

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0682-09
Bill No.: Truly Agreed To and Finally Passed SCS for HCS for HB 351
Subject: Administrative Rules; Hospitals; Licenses - Professional; Health Department
Type: Original
Date: June 7, 2013

Bill Summary: This proposal amends various provisions regarding the licensure and inspection of hospitals and the furnishing of medical records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown, greater than \$35,465)	(Unknown, greater than \$43,426)	(Unknown, greater than \$44,295)
Total Estimated Net Effect on General Revenue Fund	(Unknown, greater than \$35,465)	(Unknown, greater than \$43,426)	(Unknown, greater than \$44,295)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income and expenditures net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

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 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** state section 197.080.2 of the legislation would require the DHSS to review and revise hospital licensure and enforcement regulations in order to promote hospital and regulatory efficiencies and eliminate duplicative regulations and inspection by state and federal agencies. The DHSS is currently involved in a comprehensive review and revision of the existing hospital regulations and, therefore, assumes there to be no fiscal impact to implement the rule review/revision part of the proposed legislation.

Section 197.080.2(3)(c) requires the DHSS to provide a report of all complaints made against the hospital. The report must include the nature of the complaint, the date of the complaint, the department conclusions regarding the complaint, the number of investigators and days of investigation resulting from each complaint. The DHSS assumes this function can be absorbed with existing resources.

Section 197.080.2(4) requires the DHSS to provide hospital and hospital representatives the opportunity to participate in annual training sessions provided to state licensure surveyors at least annually. This section also states that hospitals and hospital representatives shall assume all costs associated with facilitating the training sessions and use of curriculum materials. The DHSS currently provides an annual surveyor training session each fall and only select industry members are invited to attend due to cost factors and facility requirements. At present, there are 166 hospitals in Missouri. At a minimum, if attendance was approved by the DHSS director and CMS, space and materials for the training would need to accommodate, at a minimum, 166 additional attendees. DHSS assumes the department would be allowed to charge a registration fee to all hospital and hospital representatives to cover all costs associated with the training. This fee would include such costs as meeting room rental, audio-visual equipment, copying of materials, provided meals and breaks, etc. The DHSS assumes this fee would cover all additional costs associated with conducting the training sessions. If this is not the case, the department assumes additional resources would be needed to allow hospitals to attend the department's training sessions.

Section 197.100.1 of the legislation requires the DHSS to accept reports of hospital inspections from other governmental and recognized accrediting organizations in lieu of annual state inspections. Currently, licensure inspections are performed simultaneously during certification surveys mandated by the Center for Medicare and Medicaid Services (CMS) or incorporated with complaint investigations. Since these activities would need to be continued to meet federal mandates, there is considered to be no cost savings associated with accepting these reports instead of doing a state inspection.

ASSUMPTION (continued)

Section 1 of the legislation requires complaint information to be posted on the department website. DHSS will incur an unknown cost related to website adjustments that will need to be performed by the Office of Administration, Information Technology Services Division (ITSD).

The DHSS estimates Unknown ITSD web development costs for FY 14, FY 15, and FY 16 to the General Revenue Fund.

Oversight assumes the DHSS is provided core funding for a certain amount of ITSD expenses. Oversight will assume unknown ITSD web development costs for FY 14. For FY 15 and FY 16, Oversight assumes costs will be absorbable within departmental funding levels. However, if costs are significant, DHSS may request additional funding through the appropriations process.

Officials from the **Department of Social Services (DSS)** provide the following assumptions:

§ 96.229 - City Hospitals:

This section prohibits the sale, lease, or transfer of a certain city hospital by the hospital's Board of Trustees without the approval of the city council. If the city council disapproves, the hospital cannot be sold unless and until the city council submits the question to the voters and it is approved by the voters. The city council, with the approval of 2/3rds of the hospital Board of Trustees can re-submit the question to the voters no sooner than twelve months from the date of the last question. This section has no fiscal impact to the DSS.

§ 191.227 - Medical Records Copying Costs:

SB 62 enacted in 2011 increased the amount a medical provider could charge for copies of medical records. SB 62 also tied future increases to the Consumer Price Index (CPI). The Department of Health and Senior Services was charged with the responsibility of determining and publishing the new rates by February 1st each year. The table below shows the rate set by statute; the current rate based on CPI inflation, as determined by DHSS and effective February 1, 2013; and the new rate proposed in this bill.

