

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0496-13
Bill No.: HCS for SS for SCS for SB 85
Subject: Hospitals; Health Care Professionals; Health Department; Drugs and Controlled Substances
Type: Original
Date: May 3, 2007

Bill Summary: This proposal establishes a drug monitoring program and modifies existing record keeping for controlled substances and pseudoephedrine products.

The provisions of this legislation shall be effective on January 1, 2008 and sunset in six years.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	(\$762,646)	(\$333,825)	(\$336,666)
Total Estimated Net Effect on General Revenue Fund	(\$762,646)	(\$333,825)	(\$336,666)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 FTE

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator, Department of Public Safety, Department of Insurance, Financial Institutions & Professional Registration, Missouri State Highway Patrol** and the **Department of Social Services** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Mental Health (DMH)** assumes this proposal does exclude hospitals under Chapter 197 RSMo, a practitioner or other authorized person who administers such substances, and wholesale distributors of such controlled substances. Those facilities that operate pharmacies do so in support of inpatient programs for the most part, and thus most of the dispensing activity performed would not be subject to this law. The exception would be those facilities with dispensing pharmacies that fill Emergency Services prescriptions. Initial set-up of records and monthly maintenance and logging of activity would be required; however, this cost should be minimal and DMH would absorb these costs. Dispensers of Methadone & Naltrexone under the Division of Alcohol and Drug Abuse programs which fit the bill's definition of a "dispenser" may incur minimal costs associated with meeting the requirements of the bill. Such costs would not be paid for by the DMH.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Office of Prosecution Services (OPS)** assume this proposal would not have a significant direct fiscal impact on county prosecutors or the OPS.

Officials from the **Office of the Attorney General (AGO)** assume that any costs associated with implementing the provisions of this proposal can be absorbed with existing resources. To the extent the implementation of the prescription monitoring program results in a significant number of new referrals to the AGO in the areas of Medicaid fraud or other possible criminal activity, AGO may seek necessary appropriations to handle the increase in workload.

In response to a previous version of this proposal, officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the SPD cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of failing to comply with an established drug monitoring program and the modified existing record keeping for controlled substances and pseudoephedrine products. This proposed legislation adds a lot of substances to Schedule III list of controlled substances and requires additional records, identification, signatures, etc in order to purchase certain products. It also makes it a class A misdemeanor to fail to comply with these requirements. The Missouri State Public Defender System is currently operating in a crisis mode with caseloads far in excess of any recognized standard.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Health and Senior Services (DHSS)** state past fiscal note estimates for proposed legislation filed in previous legislative sessions to create a prescription monitoring program were based upon the experience of other states. Over the past several years, there have been an increasing number of states either with enabling legislation in place to create a prescription monitoring program or with active prescription monitoring programs in place. As a result, there is also increased competition among vendors providing services and support.

ASSUMPTION (continued)

Information related to prescription monitoring program vendor contract information was sought and obtained related to other states with active prescription monitoring programs. The information obtained reflects costs associated with contracts with one vendor. Based upon the competitive nature of these contracts, it is assumed for the purposes of this fiscal note that costs for implementing such a program in Missouri would be similar to the cost information obtained.

Vendor Cost Information for Implementation of a Prescription Monitoring Program:

Program manager (database building, data management)	\$105,000	
Power search (reporting capabilities)	\$150,000	
Web center (requests and provision of reports to practitioners)	\$ 96,000	
State specific customization (10% of costs noted above)	\$ 35,000	
Pseudoephedrine sales tracking program (optional)	<u>\$105,000</u>	
	Subtotal	\$491,000
Collection of data from dispensers	\$120,000	
Implementation and training (one time cost)	<u>\$ 35,000</u>	
	Subtotal	<u>\$155,000</u>
	Total	\$646,000

Estimated fiscal impact for the Information Technology Services Division (ITSD) includes: 3 Servers, MSSQL Server License (database), SSL Certificate (for encryption), staff time, and Crystal Decisions Crystal Reports (Developer Edition V9.0) for a total impact of \$62,000.

