

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0164-01
Bill No.: SB 139
Subject: Abortion; Health and Senior Services Department; Physicians
Type: Original
Date: February 8, 2019

Bill Summary: This proposal modifies provisions of law relating to abortion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Federal Funds	\$0 to (\$7,408,762,188)	\$0 to (\$7,586,572,481)	\$0 to (\$7,768,650,220)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (\$7,408,762,188)	\$0 to (\$7,586,572,481)	\$0 to (\$7,768,650,220)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§188.026, 188.027, and 188.052 - Fetal heartbeat detection

Officials from the **Department of Social Services (DSS)** state under this legislation, no physician shall perform or induce an abortion on a pregnant woman without first performing a fetal heartbeat detection test except in cases of medical emergency. The abortion should be performed or induced within 96 hours of the fetal heartbeat detection test. If more than 96 hours has passed since the fetal heartbeat detection test, the physician shall perform a new test prior to an abortion.

The physician shall record the estimated gestational age of the unborn child as well as the time, date, method, and results of the fetal heartbeat detection test in the woman's medical record and in the abortion report submitted to the Department of Health and Senior Services.

Any physician who fails to perform a fetal heartbeat detection test prior to the performance or inducement of an abortion shall be subject to having his or her medical license rejected, revoked, or suspended for 6 months and shall pay a \$1,000 fine.

The proposed language may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest, or in cases where the abortion is necessary to save the life of the mother. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. (See PL 114-113, 114-223 and PL 114-254.) In 1994 the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. (*Stangler vs. Shalala*, 1994 WL 764104 (W.D.Mo 1994)). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanctions, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program. The extent of the deferral or disallowance is unknown.

This legislation could result in the loss of all federal Medicaid funds. In FY 2019, there is over \$7.2 billion federal funds budgeted for MO HealthNet services across the Department of Social Services, Department of Mental Health, and Department of Health and Senior Services. To

ASSUMPTION (continued)

continue covering services in SFY 2020 to Medicaid participants, the State of Missouri would need an additional \$7,408,762,188 in General Revenue to account for the reduction in Federal matching funds. A 2.4% medical inflation rate was used for FY 2020, FY 2021 and FY 2022.

SFY 2020: GR - \$7,408,762,188, FED - 0, OTHER - 0, Total: \$7,408,762,188

SFY 2021: GR - \$7,586,572,481, FED - 0, OTHER - 0, Total: \$7,586,572,481

SFY 2022: GR - \$7,768,650,220, FED - 0, OTHER - 0, Total: \$7,768,650,220

Oversight notes DSS officials provided the MO HealthNet Division paid for 2 abortions during FY 2018 to save the life of the mother; no abortions were paid for during FY 2017 and 2 abortion were paid for in FY 2016 that resulted from rape and incest.

Oversight assumes federal funding would only be in jeopardy if, as a result of rape and incest, the DSS did not authorize funding for abortions for MO HealthNet recipients and the DSS actually had cases that met those conditions. Oversight contacted the DSS and requested a letter be obtained from the Centers for Medicare and Medicaid (CMS) services stating whether the provisions of 188.026.3 would result in the loss of federal funding. DSS believes it is unlikely CMS will provide such a letter. Since it is unknown whether DSS would lose some or all federal funding, Oversight will range the potential loss of federal funding from \$0 to the amount provided by DSS.

Officials from the **Department of Health and Senior Services (DHSS)** state §188.026.1-2 of the proposed legislation requires a physician performing an abortion to conduct a fetal heartbeat determination, and a record of the results of the fetal heartbeat determination exam to be included in the woman's medical record. The DHSS, Division of Regulation and Licensure, Section for Health Standards and Licensure (HSL) is responsible for regulating abortion facilities. This will require two additional steps to be added to the survey process to ensure the physician performing the abortion conducts a fetal heartbeat determination exam, and the medical record includes documentation of the fetal heartbeat determination. It is assumed that these new questions will require less than 30 additional minutes per survey, at the three abortion facilities in Missouri, for a total of one and one-half hours of additional work a year. These surveys are conducted by a Health Facilities Nursing Consultant. The average hourly rate for this position is \$26.05, so the additional cost of these additional questions is \$39.08 annually (1.5 hours x 26.05).