ASSUMPTION (continued)

	Rate in Section 191.227.2 RSMo	Rate effective 2/1/2013 (Source: DHSS Website)	New rate proposed in this proposed bill
Labor to copy pages	\$21.36	\$22.01	\$22.82
Paper copies (per page)	\$.50	\$.52	\$.53
Off-site storage retrieval, if applicable	\$20.00	\$20.00	\$21.36
Electronic or digital format copies	\$5 plus \$.50 per page or \$25 maximum	\$5.15 plus \$.52 per page or \$25.77 maximum	Same cost for search, retrieval, & copying as paper copies with a maximum of \$100

Since the cost for paper copies is tied to the CPI and the new rate in the proposed bill has already been implemented as of February 1, 2013, there is, effectively, no increase in the cost of paper copies. However, the cost for electronic copies could increase significantly, depending upon the size of the document. The maximum amount a provider can charge for an electronic record is significantly greater than before; i.e., \$100 vs. \$25 (\$25.77 with inflation).

If a record is submitted electronically, the charge is based on the equivalent amount for a paper copy of the same size, based on the actual number of pages involved, or a maximum of \$100, whichever is less. Removing the \$25.77 cap means there will be an increased cost for all but the smallest records. See the table below for an illustration:

Size of Document	Old Cost	New Cost	Amount of Increase
24 pages	\$25.77	\$35.54	\$9.77
50 pages	\$25.77	\$49.32	\$23.55
100 pages	\$25.77	\$75.82	\$50.05
150 pages	\$25.77	\$100.00	\$74.23
200 pages	\$25.77	\$100.00	\$74.23

ASSUMPTION (continued)

In all cases (both paper and electronic) the health care provider may charge an additional amount for postage and a notary fee, not to exceed \$2. Future increases remain tied to the CPI.

Estimated Fiscal Impact for Section 191.227:

FSD	FY 14	FY 15	FY 16
GR:	(Unknown>\$35,465)	(Unknown>\$43,426)	(Unknown>\$44,295)
Federal:	(Unknown>\$35,465)	(Unknown>\$43,426)	(Unknown>\$44,295)
Others:	\$0	\$0	\$0
Total:	(Unknown>\$70,929)	(Unknown>86,852)	(Unknown>\$88,589)

The Family Support Division (FSD) expects to incur additional costs when obtaining applicant or recipient records from health care providers who utilize electronic patient health care records.

The FSD reviews the health care records of an average of 3,138 applicants and recipients each month to determine initial or continued eligibility for the Temporary Assistance and MO HealthNet programs. These reviews may contain information from one or more health care providers; however, the FSD is unable to determine how many separate health care records are obtained per month.

The FSD is not able to determine the number of health care records that would be obtained from health care providers utilizing electronic health care records. For the purposes of this fiscal note, the FSD assumes one health care record per review for a total of 37,656 (3,138 x 12) health care records obtained per year. If 10% of these records were obtained from health care providers that use electronic health care records, the FSD would incur increased retrieval costs for 3,766 health care records per year.

The fees for health care records provided in paper format are currently set at \$22.82 plus \$0.53. Therefore, the FSD would not incur any additional costs for health care records provided in paper format.

The current fees for electronic health care records are \$5.34 plus \$0.53 per page. This bill would increase the fees to \$22.82 plus \$0.53 per page. The cost per page of \$0.53 is the same as current costs incurred for these records; however, the maximum cost allowed increases from the current maximum of \$26.71 to \$100.00.

ASSUMPTION (continued)

For a 50 page electronic health care record, currently, the maximum a provider can charge the FSD for the record is \$26.71 (50 pages x \$0.53 = \$26.50 + \$5.34 current base fee = \$31.84, which is greater than current max allowed of \$26.71). This cost would increase to \$49.32 (50 pages x \$0.53 = \$26.50 + \$22.82 new base fee = \$49.32), which would result in a per record increase of \$22.61 (\$49.32 - \$26.71 current max) for records containing 50 pages. Records containing more pages would result in a larger increase.

