

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0572-07
Bill No.: SCS for SB Nos. 70 & 128
Subject: Disabilities; Elderly; Health Care; Health Care Professionals; Health and Senior Services Department; Medicaid; Public Assistance; Social Services Department
Type: Original
Date: March 11, 2019

Bill Summary: This proposal modifies provisions relating to consumer-directed services in the MO HealthNet Program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$507,718 to \$517,161)	(\$553,657)	(\$559,455)
Total Estimated Net Effect on General Revenue	(\$507,718 to \$517,161)	(\$553,657)	(\$559,455)

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	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income and expenses more than \$550,000 annually and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	7.5 to 7.6	7.5	7.5
Federal Funds	7.5	7.5	7.5
Total Estimated Net Effect on FTE	15.0 to 15.1	15	15

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

§§208.909, 208.918, and 208.924 - Consumer directed services

Officials from the **Department of Health and Senior Services (DHSS)** state the DHSS would promulgate by rule a consumer-directed services division provider certification manager course; however, it is assumed that Missouri Medicaid Audit and Compliance (MMAC) in the Department of Social Services (DSS) would enforce the rule. Therefore, any fiscal costs outside of rule-making would impact MMAC rather than DHSS.

§208.918.2(4)(a): DHSS interprets this to mean that DHSS would promulgate a rule to define the elements and frequency of the consumer-directed division provider certification manager course, and MMAC would maintain responsibility for provisions of the course and administering the exam. This would be similar to the current certified manager course required of agency model in-home services providers and would follow the delineation of authorities granted through executive order to MMAC, specifically related to the responsibilities of provider education and oversight.

Director's Office

§208.918.2(3)(a) provides that the department of health and senior services shall promulgate by rule a consumer-directed division provider certification manager course for the implementation of this section.

General Counsel (\$64,500)

§208.918.2.(3).(a) of the proposed legislation requires the promulgation of rules and regulations, which include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The DHSS, Office of General Counsel will need an additional .10 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

Oversight assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for 0.1 FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

ASSUMPTION (continued)

Oversight assumes since DHSS states their responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs.

Officials from the **Department of Social Services (DSS), Missouri Medicaid Audit Compliance (MMAC)** §208.918 is part of the state statutes pertaining to Personal Care Assistance Services, more commonly known as Consumer Directed Services (CDS) which allow a physically-disabled Medicaid consumer to remain in his or her home and hire a personal care attendant to perform routine tasks for the consumer including, but not limited to, such tasks as dressing and undressing, moving into and out of bed, bathing and grooming, and meal preparation. Federal law (42 U.S.C. § 455.432) requires MMAC to conduct pre-enrollment and post-enrollment site visits of vendors that are designated as "moderate" risks to the Medicaid program. CDS vendors are considered "moderate" risks.

The Centers for Medicare and Medicaid Services (CMS) is a federal agency within the U.S. Department of Health and Human Services that oversees many federal healthcare programs, including Medicaid. In a sub-regulatory guidance document, CMS told states that visits required by §455.432 could be combined as long as the verification activity for screening and enrollment was documented separately. MMAC has been able to take advantage of this directive from CMS by using site visits performed by either the Missouri Department of Health and Senior Services or the Missouri Department of Mental Health, thereby consolidating the work of the state agencies and staff positions necessary to perform site visits. If MMAC is made solely responsible for verifying vendors' compliance with 208.918.2(5), it will result in an increase in the number of Full Time Employees (FTEs) that MMAC will have to hire and train to carry out this work.

208.918.2(5) is added to require vendors to maintain a proper business location that complies with all applicable city, county, state, and federal regulations and is verified by Missouri Medicaid Audit and Compliance (MMAC). MMAC will need 15 FTE (Medicaid Specialists). The Department of Health and Senior Services (DHSS) interprets the statute to mean that DHSS will promulgate the rule and MMAC will provide the course.

Until the FY 20 budget is final, the Department cannot identify specific appropriations.

The Grand Total for the DSS is:
FY 2019 (10 mo.): \$1,015,436 (GR: \$507,718; FF: \$507,718);
FY 2020: \$1,107,317 (GR: \$553,657; FF: \$553,657); and,
FY 2021: \$1,118,912 (GR: \$559,456; FF: \$559,456).