Estimated Implementation Costs: $\$646,000 + \$62,000 = \mathbf{\$708,000 \text{ for FY08}}$

The U.S. Department of Justice, Bureau of Justice Assistance has announced the availability of implementation grants to assist states in implementing prescription monitoring programs. An application will be submitted for a maximum of \$400,000 in one time grant monies in response to this competitive grant announcement. Subsequent grant monies may be available for enhancements to the program. Since we are not assured of receiving these grant funds, this amount has not been included in the fiscal note worksheet.

On-going, annual estimated costs of the proposed program:

Approximately 20% of the \$491,000 vendor implementation costs, plus \$120,000 annual cost for collection of data from dispensers is \$218,200 ($\$491,000 \times 0.20 + \$120,000$).

ASSUMPTION (continued)

Approximately one-third of the initial cost of ITSD hardware and software needs is \$21,000
(\$62,000/3 = \$21,000)

Estimated On-going, annual costs: \$218,200 + \$21,000 = **\$239,200 for FY09 and FY10**

Staffing for the Bureau of Narcotics and Dangerous Drugs:

One Health and Senior Services Manager (1) will be needed to perform the following duties:

Develop grant requests for DEA funds and prepare required reporting based on the conditions of any grant received;

Draft a Request for Proposal to solicit bids for the required database. Once the contract is awarded, this individual will be needed on an ongoing basis to monitor the database contract and program, maintain ongoing communication with professional organizations regarding compliance with reporting requirements, and other state and local agencies and the public regarding the program;

Coordinate with investigative management of the BNDD for enforcement activities and with law enforcement and regulatory agencies of this and other states for sharing data and tracking outcomes;

Develop policies and procedures for reporting by dispensers, access to data by authorized parties; provide technical assistance to program participants on matters relating to the program;

Supervise subordinate staff involved in program implementation; and

Design and prepare reports of program data; and review data collected to determine trends.

It may be possible to include many of these functions in the vendor contract, or to require the vendor to provide staffing for those functions as part of the vendor contract. This would increase initial and ongoing costs related to this contract. The salary included for the broad-band manager position is equivalent to entry level plus two steps.

One Office Support Assistant (keyboarding), would be necessary to provide clerical support to the program and to respond to inquiries and requests for database reports received. This individual will perform coordination of communication with other agencies and the public and maintenance of memoranda of understanding for data sharing; assist practitioners in obtaining access to the reporting subsystem of the program and generate and e-mail, or generate, print and fax reports as requested by authorized individuals and agencies that cannot access this information via the internet. This individual will also be responsible for responding to routine

ASSUMPTION (continued)

telephone inquiries regarding the program. A New Decision Item has been submitted for an on-line registration process for the Bureau of Narcotics and Dangerous Drugs. Should this request be funded, a portion of the duties of existing staff might be shifted to eliminate the need for one new FTE. The salary included for the Office Support Assistant is two-steps above entry level.

Oversight has, for fiscal note purposes only, changed the starting salary for the DHSS positions to correspond to the first step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Oversight also adjusted the cost of the additional FTE to reflect six months in FY08.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
GENERAL REVENUE FUND			
<u>Costs - Department of Health and Senior Services</u>			
Personal Services	(\$29,695)	(\$61,171)	(\$63,007)
Fringe Benefits	(\$13,440)	(\$27,686)	(\$28,517)
Equipment and Expense Program	(\$11,511)	(\$5,768)	(\$5,942)
	<u>(\$708,000)</u>	<u>(\$239,200)</u>	<u>(\$239,200)</u>
<u>Total Costs - DHSS</u>	<u>(\$762,646)</u>	<u>(\$333,825)</u>	<u>(\$336,666)</u>
FTE Change - DHSS	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$762,646)</u>	<u>(\$333,825)</u>	<u>(\$336,666)</u>
Estimated Net FTE Change for General Revenue Fund	2 FTE	2 FTE	2 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Licensed pharmacies and dispensing practitioners may incur an indeterminate fiscal impact for purchasing electronic equipment, software and related man-hours required in entering and transmitting data to the Department of Health and Senior Services. Any cost incurred may be offset somewhat by the benefits provided by being able to access controlled substance prescription data from the program.