If all electronic health care records requested were 50 pages in length, the estimated increased cost to FSD would be \$85,149 per year (\$22.61 increased cost per record x 3,766 records = \$85,149.26, rounded down). However, the FSD is unable to determine how many electronic health care records requested would be limited to 50 pages. Since the FSD is also unable to determine the number of health care records that would be obtained from health care providers utilizing electronic health care records, the FSD anticipates the cost of this proposed proposal to be unknown but greater than \$85,149.

MMAC	FY 14	FY 15	FY 16
GR:	(\$12,459)	(\$36,498)	(\$106,930)
Federal:	(\$12,459)	(\$36,498)	(\$106,930)
Other:	\$0	\$0	\$0
Total:	(\$24,918)	(\$72,996)	(\$213,860)

In FY 11 nine providers billed Program Integrity/Missouri Medicaid Audit and Compliance (MMAC) for medical records. In the first year after the MMAC reorganization, in FY 12, 42 providers billed MMAC for medical records. Six months into FY 13, 58 providers have billed MMAC; therefore, MMAC estimates at least 116 requests for records will be made in FY 13. The increase in requests for FY 13 is attributed to changes that MMAC has instituted for how they conduct reviews and investigations.

In FY 11 and FY 12 there were 1,159 and 1,475 audits, respectively. Some of these audits, referred to as special projects, involved multiple providers. In FY 11, MMAC conducted 62 special projects involving 2,018 providers. In FY 12 there were 53 special projects involving 6,464 providers. Providers did not charge MMAC for copies of medical records in all cases.

Based on actual experience from FY 11 to mid-FY 13, MMAC believes the number of audits will continue to increase, resulting in: 340 audits in FY 14; 996 audits in FY 15; and 2,918 audits in FY 16.

ASSUMPTION (continued)

MMAC based historic cost on small case files of 25 pages each. However, many cases are significantly larger - some as large as 300 and 400 pages. Therefore, MMAC expects nearly all future electronic records will exceed 150 pages and will incur the maximum cost. Based on the potential for a provider to charge up to \$100 for each electronic record, the increased cost to MMAC would be \$25,228 in FY 14; \$73,922 in FY 15; and \$216,591 in FY 16.

Oversight assumes the MMAC will experience some increase in medical record search, retrieval and copying costs as a result in the changes to those fees in this proposal. For fiscal note purposes, Oversight assumes the MMAC will experience an unknown, less than \$100,000 annual increase in medical record search, retrieval and copying costs.

DLS	FY 14	FY 15	FY 16
GR:	(Unknown<\$100,000)	(Unknown<\$100,000)	(Unknown<\$100,000)
Federal:	(Unknown<\$100,000)	(Unknown<\$100,000)	(Unknown<\$100,000)
Other:	\$0	\$0	\$0
Total:	(Unknown<\$100,000)	(Unknown<\$100,000)	(Unknown<\$100,000)

The exact fiscal impact to the Division of Legal Services (DLS) is difficult to forecast due to fluctuations in the workflow. However, because the Division regularly obtains medical records in the course of its investigation and litigation, the DLS expects to see an increased cost, particularly as a result of raising the maximum cost for an electronic record from \$25.77 to \$100. It is anticipated that the increased cost would probably be less than \$100,000 per year.

The Children's Division (CD) does not expect this bill will have a significant fiscal impact on the CD. The potential increase to the cost of copying medical records as a result of the changes to the rates as described in this section appear to be minimal.

The MO HealthNet Division (MHD) believes the increased cost to the Division would be minimal. In FY 12, MO HealthNet paid four invoices related to search, retrieval, and copying of medical records. The four invoices totaled \$112.50. Therefore, MHD assumes the increased cost could be absorbed in current appropriations.

As State Technical Assistance Team (STAT) provides investigative assistance to other agencies upon request, all medical records are obtained through and provided by other investigative child protection agencies; i.e., the Children's Division, law enforcement agencies, the coroner or medical examiner, or the prosecutor. Therefore, STAT does not incur any expense for obtaining medical records directly from health care providers.

The Division of Finance and Administrative Services (DFAS) also indicate that there would be no fiscal impact to that Division.