In addition, §188.052.2(4) of the proposed legislation states that the time, date, method, and results of the fetal heartbeat detection test performed prior to an abortion shall be captured in the individual complication report. This would require DHSS, Division of Community and Public Health (DCPH), to make minor revisions to the Complication Report for Post-Abortion Care

ASSUMPTION (continued)

form that is posted on the DHSS website, and would also require minor changes to the DHSS database used to capture this information. Both of these revisions could be completed by current staff. Forms are not printed, therefore, DCPH would not incur any cost to print revised forms.

The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DHSS will be able to perform the additional duties prescribed in this bill with current staff and resources and will present no fiscal impact to the DHSS for fiscal note purposes.

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this bill is anticipated to have no fiscal impact on the DIFP. However, should the extent of the work be more than anticipated, the DIFP would request additional appropriation and/or FTE through the budget process.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DIFP can perform the additional duties required by this proposal with existing personnel and resources.

Oversight notes the provisions of §188.026.4 provide that if a physician fails to conduct a fetal heartbeat detection test prior to the performance or inducement of an abortion, he/she will be subject to having his/her license application rejected, revoked, or suspended by the state board of registration for the healing arts for a period of six months and shall be subject to a fine of one thousand dollars.

Per DHSS's 2016 Annual Report (most current available), 4,562 abortions were performed in Missouri. Per www.steadyhealth.com, fetal heartbeats can usually be detected around 6-7 weeks, although it can take up to 10 weeks for the heartbeat to be heard. Other online information indicated a doctor can usually detect the baby's heartbeat at 9-10 weeks, although sometimes it

ASSUMPTION (continued)

takes 12 weeks for it to be easily detected. For purposes of this fiscal note, Oversight assumed a fetal heartbeat would be detected after 9-10 weeks. According to DHSS's report, 1,323 abortions (29%) were performed after the 9-10 week period of time.

Oversight notes, per DHSS's response, there are three facilities in Missouri which perform abortions. With the limited number of facilities providing abortion services, Oversight assumes there would be a limited number of physicians required to comply with the provisions of this the proposal. Therefore, for fiscal note purposes, Oversight is not presenting potential fine revenue; however, any fine revenue collected would be deposited in the State School Moneys Fund (0616).

Oversight notes that the **Office of State Courts Administrator (OSCA)** has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for OSCA.

<u>FISCAL IMPACT - State Government</u>	FY 2020	FY 2021	FY 2022
	(10 Mo.)		

FEDERAL FUNDS

Loss - DSS (§188.026)

A potential reduction in federal funding if Missouri is found to be non-compliant with federal law	<u>\$0 to</u> <u>(\$7,408,762,188)</u>	<u>\$0 to</u> <u>(\$7,586,572,481)</u>	<u>\$0 to</u> <u>(\$7,768,650,220)</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to</u> <u>(\$7,408,762,188)</u>	<u>\$0 to</u> <u>(\$7,586,572,481)</u>	<u>\$0 to</u> <u>(\$7,768,650,220)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2020	FY 2021	FY 2022
	(10 Mo.)		

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

This proposal may have a significant negative fiscal impact on small business health care providers if the State of Missouri loses federal funding used to provide services to MO HealthNet recipients through these health care providers.

FISCAL DESCRIPTION

Under this act, no physician shall perform or induce an abortion on a pregnant woman without first performing a heartbeat detection test on the unborn child. Except in cases of medical emergency, a physician shall not perform or induce an abortion if a heartbeat of an unborn child is detected and shall inform the woman, in writing, that such abortion cannot be performed or induced. If a heartbeat is not detected, an abortion may be performed or induced, in accordance with applicable law, so long as the abortion is performed or induced within 96 hours of the heartbeat detection test. If more than 96 hours has passed since the heartbeat detection test, the physician shall perform a new test prior to an abortion.

The physician shall record the estimated gestational age of the unborn child as well as the time, date, method, and results of the heartbeat detection test in the woman's medical record and in the abortion report submitted to the Department of Health and Senior Services.

Any physician who fails to perform a heartbeat detection test prior to the performance or inducement of an abortion shall be subject to having his or her medical license rejected, revoked, or suspended for 6 months and shall pay a \$1,000 fine. Any physician who performs or induces an abortion following the detection of a heartbeat of the unborn child shall have his or her license revoked and any future license application denied. No woman upon whom an abortion was performed or induced in violation of this act shall be prosecuted for a conspiracy to violate the provisions of this act.

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 Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Social Services
Office of State Courts Administrator



Kyle Rieman
Director
February 8, 2019

Ross Strobe
Assistant Director
February 8, 2019