COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3442-03
Bill No.: SCS for SB 732
Subject: Hospitals; Health Care Professionals; Health Department; Drugs and Controlled Substances
Type: Original
Date: February 18, 2008

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

The drug monitoring program shall sunset in six years.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	($1,140,315)	($692,636)	($699,042)
Total Estimated Net Effect on General Revenue Fund	**($1,140,315)**	**($692,636)**	**($699,042)**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on Other 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 2009	FY 2010	FY 2011
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	**3 FTE**	**3 FTE**	**3 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 2009	FY 2010	FY 2011
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

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

In response to a previous version of this proposal, officials from the **Office of the State Public Defender** assume the proposal would have no fiscal impact on their agency.

In response to a previous version of this proposal, 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.

Officials from the **Office of the 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.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Office of Prosecution Services (OPS)** are not aware of any estimates of the number of additional criminal cases that would be referred to County Prosecutors for charges because of this proposed legislation. Additionally, the OPS is not otherwise able to establish a workable estimate of the number of additional criminal cases that would be referred to County Prosecutors for charges, though it is not believed that a significant number of additional criminal case referrals would result from this proposed legislation. It is not presently possible, therefore, to determine if this proposal would have a significant direct fiscal impact on county prosecutors or the Office of Prosecution Services.

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

Officials from the **Department of Mental Health (DMH)** assume these new legislative requirements between DHSS and DMH to consult and coordinate when implementing patient intervention and referrals (Section 195.396.2(2) will exhaust the existing substance abuse treatment system. In order to permit treatment for the increased number of referrals that may result from this legislation, the existing substance abuse treatment system must expand. The number of persons identified and referred to treatment through the proposed monitoring system cannot be determined. Treatment costs per person in a Primary Recovery program is $1,070. Treatment costs per person in a CSTAR program is $2,511 ($964 GR). To treat an additional 100 persons will cost between $96,400 and $107,000. The Department estimates General Revenue costs as "unknown" to greater than $100,000.

Oversight assumes, because the potential for additional persons to be referred to treatment is speculative, that the DMH will not treat more than 100 additional persons with a cost of $107,000. If a greater fiscal impact were to result, the DMH may request additional funding through the appropriation process.

Officials from the **Department of Health and Senior Services (DHSS)** assume costs associated with the proposed bill relate to implementation of Sections 195.378 through 195.399, also referred to as the "Drug Monitoring Act", and Section 195.417.7. which requires the implementation of an electronic log of transactions involving the sale of ephedrine, phenylpropanolamine, or pseudoephedrine products.

ASSUMPTION (continued)

Information related to prescription monitoring program vendor contract information was sought and obtained related to other states with active prescription monitoring programs and electronic logs for methamphetamine sales tracking.

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.

Bureau of Narcotics and Dangerous Drugs (BNDD) Costs:

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;
- On an on-going basis monitor the program, maintain ongoing communication with the ITSD staff responsible for maintenance of the program applications, communicate with professional organizations regarding compliance with reporting requirements, and communicate with 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 regulations, training materials and policies and procedures related to 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 administration; and
- Work with ITSD staff to design and prepare reports of program data; review data reports and report to administration trends identified.

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 assist in the generation and distribution of 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 telephone inquiries regarding the program.

ASSUMPTION (continued)

Standard expense and equipment costs are included for the two BNDD positions identified above.

Office of Administration, Information Technology Services Division (ITSD) Costs:

Support from ITSD will be needed to assist DHSS in purchasing and customizing a data system to establish and maintain a program for the monitoring of prescribing and dispensing of all schedule II, III, IV, and V controlled substances except schedule V controlled substances containing any detectable amount of pseudoephedrine that do not require a prescription, by all professionals licensed to prescribe or dispense such substances in this state.

It is assumed that the application(s) will reside on servers at DHSS-ITSD and due to the large amount of data that will be collected and stored, a Storage Area Network (SAN) will need to be purchased. The hardware costs included in this response assumed the ongoing leasing of all hardware.

ITSD estimates that the following costs will apply:

> Consultant cost for purchase and implementation of application. $810,000 in FY 09, $275,000 in FY10 and FY11.
>
> The total amount for hardware and leasing requirements is $97,091 annually.

ITSD Staffing:

1 FTE - Computer Information Technology Specialist II will be required to provide project management, development support and administration/maintenance of application.

1 FTE - Computer Information Technologist II will be required to provide on-going support of the application.

.50 FTE - Computer Information Technology Specialist I will be required to provide hardware server support installation and maintenance.

Standard expense and equipment costs related to each position are also included.

Oversight assumes the DHSS/BNDD could absorb one Office Support Assistant FTE and the DHSS/ITSD could absorb a one-half Computer Information Technology Specialist I FTE.

ASSUMPTION (continued)

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 FY09.

FISCAL IMPACT - State Government	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE FUND			
Costs - Department of Mental Health			
Treatment Cost of Referred Persons	($107,000)	($107,000)	($107,000)
Costs - Department of Health and Senior Services			
Personal Services	($65,897)	($135,749)	($139,821)
Fringe Benefits	($29,140)	($60,028)	($61,829)
Equipment and Expense	($31,187)	($17,768)	($18,301)
Consultant & Purchase of Application	($810,000)	($275,000)	($275,000)
Specialized Computer Equipment	($97,091)	($97,091)	($97,091)
Total Costs - DHSS	($1,033,315)	($585,636)	($592,042)
FTE Change - DHSS	3 FTE	3 FTE	3 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**($1,140,315)**	**($692,636)**	**($699,042)**
Estimated Net FTE Change for General Revenue Fund	3 FTE	3 FTE	3 FTE

FISCAL IMPACT - Local Government	FY 2009 (10 Mo.)	FY 2010	FY 2011
	$0	**$0**	**$0**

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 electronic log for methamphetamine purchases. Tracking this information is already required, but allowed to be kept in a paper log. Also, licensed pharmacies may incur an indeterminate fiscal impact for purchasing electronic equipment, software and related man-hours required in entering and transmitting data to the controlled substance prescription monitoring program in 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 and that such identification must be furnished prior to purchase. 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. The legislation also requires that the log be electronic, rather than written. The seller is required to deliver the product directly into the custody of the purchaser.

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 twenty-four 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 an 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 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.

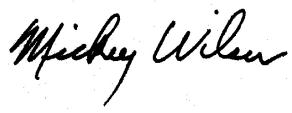
The provisions of this legislation shall be effective on January 1, 2009 and the drug monitoring program shall sunset in six years.

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

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



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