ASSUMPTION (continued)

§§ 197.080, 197.100, and 1 - Hospital Licensure:

This legislation changes various provisions regarding the licensure and inspection of hospitals. There is a possibility of administrative cost savings to a hospital as a result of less time involved in inspections if the Department of Health and Senior Services (DHSS) reduces the number of inspections or combines them with other processes which are performed by DHSS or other authorized agencies. These requirements may result in a cost savings to hospitals, but the amount is unknown.

MO HealthNet bases hospital reimbursement for a given year on the fourth prior year cost report. Since the first requirement is effective August 28, 2013, the reduced cost would begin to be reflected in 2013 cost reports. MO HealthNet would use 2013 cost reports to establish reimbursement for SFY 17. Therefore, there would not be a fiscal impact to the MO HealthNet Division for FY 14, FY 15 and FY 16, but starting FY 17 there could be a cost savings, but the amount is unknown.

Officials from the **Department of Mental Health (DMH)** state while this proposal would increase the amounts the DMH could charge for search, retrieval, and copying of patient medical records, it is assumed that costs for providing the information will continue to exceed charges. Therefore, the fiscal impact of the proposal is negligible. Additionally, the DMH state-operated hospitals are currently not subject to the provisions of Chapter 197 licensure requirements; therefore, no fiscal impact is anticipated.

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.

In response to an earlier version of this proposal, officials from the **Office of Secretary of State (SOS)** stated 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.

No hospitals responded to **Oversight's** request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Costs - DHSS</u>			
ITSD web development costs (§ 197.080.2(3)(c))	(Unknown)	\$0	\$0
<u>Costs - DSS (§ 191.227)</u>			
FSD medical record search, retrieval and copy fees	(Unknown, greater than \$35,465)	(Unknown, greater than \$43,426)	(Unknown, greater than \$44,295)
MMAC medical record search, retrieval and copy fees	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)
DLS medical record search, retrieval and copy fees	<u>(Unknown, less than \$50,000)</u>	<u>(Unknown, less than \$50,000)</u>	<u>(Unknown, less than \$50,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Unknown, greater than \$35,465)</u>	<u>(Unknown, greater than \$43,426)</u>	<u>(Unknown, greater than \$44,295)</u>
FEDERAL FUNDS			
<u>Income - DSS (§ 191.227)</u>			
FSD program reimbursement for medical record search, retrieval and copy fees	Unknown, greater than \$35,465	Unknown, greater than \$43,426	Unknown, greater than \$44,925
MMAC program reimbursement for medical record search, retrieval and copy fees (§ 191.227)	Unknown, less than \$50,000	Unknown, less than \$50,000	Unknown, less than \$50,000
DLS program reimbursement for medical record search, retrieval and copy fees (§ 191.227)	Unknown, less than \$50,000	Unknown, less than \$50,000	Unknown, less than \$50,000

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
FEDERAL FUNDS (continued)			
<u>Costs - DSS</u>			
FSD program expenditures for medical record search, retrieval and copy fees (§ 191.227)	(Unknown, greater than \$35,465)	(Unknown, greater than \$43,426)	(Unknown, greater than \$44,925)
MMAC program reimbursement for medical record search, retrieval and copy fees (§ 191.227)	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)	(Unknown, less than \$50,000)
DLS program reimbursement for medical record search, retrieval and copy fees (§ 191.227)	<u>(Unknown, less than \$50,000)</u>	<u>(Unknown, less than \$50,000)</u>	<u>(Unknown, less than \$50,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposal requires the Department of Health and Senior Services to provide the opportunity for hospitals and their representatives to participate in annual training sessions provided to state licensure surveyors. Some hospitals may meet the definition of a small business and would, therefore, need to assume all costs associated with the participation in this training as stated in the proposal.

The proposal increases medical record search, retrieval and copy fees. This may increase small business medical-related administrative expenses as well as income, depending on whether the business is receiving or providing the medical records.

FISCAL DESCRIPTION

The proposal requires the department of health and senior services to post hospital complaint investigation information on the departmental website.

This proposal increases the amount a health care provider may charge for the search and retrieval of medical records from \$21.36 to \$22.82 and the copying cost is increased from 50 to 53 cents per page. The offsite storage retrieval cost is increased to \$21.36 from \$20. If the records are provided electronically, the total cost is capped at \$100.

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 Social Services
Joint Committee on Administrative Rules
Office of Secretary of State



Ross Strope
Acting Director
June 7, 2013