

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5977-04
Bill No.: HCS for SS for SB 854
Subject: Health Dept.; Disabilities; Employees-Employers
Type: Original
Date: May 8, 2012

Bill Summary: Modifies provisions relating to the Employment Disqualification List for home care employees.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	(\$28,010 to More than \$1,586,450)	(\$30,454 to More than \$1,703,915)	(\$30,878 to More than \$1,718,631)
Total Estimated Net Effect on General Revenue Fund	(\$28,010 to More than \$1,586,450)	(\$30,454 to More than \$1,703,915)	(\$30,878 to More than \$1,718,631)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Federal*	\$0	\$0	\$0
Unemployment Trust	(Up to \$400,325)	(Up to \$400,325)	(Up to \$400,325)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Up to \$400,325)	(Up to \$400,325)	(Up to \$400,325)

* Income and expenditures more than \$1.9 million annually and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	Up to 18.5	Up to 18.5	Up to 18.5
Federal Funds	Up to 18.5	Up to 18.5	Up to 18.5
Total Estimated Net Effect on FTE	37	37	37

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 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** and **Department of Revenue** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Due to time constraints the following responses are being used from SS for SB 854 for section 660.315:

Officials from the **Department of Mental Health** and the **Department of Health and Senior Services** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Social Services (DSS) - Human Resource Center (HR)** state the DSS already has an Administrative Policy 2-107 Background Checks which states that background check results which may cause the withdrawal of a conditional employment offer, rejection of an applicant, dismissal of an employee or rejection of a volunteer, etc., include but are not limited to those which:

- Display the propensity to harm a client (e.g., if an individual has been involved as a perpetrator in any child or elderly abuse which was substantiated or determined probable cause or reason to suspect and documented by a state agency, regardless of whether proven in court and whether a criminal conviction of any kind occurred);
- Demonstrate that an individual is unsuitable for employment or service including criminal acts for which they are under current charge or have been convicted, found guilty, pled guilty or no contest or nolo contendere, or received a suspended imposition of sentence (regardless of whether incarceration actually occurred).

The DSS abides by the same background screening and employment eligibility determination process as stated in this legislation. Because this section of the proposal states that the employer shall not be charged for unemployment insurance benefits based on wages paid to the employee or based on an employer making payments in lieu of contributions for work prior to the date of discharge, there could be a potential cost savings to DSS. However, due to the limited number of discharges for this reason, a cost savings was not reflected and is assumed to be minimal.

Officials from the **Department of Labor and Industrial Relations (DOL)** state in order to assess the effect of this change on the Unemployment Insurance Trust Fund, charges were summarized for state fiscal year 2011 for contributing employers in the home health care

ASSUMPTION (continued)

industry. In SFY 2011, former employees of contributing employers in the home health care industry received unemployment benefits totaling approximately \$2.13 million. Had all of these benefits been non-charged due to circumstances outlined in the above changes, this proposal would have resulted in an additional \$2.13 million in pool charges in SFY 2011.

In SFY2011, former employees of reimbursable employers in the home health care industry received unemployment benefits totaling approximately \$400,325. Had all employers been relieved of all of these charges due to circumstances outlined in the above changes, the trust fund would have spent an additional \$400,325 as a result of this proposal.

An ancillary effect of this legislation would be that the responsibility for paying the pool charges created by this law change would be shifted from employers (contributory and reimbursable) in this industry classification to all contributing employers.

Do to time constraints the following responses are being used from HCS HB 1846 for section 206.895:

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 Secretary of State's office 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 this is a small amount and does not expect that additional funding would be required to meet these costs.** However, it is also recognized 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 within its 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.**

Officials from the **Department of Health and Senior Services (DHSS)** provide the following assumptions:

Section 208.895.1

Section 208.895.1(4)(c) allows participants to choose whether a Home and Community Based Services (HCBS) provider or state staff perform the assessment. The number of individuals who will opt to have a provider conduct their assessment is unknown.

ASSUMPTION (continued)

The Division of Senior and Disability Services (DSDS) assumes providers will be paid to perform the assessments on new referrals when the participant chooses the provider to do so. Based on historical data, the DSDS estimates that approximately 20,000 referrals will be received annually, each requiring an assessment. The DSDS cannot determine the number of participants that would request a provider complete their assessment. At the rate of \$50 per assessment paid to providers, the DSDS estimates that the cost would be \$0 - (\$1,000,000), reimbursed from 50% GR (\$0 - \$500,000)/50% Federal funds (\$0 - \$500,000)

The DSDS further assumes it will be required to assure provider compliance with Section 208.895, including participants' freedom of choice, access to information regarding services and providers and prioritization of high-risk cases. This will require a total of 35 FTE.