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the costs provided by DSS for fiscal note purposes.

Oversight has inquired with DSS if there would be some amount of offsetting savings to DHSS and DMH, but have received information yet. Upon the receipt of their response, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Oversight notes that the **Department of Mental Health** 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 DMH.

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.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

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 \$5,000. 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 require additional resources.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - DHSS (\$208.918)</u>			
Personal service	(\$5,375)	\$0	\$0
Fringe benefits	(\$411)	\$0	\$0
Equipment and expense	<u>(\$3,657)</u>	<u>\$0</u>	<u>\$0</u>
Total <u>Costs - DHSS</u>	<u>\$0 to (\$9,443)</u>	<u>\$0</u>	<u>\$0</u>
FTE Change - DHSS	0 to 0.1 FTE	0 FTE	0 FTE
 <u>Costs - DSS (\$208.918)</u>			
Personal service	(\$239,400)	(\$290,153)	(\$293,054)
Fringe benefits	(\$151,770)	(\$183,000)	(\$183,884)
Equipment and expense	<u>(\$116,548)</u>	<u>(\$80,504)</u>	<u>(\$82,517)</u>
Total <u>Costs - DSS</u>	<u>(\$507,718)</u>	<u>(\$553,657)</u>	<u>(\$559,455)</u>
FTE Change - DSS	7.5 FTE	7.5 FTE	7.5 FTE
 ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	 <u>(\$507,718 to \$517,161)</u>	 <u>(\$553,657)</u>	 <u>(\$559,455)</u>
 Estimated Net FTE Effect on the General Revenue Fund	 7.5 to 7.6 FTE	 7.5 FTE	 7.5 FTE
 FEDERAL FUNDS			
<u>Income - DSS (\$208.918)</u>			
Program reimbursements	\$507,718	\$553,657	\$559,455
 <u>Costs - DSS (\$208.918)</u>			
Personal service	(\$239,400)	(\$290,153)	(\$293,054)
Fringe benefits	(\$151,770)	(\$183,000)	(\$183,884)
Equipment and expense	<u>(\$116,548)</u>	<u>(\$80,504)</u>	<u>(\$82,517)</u>
Total <u>Costs - DSS</u>	<u>(\$507,718)</u>	<u>(\$553,657)</u>	<u>(\$559,455)</u>
FTE Change - DSS	7.5 FTE	7.5 FTE	7.5 FTE
 ESTIMATED NET EFFECT ON FEDERAL FUNDS	 <u>\$0</u>	 <u>\$0</u>	 <u>\$0</u>
 Estimated Net FTE Effect on Federal Funds	 7.5 FTE	 7.5 FTE	 7.5 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a direct, negative fiscal impact on small business consumer-directed services programs as they will be required to have an annual audit or financial statement review performed by a Certified Public Accountant.

FISCAL DESCRIPTION

Under current law, vendors of consumer-directed services shall monitor the performance of personal care assistance service plans. This act requires the consumer to permit the vendor to comply with its quality assurance and supervision process, including bi-annual face-to-face home visits and monthly case management activities. During the home visits, the vendor shall document if the attendant was present and providing services as set forth in the plan of care and report the Department if the attendant is not present or providing services, which may result in a suspension of services to the consumer.

This act repeals language permitting the Department of Health and Senior Services to establish certain pilot projects for telephone tracking systems.

This act also requires vendors to notify consumers during orientation that falsification of personal care attendant time sheets shall be considered and reported to the Department as fraud.

Under this act, a vendor shall submit an annual financial statement audit or annual financial statement review performed by a certified public accountant to the Department. The Department shall require the vendor to maintain a business location in compliance with any and all city, county, state, and federal requirements. Additionally, this act requires the Department to create a consumer-directed services division provider certification manager course. No state or federal funds shall be authorized or expended if the owner, primary operator, certified manager, or any direct employee of the consumer-directed services vendor is also the personal care attendant, unless such person provides services solely on a temporary basis.

Currently, a consumer's services may be discontinued if the consumer has falsified records. This act adds language to include providing false information of his or her condition, functional capacity, or level of care needs.

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

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SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Mental Health
Department of Social Services -
 Missouri Medicaid Audit and Compliance
Joint Committee on Administrative Rules
Office of Secretary of State



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March 11, 2019

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March 11, 2019