

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0719-02
Bill No.: SCS for SB 82
Subject: Boards, Commissions, Committees, and Councils; Certificate of Need; Disabilities; Elderly; Health Care; Health and Senior Services Department; Hospitals; Nursing Homes and Long-term Care Facilities
Type: Original
Date: April 5, 2019

Bill Summary: This proposal modifies provisions of law relating to health care facilities and certificates of need.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$1,249,346 to \$3,615,912)	(\$1,634,920 to \$4,807,735)	(\$1,773,931 to \$5,304,124)
Total Estimated Net Effect on General Revenue	(\$1,249,346 to \$3,615,912)	(\$1,634,920 to \$4,807,735)	(\$1,773,931 to \$5,304,124)

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 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income and expenses could exceed \$8.7 million annually and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE
Total Estimated Net Effect on FTE	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE

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

§§197.305, 197.315, 197.326 and 197.330 - Certificate of Need law

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

§197.305 - No Certificate of Need for major medical equipment

This section of the proposal removes major medical equipment from the definition of a new institutional health service; therefore, a Certificate of Need (CON) would not be required for major medical equipment.

The DHSS generates an average of \$83,494 of General Revenue (GR) from major medical equipment applications. Using a 2.5 percent annual growth rate, the total fiscal impact projected to GR will be a reduction of equipment applications fees of \$73,101 ($\$83,494 \text{ (average fees)} \times 1.025 \times 1.025 = \$87,721 \times 10/12$) for FY 2020; \$89,914 for FY 2021; and \$92,162 for FY 2022.

The funding to administer the Certificate of Need Program (CON) program was cut from the DHSS budget and duties were absorbed by Division of Regulation and Licensing's (DRL) Director's Office using existing staff. DHSS currently processes an average of 137 applications annually related to CON for major medical equipment and applications for new/additional beds.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the loss in application fees as provided by DHSS for fiscal note purposes.

Oversight notes from the DHSS FY 2020 budget that costs for the MHFRC for FY 2016 were \$104,755; FY 2017 were \$97,227; and FY 2018 were \$95,689 (Governor Recommended \$118,681). The DHSS 2019 budget request was for \$118,681, but the Governor's Recommendation was \$0. DHSS still administers the CON program with resources pulled in from various other programs. As the CON program is still on-going, Oversight will range DHSS need to administer from 0 up to the 2 FTE in previous budgets for the MHFRC since the CON program continues.

§208.225 - Capital expenditures by long-term care facilities - rebase

DHSS officials state the proposed changes to §208.225 would modify the way the Nursing Facility per diem rate is calculated for MO HealthNet. DHSS assumes there will be a corresponding fiscal impact to Home- and Community-Based Services expenditures because reimbursement for these services is based on the Nursing Facility rates.

ASSUMPTION (continued)

DHSS defers to the Department of Social Services (MoHealthNet) (DSS) to calculate the fiscal impact of altering long-term care facility (nursing home) provider rates.

In estimating the impact on DHSS home- and community-based programs, DHSS used the DSS (MoHealthNet) nursing home provider rate estimates. Any increase or decrease in the average monthly cost will equate to a corresponding increase or decrease to the monthly maximum allowable cost of home- and community-based services (HCBS) that eligible participants could potentially use. Currently, recipients of State Plan Basic Personal Care and Consumer-Directed Services HCBS are limited to a maximum monthly cost not to exceed 60 percent of the average monthly cost of nursing facilities for a participant, as calculated by DSS. Additionally, recipients of State Plan Advanced Personal Care, as well as Adult Day Care services, within both the Adult Day Care Waiver and the Aged and Disabled Waiver are limited to a maximum monthly cost not to exceed 100 percent of the average monthly cost of nursing facilities for a participant, as calculated by DSS.

DHSS used HCBS participant data for the last three fiscal years where the nursing facility rate increased, but the provider rate did not simultaneously increase (FY 2014, FY 2016, and FY 2018). For the purposes of this fiscal note, only those participants that were authorized for services within the range of the previous fiscal years' 60 percent cap and the new fiscal years' 60 percent cap were considered to be those affected by the HCBS 60 percent cost cap increase in those specific years. By taking an average of the participants with increased authorization within this range from those years, DHSS estimates that the number of participants that will benefit from a new 60 percent cost cap increase would be 1,572 participants per year. DHSS used this participant count and the DSS (MHD) estimated rate calculations and ranges to estimate the HCBS cost cap ranging from \$1,932 to \$1,947 for FY 2020, \$1,940 to \$1,972 for FY 2021, and \$1,948 to \$1,998 for FY 2022. Subtracting the FY 2019 cost cap of \$1,924 from these projections results in the increased cost cap range of \$7.67 to \$23.18, \$15.69 to \$47.63, and \$23.91 to \$73.55 per participant for FY 2020, FY 2021, and FY 2022, respectively. DHSS estimates additional total costs ranging from:

FY 2020 - \$144,656 ($\$7.67 * 1,572 * 12$) to \$437,175 ($\$23.18 * 1,572 * 12$);
FY 2021 - \$295,913 ($\$15.69 * 1,572 * 12$) to \$898,302 ($\$47.63 * 1,572 * 12$); and
FY 2022 - \$450,943 ($\$23.91 * 1,572 * 12$) to \$1,387,153 ($\$73.55 * 1,572 * 12$).