Each region will have a team of six FTE for a total of 30.

- Four Adult Protective & Community Worker (APCW) IIs to conduct a statistically valid number of provider reviews based on random sampling of clients, services, and claims activity to ensure compliance. The APCW IIs would also investigate complaints against providers and follow up on cases that may be referred for administrative and/or legal action. (4 X 5 regions = 20 FTE)
- One Adult Protective & Community Supervisor (APCS) to provide oversight and accountability for the performance of APCWs including case review, evaluation, and guidance. (1 X 5 regions = 5 FTE)
- One Senior Office Support Assistants-Keyboarding (SOSA-K) to provide clerical support services for APCWs and APCSs including scheduling, correspondence, data entry, filing, and other routine clerical duties. (1 X 5 regions = 5 FTE)

In addition to the thirty staff assigned to the field, the DSDS would require two Aging Program Specialist (APS) IIs to develop training for providers and staff, develop service standards regarding assessments, file rules and regulations, field questions from staff regarding policy issues, answer inquiries from the Centers for Medicare and Medicaid Services (CMS), and develop quality review methods.

The DSDS would also require two Management Analysis Specialist (MAS) IIs to review data regarding assessments completed, determine statistical norms, design reports and reporting methods, calculate valid sample sizes, conduct random sampling of services, participants, and providers, identify outliers in data, and analyze the impact of the assessment methods on the cost of services, amount of services authorized and participant satisfaction.

ASSUMPTION (continued)

One Senior Office Support Assistant-Keyboarding (SOSA-K) would provide clerical support for the APS IIs and MAS IIs including scheduling, correspondence, data entry, filing, and other routine clerical duties.

Section 208.895.2

Section 208.895.2 requires a care plan not processed within fifteen business days of receipt to become automatically effective. This action could cause a disallowance by Centers for Medicare and Medicaid Services (CMS) for implementing a care plan that has not been reviewed and approved by DHSS qualified staff. This disallowance would be an unknown cost to General Revenue, assuming Home and Community Based Services program would continue at the current level.

Section 208.895.7

Section 208.895.7 (1)(a) requires that assessments be conducted by trained assessors. The DSDS would require one Training Technician II and associated expense and equipment to complete initial training of new assessors and provide periodic training thereafter for updates of the Cyber Access WebTool and the InterRAI HC© assessment tool and to ensure assessments are conducted according to state and federal statutes and regulations, Medicaid rules, and DHSS policies. An unknown cost would be associated with alterations to the CyberAccess WebTool to allow assessors to enter data regarding assessments and care plans.

Section 208.895.8

Section 208.895.8 requires the department to develop an automated electronic assessment care plan tool and make recommendations to the general assembly by January 1, 2013, for the implementation of the tool. The DSDS assumes that a contractor familiar with DSDS's systems and clients would perform the client case mix analysis and quality reporting review. The cost of the analysis and review is unknown, but expected to be greater than \$100,000.

If the recommendations are accepted, the DSDS assumes the development and implementation of the tool would move forward in FY 2014 at an unknown cost, but expected to be greater than \$100,000 because it would involve programming changes to the CyberAccess WebTool and MO HealthNet's MMIS.

ASSUMPTION (continued)

Costs associated with Sections 208.895.1, 208.895.7, and 208.895.8 would be paid at 50% General Revenue/50% Federal.

In summary, the DHSS assumes this proposal will result in an Unknown impact to General Revenue greater than \$1,058,440 to \$1,558,440 for FY 13; Unknown greater than \$1,173,370 to \$1,673,370 for FY 14; and Unknown greater than \$1,187,753 to \$1,687,753 for FY 15. In addition, there would be an Unknown impact on federal funds for each year of the fiscal note.

Oversight assumes the DHSS will process completed referrals containing care plans recommended by nurse or physician within 15 days. **Oversight** also assumes the disallowance of services by CMS to be speculative and is not presenting these potential costs in the fiscal note as it is assumed DHSS will perform the duties outlined in the proposal in a manner to minimize these potential costs.