FISCAL DESCRIPTION

This legislation modifies a number of provisions relating to monitoring of drugs.

Current law requires certain documentation relating to the sale of products containing pseudoephedrine. For non-prescription pseudoephedrine products, this legislation requires that the photo identification that must currently be provided to the pharmacist must be issued by a state or the federal government, or another acceptable document. The log currently maintained by pharmacists is modified to now include the signature of the purchaser, the name of the product and the time of the purchase. If the drug monitoring program, described below, is fully operational, the legislation provides that pharmacists need only comply with the current log to the extent required by rules promulgated by the Department of Health and Senior Services.

The legislation modifies the current gram limits for the sale of pseudoephedrine products. The legislation provides that the limits do not apply to quantities that must be sold, dispensed or distributed in a pharmacy under a valid prescription or to any purchase by an individual of a single package containing not more than 60 mg of pseudoephedrine. The current 30 day period limit of 9 grams to a person applies without regard to the number of transactions. For mail order or mobile retail sales within a 30 day period, the limit on pseudoephedrine products shall be 7.5 grams without regard to the number of transactions. Within a 24 hour period, no person may obtain 3.6 grams without regard to the number of transactions.

The legislation provides that liquid or liquid-filled gel capsule forms of pseudoephedrine must be in a place where customers do not have direct access to them. The legislation repeals provisions that exempted the liquid and liquid-filled gel capsule forms of pseudoephedrine from record keeping and log maintenance requirements.

FISCAL DESCRIPTION (continued)

The person selling the pseudoephedrine products shall maintain a written or electronic log of each transaction, including the name and signature of the purchaser, the name of the drug, the date and time of purchase and the name or initials of the person selling the drugs.

The legislation establishes a drug monitoring program in the Department of Health and Senior Services. The program will monitor the prescribing and dispensing of all Schedule II through Schedule V controlled substances, and other drugs designated by the Department, by all licensed professionals who prescribe or dispense these substances in Missouri. The dispenser must electronically submit to the Department information for each prescription or dispensing. The legislation specifies the frequency of the submissions. The Department may issue a waiver to a dispenser who is unable to submit the required information electronically. If a waiver is obtained, a dispenser may submit the required information in paper format or by other approved means. With certain listed exceptions, all submitted prescription information shall be confidential.

The legislation authorizes the release of non-personal, general information for statistical, educational, and research purposes. The Department may contract with other state agencies or private vendors to implement the provisions of this legislation. The legislation contains penalty provisions for dispensers and authorized persons who violate provisions of the legislation. The Department is required to implement certain education courses regarding the prescription monitoring program. The Department shall, when appropriate, work with associations for impaired professionals to ensure ongoing monitoring and treatment and encourage individual patients who are addicted to substances monitored by the program to receive addiction treatment.

Nothing in the drug monitoring program shall be construed to require a dispenser or prescriber to access or check information from the program prior to dispensing, prescribing or administering medications. Dispensers and prescribers are immune from liability based on any claim of damages as a result of accessing or failing to access the information in the drug monitoring program.

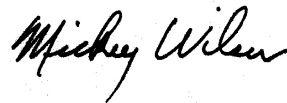
The provisions of this legislation shall be effective on January 1, 2008 and sunset in six years.

In addition, this legislation modifies and adds to the current names of scheduled controlled substances.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Mental Health
Department of Health and Senior Services
Department of Insurance, Financial Institutions & Professional Registration
Office of the State Public Defender
Office of the Secretary of State
Missouri State Highway Patrol
Office of the State Courts Administrator
Department of Social Services
Department of Public Safety
Office of Prosecution Services
Office of the Attorney General



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