

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4952-01
Bill No.: SB 909
Subject: Disabilities; Elderly; Evidence; Guardians; Health Care; Health and Senior Services Department; Nursing Homes and Long-term Care Facilities
Type: Original
Date: March 2, 2020

Bill Summary: This proposal establishes the “Authorized Electronic Monitoring in Long-term Care Facilities Act”.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$252,865)	(Less than \$269,828)	(Less than \$271,520)
Total Estimated Net Effect on General Revenue	(Less than \$252,865)	(Less than \$269,828)	(Less than \$271,520)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
#Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
Total Estimated Net Effect on FTE	1 to 2 FTE	1 to 2 FTE	1 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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§198.610 - 198.632 - Electronic monitoring in long-term care facilities

Officials from the **Department of Health and Senior Services (DHSS)** state this legislation requires the Division of Regulation and Licensure (DRL), Section for Long-Term Care Regulation (SLCR) to create a notification and consent form for authorization of electronic monitoring to be conducted in a Skilled Nursing Facility/Intermediate Care Facility (SNF/ICF) and Residential Care Facility/Assisted Living Facility (RCF/ALF) resident's room, and to promulgate rules to adopt the form.

It is assumed it will take a Health and Senior Services Manager (\$65,694 based on equivalent level managers in the division) approximately 200 hours to promulgate state rules, policies and procedures, and forms. Based on 2,080 working hours per year, this would require 0.1 FTE to assume these duties (200 hours / 2,080 hours per year = 0.1) for a total personal service cost of \$6,569 ($\$65,694 \times 0.1$) in FY21. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

There are 520 SNF/ICF and 653 RCF/ALF in Missouri. It is assumed it will take a Facility Advisory Nurse II (\$49,329 based on the average starting salary of a Facility Advisory Nurse II) approximately one-half hour per facility to include the additional survey process changes of ensuring facilities comply with the provisions of this legislation for a total of 587 hours ($520 + 653 \times 0.5 = 587$). Based on 2,080 working hours per year, this would require 0.28 FTE ($587 \text{ hours} / 2,080 \text{ hours per year} = 0.28$) to assume these duties for a total personal service annual cost of \$13,812 ($\$49,329 \times 0.28$). DRL, SLCR employs approximately 200 survey staff. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It is estimated the number could range from zero to more than 2,000. At the higher range, one Health and Senior Services Manager and one Health Program Representative II would be needed to handle the requirements of this legislation.

One Health and Senior Services Manager (\$65,694 based on equivalent level managers in the division with pay plan) will be needed to coordinate receipt of tapes or recordings and provide technical assistance to facilities concerning forms and electronic monitoring.

ASSUMPTION (continued)

One Health Program Representative II (\$37,070 based on the average starting salary in the division with pay plan) will be responsible for the collection of notification and consent data.

DHSS estimates a fiscal impact to the General Revenue Fund of (\$196,748) for FY 21; (\$199,586) for FY22; and (\$201,675) for FY23.

Oversight notes the DHSS, SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It has been assumed that at the higher range estimated (up to 2,000), DHSS will need 2 additional FTE. Oversight assumes the DHSS could meet the requirements of this proposal with 1 FTE Health and Senior Services Manager until better information is obtained. Therefore, for fiscal note purposes, Oversight will range DHSS personal service costs from 1 FTE Senior Services Manager to the personal service costs estimated for 2 FTE.

Oversight notes DHSS assumes it will need a total of 2 new FTE as a result of the provisions of this proposal. Based on DHSS' response that new FTE would be located in Jefferson City, it is assumed the additional FTE can be housed within current DHSS locations. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DSS needing additional rental space.

In addition, **Oversight** notes the additional partial FTE expenses calculated by DHSS are assumed to be absorbable by the department.

Officials from the **Department of Public Safety (DPS), Missouri Veterans Commission (VET)** assume the provisions of this proposal will require:

\$80,000 for hardware for a 150-bed home (4 homes); \$106,400 in hardware for a 200-bed home (2 homes; 33% increase from 150-bed home); and \$127,680 for hardware for the home in St. Louis (25% increase from 200-bed home) for a total of \$660,480 for hardware costs to update veterans homes.

It is estimated an average cost per home for inside wiring of \$20,000 or \$140,000 (7 homes total).

In addition, maintenance and upkeep is assumed to require 1 additional FTE Maintenance Worker II per home (7 FTE; \$30,000 annually each). Fringe benefits are assumed to be \$15,000 per FTE.

ASSUMPTION (continued)

Additional electric costs are estimated to be \$300 annually per resident at 1,238 beds or approximately \$371,400 annually.

Finally, the VET estimates if infrastructure is not in place, it will cost an additional \$60,000 per home for infrastructure upgrades.

The VET estimates a fiscal impact for this proposal of approximately \$2.1 million to the Veterans Commission Capital Improvement Trust Fund for FY21; \$585,000 for FY22; and \$589,000 for FY23.

Oversight notes the provisions of §198.622.6 provide that the resident or the resident's guardian/legal representative shall pay all costs associated with conducting electronic monitoring, including equipment installation and equipment maintenance, except for the costs of electricity. In addition, §198.622.9 provides that a facility shall not be required to provide internet service or network access for any electronic monitoring device.