Additionally, those participants that were authorized for services within the range of the previous fiscal years' 100 percent cap and the new fiscal years' 100 percent cap were considered to be those affected by the 100 percent nursing facility cost cap increase in those specific years. By taking an average of the participants with increased authorization within this range from those

ASSUMPTION (continued)

years, DHSS assumed that the number of participants that will benefit from a new 100 percent cost cap increase would be 603 participants per year. DHSS used this participant count and the DSS (MHD) estimated rate calculations and ranges to estimate the average monthly nursing facility cost cap ranging from \$3,220 to \$3,246 for fiscal year 2020, \$3,233 to \$3,287 for fiscal year 2021, and \$3,247 to \$3,330 for fiscal year. Subtracting the FY 2019 cost cap of \$3,207 from these projections results in the increased cost cap range of \$12.78 to \$38.63, \$26.16 to \$79.39, and \$39.85 to \$122.58 per participant for FY 2020, FY 2021, and FY 2022, respectively. DHSS estimates additional total costs ranging from:

FY 2020 - \$92,527 ($\$12.78 \times 603 \times 12$) to \$279,681 ($\$38.63 \times 603 \times 12$);
FY 2021 - \$189,398 ($\$26.16 \times 603 \times 12$) to \$574,784 ($\$79.39 \times 603 \times 12$); and
FY 2022 - \$288,514 ($\$39.85 \times 603 \times 12$) to \$887,479 ($\$122.58 \times 603 \times 12$).

Accordingly, DHSS estimates total costs ranging from:

FY 2020 - \$237,183 ($\$144,656 + \$92,527$) to \$716,856 ($\$437,175 + \$279,681$);
FY 2021 - \$485,312 ($\$295,913 + \$189,398$) to \$1,473,086 ($\$898,302 + \$574,784$); and
FY 2022 - \$739,457 ($\$450,943 + \$288,514$) to \$2,274,632 ($\$1,387,153 + \$887,479$).

The current FMAP split for FY 2020 is 34.412 % GR and 65.588% Fed.

FY 2020: \$81,620 - \$246,684 (GR) and \$155,564 - \$470,172 (Fed)
FY 2021: \$167,006 - \$506,918 (GR) and \$318,306 - \$966,167 (Fed)
FY 2022: \$254,462 - \$782,746 (GR) and \$484,995 - \$1,491,886 (Fed).

Oversight determined from DHSS officials that the FY 2020 costs in the fiscal note are for a full year. Oversight will present FY 2020 costs for 10 months. Therefore, after applying the FMAP split, FY 2020 costs will be ranged from \$68,017 - \$205,570 (GR) and \$129,637 - \$391,810 (Fed).

Officials from the **Department of Social Services (DSS), MO HealthNet Division (MHD)** state MHD used the average rate increase for rate adjustments granted in 2002 for the impact of the "Adjust Capital Rate Only" scenario (adjusted for increase in nursing facility rates between 2002-2019 + 2.1% inflation for SFYs 20-22). MHD only used allowable nursing facility related capital expenditures to determine qualifying facilities (excludes capital expenditures for non-allowable items like construction in progress, vehicles, land, etc) or non-nursing facility related items (residential care facilities, apartments, etc). MHD assumes a range due to different rates recalculated for the capital costs vs all costs.

ASSUMPTION (continued)

Costs associated with adjustment to Capital Rate-only are listed first; the second number in the range is for all costs incurred during the facility fiscal year during which such capital expenditures were made.

FY 2020 total: \$3,666,401 (GR \$1,261,682; FF \$2,404,719) to \$11,094,434 (GR \$3,817,817; FF \$7,276,617);

FY 2021 total: \$7,465,126 (GR \$2,568,899; FF \$4,896,227) to \$22,780,587 (GR \$7,839,256; FF \$14,941,331);

FY 2022 total: \$11,399,319 (GR \$3,922,734; FF \$7,476,585) to \$35,093,336 (GR \$12,076,319; FF \$23,017,018)

MHD estimates a vendor would be needed to audit/adjust rates for nursing homes. MHD estimates this will cost:

FY 2020 total: \$136,383 (GR \$68,191, FF \$68,191);

FY 2021 total: \$141,565 (GR \$70,783, FF \$70,783); and,

FY 2022 total: \$146,945 (GR \$73,472, FF \$ 73,472).

Estimated Grand Total with Vendor Costs:

FY 2020 total: \$3,802,784 (GR \$1,329,873; FF \$2,472,910) to \$11,230,817 (GR \$3,886,008; FF \$7,344,809);

FY 2021 total: \$7,606,691 (GR \$2,639,682; FF \$4,967,009) to \$22,922,152 (GR \$7,910,038; FF \$15,012,114);

FY 2022 total: \$11,546,264 (GR \$3,996,206; FF \$7,550,058) to \$35,240,281 (GR \$12,149,791; FF \$23,090,490).

