil fines is indeterminate until the severity matrix is established for fines and cost-recovery and rules are adopted.

### Licensing Fees

Current law, RCW 43.70.250 (License fees for professions, occupations, and businesses.) requires that a business-licensing program be self-supporting and sufficient revenue be collected through fees to fund expenditures. The department anticipates the need to increase licensing fees to support the changes proposed in this bill. The department will monitor the program fund balance and adjust fees over a six (6) year period to ensure that fees are sufficient to cover all program expenditures.

## II. C - Expenditures

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

The following assumptions were used to inform this analysis:

- Eighteen months for rulemaking (July 2023 – December 2024)
- 175 enforcement actions per year starting in FY 2025:
  - o 43 surveys per year will result in a stop service type/category or limited stop service type/category
  - o 132 surveys per year would result in finding duplicate deficiencies from previous surveys
- Higher utilization of Office of Attorney General services with increased enforcement and rules support

### Rulemaking:

The department will adopt rules to establish the severity matrix for fines and as needed to implement this bill. The department anticipates this will be a complex rulemaking process taking approximately 18 months to complete due to the large number of facilities and stakeholders effected by this change. Rulemaking will include 12 stakeholder meetings as well as one formal hearing which allows for stakeholder participation. Costs include staff, associated expenses (including goods and services, travel, intra-agency, and indirect charges), and Office of Attorney General support in the amount of \$4,100. In fiscal year 2024, one-time costs for rulemaking will be 0.2 FTE and \$45,000 in FY24 and 0.1 FTE and 24,000 in FY25 (001-1).

### Health Technology Systems (HTS):

Updates will need to be made in the Healthcare Enforcement and Licensing Modernization Solution (HELMS) to track

repeat violations. The department estimates additional contractor hours of 29 hours for a one-time cost of \$8,000 in FY 2024. Other FY 2024 costs include staff and associated costs (goods and services, intra-agency, and indirect charges) for a total of \$13,000 (001-1). Starting in FY2025 and ongoing costs will be \$5,000 (001-7) each year.

**Investigation:**

The department will conduct an estimated 175 additional on-site inspections when a facility has repeat violations or an immediate jeopardy has been identified resulting in a stop service type/category or limited stop service type/category. Tasks include the review of repeat violations, drafting an inspection report, tracking response(s) from the facility, meeting with facility management. To complete an onsite inspection, the department estimates 1 staff at an average of fifteen (15) hours including travel to the facility to complete the tasks related to onsite inspection: 1) inspection preparations; 2) travel; 3) onsite inspection; 4) inspection report writing; 5) responding to the facility’s questions and reviewing a statement of corrections if necessary; and 6) management review and oversight. In FY 2025 total costs include staff and associated costs (goods and services, intra-agency, and indirect charges) will be 2.4 FTE and \$166,000 (001-1), \$579,000 (001-7), and \$6,000 (202). Starting in FY2026 and ongoing costs will be 4.6 FTE and \$335,000 (001-1), \$1,157,000 (001-7), and \$12,000 (202).

**Enforcement:**

The enforcement process has two steps: 1) violation identification and 2) adjudication. Department staff review the history of the facility, assess whether an enforcement action is needed, and decides whether to pursue legal action. Staff attorneys, paralegals, assistant attorney general and other staff work to develop the legal documents and charge the violation. Most cases are settled, and the staff attorney manages that process. However, if the respondent asks for a hearing, staff must schedule the hearing, and the health law judge considers all legal motions, presides over the hearing, and drafts the final order. Also, the Office of the Attorney General will represent the department at hearing and may provide advice throughout the enforcement process. All Investigation and inspection statements of deficiencies, plans of correction, enforcement actions, notices of resolution will be posted online under RCW 43.70.790 (Health Care Facility Inspection and Investigation Availability). In FY 2025 costs include staff and associated costs (goods & services, intra-agency and indirect charges) for a total of 5.1 FTE and \$128,000 (001-1), \$456,000 (001-7), \$220,000 (02G), and \$11,000 (202) each year. Starting in FY 2026 and ongoing costs include 5.1 FTE and \$128,000 (001-1), \$456,000 (001-7), \$220,000 (02G), and \$12,000 (202) each year.