Oversight assumes the DPS, VET would not be required to update its facilities to provide internet service/WiFi for residents as all costs (including buying WiFi hot spot services) is to be borne by the resident or the resident's guardian/legal representative, except electricity. Therefore, Oversight assumes the DPS, VET would not incur any costs associated with this proposal.

Oversight notes the stated responsibilities of the facility (in §198.622.5) include:

1. Providing a reasonable secure place to mount the monitoring device; and
2. Providing access to power sources

Oversight assumes the facilities would not have to provide the mounting brackets, only a reasonably secure place for the monitoring device to be monitored. Oversight also assumes the additional electricity costs from these devices would be minimal.

§198.630 - Sanctions/penalties

Oversight notes the provisions of §198.630.1 allow the department to impose sanctions against an administrator of a facility who knowingly violates provisions of the proposal. In addition, provisions of §198.630.2 provide that the department may (permissive) impose administrative penalties against a facility that violates provisions of the proposal. The amount of the sanctions/administrative penalties is not provided. Oversight further notes that penalties are distributed to school districts. Since it is unknown whether the department will impose sanctions/administrative penalties or the amount that may be collected, Oversight will not present penalties for fiscal note purposes.

ASSUMPTION (continued)

§198.632 - Class B misdemeanor

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crimes where indigent persons are charged with the proposed new crime of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility would be a new class B Misdemeanor. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes the **Missouri Office of Prosecution Services** has stated the proposal would not have a measurable fiscal impact on their organization. The creation of additional responsibilities for county prosecutors may result in additional costs which are difficult to determine at the present time. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

ASSUMPTION (continued)

Bill as a whole

Oversight notes the **Missouri Attorney General's Office**, the **Department of Corrections**, the **DPS**, **Missouri State Highway Patrol** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these 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.

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

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 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, we also recognize 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 our office can sustain with our 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 only reflects the responses that we have received from state agencies and political subdivisions; however, other Nursing Homes were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§198.610 - 198.632)</u>			
Personal service	(\$54,745 to \$85,637)	(\$66,351 to \$103,792)	(\$67,014 to \$104,830)
Fringe benefits	(\$27,781 to \$47,640)	(\$31,635 to \$53,669)	(\$31,855 to \$54,014)
Equipment and expense	<u>(\$7,287 to \$19,588)</u>	<u>(\$6,183 to \$12,367)</u>	<u>(\$6,339 to \$12,676)</u>
Total <u>Costs</u> - DHSS	<u>(\$89,813 to \$152,865)</u>	<u>(\$104,169 to \$169,828)</u>	<u>(\$105,208 to \$171,520)</u>
FTE Change - DHSS	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
 <u>Costs - SPD (§198.632) - Personnel</u>			
services, fringe benefits and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$252,865)</u>	<u>(Less than \$269,828)</u>	<u>(Less than \$271,520)</u>
Estimated Net FTE Change on the General Revenue Fund	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may impact small business long-term care facilities as they may incur additional work related to gathering/maintaining the additional forms/authorizations required, making facility modifications to accommodate equipment and incur increased electricity costs resulting from the additional equipment. (§§198.610 - 198.632)

FISCAL DESCRIPTION

This act establishes the "Authorized Electronic Monitoring in Long-Term Care Facilities Act". Under these provisions, a long-term care facility resident shall have the right to place in his or her room an authorized electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative.

FISCAL DESCRIPTION (continued)

The device shall be open and obvious and the facility and the Department of Health and Senior Services shall be informed about the device. Each facility shall use an electronic monitoring device acknowledgment form developed by the Department, which shall be signed by or on behalf of the resident prior to the use of a monitoring device. The form shall also require any other resident of the room to consent to release the facility from liability for a violation of his or her privacy rights; provided, that the other resident may condition his or her consent on limitations on the use of the device. The facility shall require a resident using a device to post and maintain conspicuous notice regarding the device at the entrance to the resident's room.

No facility shall be civilly or criminally liable for any activity or action arising out of the use of the monitoring device or be liable for a violation of the Health Insurance Portability and Accountability Act (HIPAA) or any resident's right of privacy. No person shall release any recording without the written permission of the resident or resident's guardian or legal representative, except for cases of abuse or neglect as specified in the act. Footage created through the use of the device may be admitted into evidence in civil or criminal actions or administrative proceedings.

No facility shall refuse to admit or remove an individual to the facility because of his or her request to use a device. The facility shall make reasonable physical accommodations for the resident to use a device. The resident, or his or her guardian or legal representative, shall pay for all costs associated with the device, except for electricity. A facility shall not be required to provide Internet service or network access for the device.

The Department may impose appropriate sanctions and administrative penalties on a facility knowingly violating provisions of this act. A person who, without the consent of the resident or his or her guardian or legal representative, intentionally hampers, obstructs, tampers with, or destroys an installed electronic monitoring device or who destroys or corrupts any data collected by the device is guilty of a Class B misdemeanor. Any person who places an unauthorized device in a resident's room, or who consents to the placement of such device, is guilty of a Class B misdemeanor if the person continues such conduct after a written warning to cease and desist. (§§198.610 and 198.632)

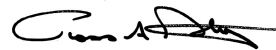
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
 Missouri Veterans Commission
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



Julie Morff
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March 2, 2020



Ross Strope
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March 2, 2020