In addition, **Oversight** assumes there is the potential for some of DHSS' current assessors to become involved in the audit function of reviewing outside assessors' documentation for compliance. An unknown number of clients may select outside assessors to complete initial assessments rather than the DHSS thereby reducing DHSS' assessors' workloads. As a result, **Oversight** will provide FTEs and related costs up to the amounts proposed by DHSS.

Officials from the **Department of Social Services - MO HealthNet Division (MHD)** state if a referral is not processed within 15 days, the care plan recommendations shall become effective. There is a possibility that more hours than medically necessary may be included in the referral. Excess hours assessed by the nurse or physician from what is medically necessary and covered under the service parameters would not be eligible for Medicaid reimbursement, leading to potential disallowances. If federal Office of Inspector General (OIG) audits determine the number of hours are not medically necessary, the state would be required to reimburse the federal government for the disallowed funds. This cost is unknown.

This proposal would require the MO HealthNet Division (MHD) to make system changes that would deduct payments for assessments conducted from the first Medicaid payment for said services. This could be accomplished through the current MMIS contract.

This proposal would require one full-time FTE for MHD at the Program Development Specialist level to conduct increased provider monitoring and oversight to ensure that providers are completing the reviews of the care plans within the 15 day deadline in order to avoid federal sanctions.

ASSUMPTION (continued)

MHD assumes the cost for this FTE as follows:

FY 13 (10 months): \$56,019 (\$28,010 GR)
 FY 14: \$61,092 (\$30,545 GR)
 FY 15: \$61,756 (\$30,878 GR)

In addition, MHD notes that in Section 208.895.8, MHD and DHSS is already using the automated electronic assessment care plan tool, prior to the 1/1/2013 implementation date referenced in this legislation.

Oversight assumes MHD's monitoring of plans of care for approval within the 15 day deadline will help prevent not medically necessary services from being provided because a care plan was not approved in a timely manner. Therefore, **Oversight** is presenting MHD's costs for one FTE.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE FUND			
§208.895			
<u>Costs - Department of Health and Senior Services</u>			
Personal service	(Up to \$492,750)	(Up to \$597,213)	(Up to \$603,185)
Fringe benefits	(Up to \$260,862)	(Up to \$316,165)	(Up to \$319,326)
Equipment and expense	(Up to \$254,828)	(Up to \$209,992)	(Up to \$215,242)
WebTool Programming	(Unknown)	\$0	\$0
Electronic Assessment Care Plan Development and Maintenance	(More than \$50,000)	(More than \$50,000)	(More than \$50,000)
Provider Assessment Payments	<u>\$0 to (\$500,000)</u>	<u>\$0 to (\$500,000)</u>	<u>\$0 to (500,000)</u>
 Total <u>Costs</u> - DHSS	 <u>\$0 to (More than \$1,558,440)</u>	 <u>\$0 to (More than \$1,673,370)</u>	 <u>\$0 to (More than \$1,687,753)</u>
 FTE Change - DHSS	 Up to 18 FTE	 Up to 18 FTE	 Up to 18 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE FUND (cont.)			
<u>Costs - Department of Social Services - MO HealthNet Division</u>			
Personal service	(\$15,540)	(\$18,834)	(\$19,023)
Fringe benefits	(\$8,227)	(\$9,971)	(\$10,071)
Equipment and expense	(\$4,243)	(\$1,740)	(\$1,784)
Total <u>Cost</u> - DSS-MHD	<u>(\$28,010)</u>	<u>(\$30,545)</u>	<u>(\$30,878)</u>
FTE Change - DSS-MHD	0.5 FTE	0.5 FTE	0.5 FTE

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$28,010 to More than \$1,586,450)</u>	<u>(\$30,454 to More than \$1,703,915)</u>	<u>(\$30,878 to More than \$1,718,631)</u>
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Estimated Net FTE Change on General Revenue Fund	Up to 18.5 FTE	Up to 18.5 FTE	Up to 18.5 FTE
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FEDERAL FUNDS

§208.895

Income - Department of Health and Senior Services

Program reimbursement	\$0 to More than \$1,731,770	\$0 to More than \$1,883,447	\$0 to More than \$1,899,931
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Income - Department of Social Services

Program reimbursement	<u>\$28,009</u>	<u>\$30,547</u>	<u>\$30,878</u>
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Total <u>Reimbursement</u> - DHSS & DSS	<u>\$28,009 to More than \$1,759,779</u>	<u>\$30,547 to More than \$1,913,994</u>	<u>\$30,878 to More than \$1,930,809</u>
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FISCAL IMPACT - State Government FY 2013 FY 2014 FY 2015
 (10 Mo.)