**Total costs to implement this bill:**

FY 2024: 0.2 FTE and \$58,000 (General Fund-State)

FY 2025: 7.6 FTE and \$318,000 (001-1), \$1,040,000 (001-7), \$220,000 (02G), and \$17,000 (202)

FY 2026 and ongoing: 9.7 FTE and \$463,000 (001-1), \$1,618,000 (001-7), \$220,000 (02G), and \$24,000 (202)

**Part III: Expenditure Detail**

**III. A - Operating Budget Expenditures**

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	58,000	318,000	376,000	926,000	926,000
001-7	General Fund	Private/Local	0	1,040,000	1,040,000	3,236,000	3,236,000
02G-1	Health Professions Account	State	0	220,000	220,000	440,000	440,000
NEW-1	OTHER 1	State	0	17,000	17,000	48,000	48,000
<b>Total \$</b>			58,000	1,595,000	1,653,000	4,650,000	4,650,000

**III. B - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.2	7.6	3.9	9.7	9.7
A-Salaries and Wages	30,000	924,000	954,000	2,556,000	2,556,000
B-Employee Benefits	10,000	340,000	350,000	930,000	930,000
C-Professional Service Contracts	8,000		8,000		
E-Goods and Other Services	7,000	251,000	258,000	928,000	928,000
G-Travel		24,000	24,000	92,000	92,000
J-Capital Outlays	1,000		1,000		
T-Intra-Agency Reimbursements	2,000	56,000	58,000	144,000	144,000
9-					
<b>Total \$</b>	<b>58,000</b>	<b>1,595,000</b>	<b>1,653,000</b>	<b>4,650,000</b>	<b>4,650,000</b>

**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 2024	FY 2025	2023-25	2025-27	2027-29
ADMINISTRATIVE ASST 3	50,592		0.3	0.2	0.3	0.3
Fiscal Analyst 2	53,000	0.1	0.1	0.1		
FORMS & RECORDS ANALYST 2	53,100		0.4	0.2	0.4	0.4
FORMS & RECORDS ANALYST 3	60,156		0.1	0.1	0.1	0.1
HEALTH SERVICES CONSULTAN 1	55,872		1.5	0.8	1.5	1.5
HEALTH SERVICES CONSULTAN 2	66,420		0.1	0.1	0.1	0.1
HEALTH SERVICES CONSULTAN 3	75,120		0.3	0.2	0.3	0.3
HEALTH SERVICES CONSULTAN 4	82,896	0.1	0.8	0.5	1.4	1.4
HEARINGS EXAMINER 3	96,156		1.3	0.7	1.3	1.3
NURSING CONSULTANT, INSTITUTIONAL	133,512		0.9	0.5	1.8	1.8
PHARMACIST - INVESTIGATOR	120,132		0.6	0.3	0.6	0.6
PHARMACIST SUPERVISOR	132,612		0.1	0.1	0.1	0.1
WMS02	114,360		0.8	0.4	1.2	1.2
WMS03	129,336		0.3	0.2	0.6	0.6
<b>Total FTEs</b>		<b>0.2</b>	<b>7.6</b>	<b>3.9</b>	<b>9.7</b>	<b>9.7</b>

**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**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

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

NONE

none

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

The department will adopt rules in the below WACs as necessary to implement the bill.

246-329 WAC (Childbirth Centers); 246-338 WAC (Medical Test Site Rules); 246-335 WAC (In-Home Services Agencies); 246-330 WAC (Ambulatory Surgical facilities); 246-337 WAC (Residential Treatment Facility); 246-322 WAC (Private Psychiatric and Alcoholism Hospitals); 246-324 WAC (Private Alcohol and Chemical Dependency Hospitals); 246-341 WAC (Behavioral Health Agency Licensing and Certification Requirements); 246-945 WAC (Pharmacy Quality Assurance Commission)