Oversight notes the DSS has provided “cumulative” costs for Capital Rate-only and costs incurred during the facility fiscal year for FY 2021 and FY 2022. For fiscal note purposes, Oversight will present estimated costs for each year. In addition, Oversight will present FY 2020 costs for 10 months rather than 12 months.

Bill as a whole

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 has sufficient staff and current resources to handle any potential increase in litigation costs and will reflect no impact to the AGO for fiscal note purposes.

ASSUMPTION (continued)

Oversight notes officials from the **Department of Mental Health** and the **Office of State Courts Administrator** assume this proposal will not fiscally impact their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will no impact to these organizations for fiscal note purposes.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, hospitals and nursing homes were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§197.305)</u>			
DHSS administers CON program p. 3	\$0 to (\$98,901)	\$0 to (\$118,681)	\$0 to (\$118,681)
FTE Change - DHSS	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE
<u>Costs - DHSS (§208.225)</u>			
Increase in HCBS cap rates p. 5	(\$68,017 to \$205,570)	(\$167,006 to \$506,918)	(\$254,462 to \$782,746)
<u>Costs - DSS (§208.225)</u>			
Vendor/contractor costs p. 6	(\$56,826)	(\$70,783)	(\$73,472)
<u>Costs - DSS (§208.225)</u>			
Increase in capital expenditures p. 6	(\$1,051,402 to \$3,181,514)	(\$1,307,217 to \$4,021,439)	(\$1,353,835 to \$4,237,063)
Total <u>All Costs</u>	<u>(\$1,176,245 to \$3,542,811)</u>	<u>(\$1,545,006 to \$4,717,821)</u>	<u>(\$1,681,769 to \$5,211,962)</u>
<u>Loss - DHSS (§197.305)</u>			
Reduction in CON fees p. 3	(\$73,101)	(\$89,914)	(\$92,162)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$1,249,346 to \$3,615,912)</u>	<u>(\$1,634,920 to \$4,807,735)</u>	<u>(\$1,773,931 to \$5,304,124)</u>
Estimated Net FTE Change on the General Revenue Fund	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
FEDERAL FUNDS			
<u>Income - DSS (§208.225)</u>			
Reimbursement for vendor/contractor costs p. 6	\$56,826	\$70,783	\$73,472
Reimbursement for increase in capital expenditures p. 6	\$2,003,933 to \$6,063,848	\$2,491,508 to \$7,664,714	\$2,580,359 to \$8,075,686
<u>Income - DHSS (§208.225)</u>			
Reimbursement for increase in HCBS cap rates p. 5	<u>\$129,637 to \$391,810</u>	<u>\$318,306 to \$966,167</u>	<u>\$484,995 to \$1,491,886</u>
Total <u>All Income</u>	<u>\$2,190,396 to \$6,512,484</u>	<u>\$2,880,597 to \$8,701,664</u>	<u>\$3,138,826 to \$9,641,044</u>
<u>Costs - DSS (§208.225)</u>			
Contractor/vendor costs p. 6	(\$56,826)	(\$70,783)	(\$73,472)
Increase in capital expenditures p. 6	(\$2,003,933 to \$6,063,848)	(\$2,491,508 to \$7,664,714)	(\$2,580,359 to \$8,075,686)
<u>Costs - DHSS (§208.225)</u>			
Increase in HCBS cap rates p.5	<u>(\$129,637 to \$391,810)</u>	<u>(\$318,306 to \$966,167)</u>	<u>(\$484,995 to \$1,491,886)</u>
Total <u>All Costs</u>	<u>(\$2,190,396 to \$6,512,484)</u>	<u>(\$2,880,597 to \$8,701,664)</u>	<u>(\$3,138,826 to \$9,641,044)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 <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 may have a positive fiscal impact on small businesses that provide Home- and Community-Based services if they realize an increase in reimbursement.

FISCAL DESCRIPTION

This act modifies several provisions relating to health care facilities, including certificates of need (CON) for major medical equipment, CON applications, ex parte communication, and long-term care facility Medicaid per diem reimbursement rates.

CON FOR MAJOR MEDICAL EQUIPMENT (Sections 197.305 and 197.315)

This act removes the requirement to obtain a certificate of need for major medical equipment.

LONG-TERM CARE FACILITY MEDICAID PER DIEM REIMBURSEMENT RATES (Section 208.225)

Under this act, any intermediate care facility or skilled nursing facility participating in MO HealthNet that incurs total capital expenditures in excess of \$2,000 per bed shall be entitled to obtain a recalculation of its Medicaid per diem reimbursement rate based on its additional capital costs or all costs incurred during the facility fiscal year during which such capital expenditures were made.

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 Mental Health
Department of Social Services -
MO HealthNet Division
Office of State Courts Administrator



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Director
April 5, 2019

Ross Strope
Assistant Director
April 5, 2019