FEDERAL FUNDS (cont.)

§208.895

Costs - Department of Health and Senior Services

Personal service	(Up to \$492,750)	(Up to \$597,213)	(Up to \$603,185)
Fringe benefits	(Up to \$260,862)	(Up to \$316,165)	(Up to \$319,326)
Equipment and expense	(Up to \$428,159)	(Up to \$420,069)	(Up to \$427,420)
WebTool Programming	(Unknown)	\$0	\$0
Electronic Assessment Care Plan Development and Maintenance	(More than \$50,000)	(More than \$50,000)	(More than \$50,000)
Provider Assessment Payments	\$0 to (500,000)	\$0 to (500,000)	\$0 to (500,000)
Total <u>Costs</u> - DHSS	\$0 to (More than \$1,731,771)	\$0 to (More than \$1,883,447)	\$0 to (More than \$1,899,931)
FTE Change - DHSS	Up to 18 FTE	Up to 18 FTE	Up to 18 FTE

Costs - Department of Social Services - MO HealthNet Division

Personal service	(\$15,540)	(\$18,835)	(\$19,023)
Fringe benefits	(\$8,227)	(\$9,971)	(\$10,071)
Expense and equipment	<u>(\$4,242)</u>	<u>(\$1,741)</u>	<u>(\$1,784)</u>
Total <u>Costs</u> - DSS-MHD	<u>(\$28,009)</u>	<u>(\$30,547)</u>	<u>(\$30,878)</u>
FTE Change - DSS-MHD	0.5 FTE	0.5 FTE	0.5 FTE

ESTIMATED NET EFFECT ON FEDERAL FUNDS

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change on Federal Funds	Up to 18.5 FTE	Up to 18.5 FTE	Up to 18.5 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
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UNEMPLOYMENT TRUST FUND

Loss - Unemployment Trust Fund
 (§660.315)

Loss of federal funds	<u>(Up to</u> <u>\$400,325)</u>	<u>(Up to</u> <u>\$400,325)</u>	<u>(Up to</u> <u>\$400,325)</u>
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**ESTIMATED NET EFFECT ON
 UNEMPLOYMENT TRUST FUND**

	<u>(Up to</u> <u>\$400,325)</u>	<u>(Up to</u> <u>\$400,325)</u>	<u>(Up to</u> <u>\$400,325)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

§208.895 - The proposal could impact small businesses that conduct care assessments as well as result in additional costs for assessments, reassessments, and care plan development as well as requirements needed to gain access to the CyberAccess WebTool.

FISCAL DESCRIPTION

§208.895 - This proposal provides that any home care employer required to deny employment to an applicant or discharge an employee as a result of information obtained through a portion of the background screening and employment eligibility determination process required under the Family Care Safety Registry provisions shall not be liable in any action brought by the applicant or employee.

§660.315 - Currently, the Department of Health and Senior Services can carry out certain requirements when a MO HealthNet-funded home- and community-based care referral with a nurse assessment or physician's order is received. This proposal requires the department to carry out those requirements when a referral is received.

The Department of Health and Senior Services is required to inform the applicant of the full range of available MO HealthNet home- and community-based services, the choice of provider in the applicant's area, and the option to choose more than one provider to deliver or facilitate the services the applicant is qualified to receive.

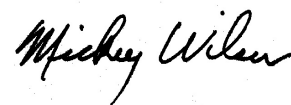
If a properly completed referral for MO HealthNet-funded home- and community-based care containing a nurse assessment or physician's order for a care plan is not processed within 15 days of receipt by the department, the care plan recommendation by the nurse or physician will become effective thereafter.

The Department of Health and Senior Services is to develop an automated electronic assessment care plan tool to be used by providers and provide a report at the end of the first year to the appropriation committee for health, mental health and social services on how well the department is doing on meeting the fifteen day requirement, the process the department used to approve assessors, and other information as required by the proposal.

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 State Courts Administrator
Department of Mental Health
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Joint Committee on Administrative Rules
Office of Secretary of State



Mickey Wilson, CPA

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