

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5105-02
Bill No.: SB 971
Subject: Insurance - Health; Department of Commerce and Insurance; Licenses -
 Miscellaneous; Pharmacy
Type: Original
Date: March 10, 2020

Bill Summary: This proposal enacts provisions relating to payments for prescription drugs.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue Fund	(Unknown) to \$7,831	(Could exceed \$29,164)	(Could exceed \$29,770)
Total Estimated Net Effect on General Revenue	(Unknown) to \$7,831	(Could exceed \$29,164)	(Could exceed \$29,770)

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

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 8 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue Fund	.75 FTE	.75 FTE	.75 FTE
Total Estimated Net Effect on <u>All</u> Federal Funds	.75 FTE	.75 FTE	.75 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

376.393 - Pharmacy Benefit Managers Licensing

Officials from the **Department of Commerce and Insurance (DCI)** state under this legislation, the department would be required to license pharmacy benefit managers. The department would establish the application process and licensure fee by rule. According to the Pharmacy Benefit Management Institute, there are currently 40 pharmacy benefit managers nationwide. The department does not believe any additional FTE would be needed to license all 40 pharmacy benefit managers should they request to become licensed, but the department would need to request General Revenue (GR) appropriation to cover the FTE and expenses of existing department staff processing the pharmacy benefit manager license applications or working on any complaint, unless it is deemed an appropriate use of the Insurance Dedicated Fund. The department estimates charging a licensure and renewal fee of \$1,000 based upon the licensure fee of third party administrators (TPAs). The department estimates needing to cover the cost of .25 Insurance Financial Analyst II FTE, .25 Fiscal and Administrative Manager FTE and .25 of an Legal Counsel FTE, with the licensure fee and requesting GR appropriation for any shortfall of licensure revenue.

In summary, DCI assumes a cost of \$32,169 in FY 2021, \$69,164 in FY 2022 and \$69,770 in FY 2023 to the General Revenue Fund to provide for the implementation of the changes in this proposal.

DCI also assumes a revenue of \$40,000 (40 pharmacy benefit managers x Annual \$1,000 licensing fee) to the General Revenue Fund.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the estimates provided by DCI.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state this proposal enacts provisions relating to payments for prescription drugs. To the extent the proposed language would not preclude MCHCP separately contracting with a specialty pharmacy for supply and payment of specialty drugs, the expected fiscal impact would be \$0. Should the language allow retail pharmacies to supply and bill for specialty drugs, then MCHCP would likely have an unknown increased cost.

ASSUMPTION (continued)

Oversight will range the fiscal impact to MCHCP as \$0 (the language would preclude MCHCP separately contracting with a specialty pharmacy for supply and payment of specialty drugs) to (Unknown) (retail pharmacies are allowed to supply and bill for specialty drugs) to the General Revenue Fund, Other State Funds, and Federal Funds.

Officials from the **Department of Transportation (MoDOT)** state this proposal will have no direct fiscal impact to MoDOT because the legislation could have an impact on pharmacy benefit managers, which the MoDOT/MSHP plan has a contract with.

The costs associated with contracting with a pharmacy benefit manager could lead to a negative impact to the Plan, though this amount is not quantifiable.

Officials from the **Office of Administration - Administrative Hearing Commission**, the **Office of Administration**, the **Missouri Department of Conservation** and the **Department of Social Services** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the above mentioned agencies have 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 on the fiscal note for these agencies.

Officials from the **Department of Public Safety - Missouri Highway Patrol** defer to the Department of Transportation to estimate the fiscal impact of the proposed legislation on their organization.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Revenue - DCI</u>	\$40,000	\$40,000	\$40,000
\$1,000 Pharmacy Benefits Manager License Fee			
<u>Cost - DCI</u>			
Salaries	(\$18,744)	(\$45,435)	(\$45,890)
Fringe Benefits	(\$13,425)	(\$23,729)	(\$23,880)
Equipment and Expense	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Cost - DCI</u>	<u>(\$32,169)</u>	<u>(\$69,164)</u>	<u>(\$69,770)</u>
FTE Change - DCI	.75 FTE	.75 FTE	.75 FTE
<u>Cost - MCHCP</u>	\$0 to	\$0 to	\$0 to
Specialty Pharmacy for Specialty Drugs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(Unknown) to</u> <u>\$7,831</u>	<u>(Could exceed</u> <u>\$29,164)</u>	<u>(Could exceed</u> <u>\$29,770)</u>
Estimated Net FTE Change to the General Revenue Fund	.75 FTE	.75 FTE	.75 FTE
OTHER STATE FUNDS			
<u>Cost - MCHCP</u>	\$0 to	\$0 to	\$0 to
Specialty Pharmacy for Specialty Drugs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2021	FY 2022	FY 2023
(continued)	(10 Mo.)		

FEDERAL FUNDS

<u>Cost - MCHCP</u>	\$0 to	\$0 to	\$0 to
Specialty Pharmacy for Specialty Drugs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2021	FY 2022	FY 2023
	(10 Mo.)		

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

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

No later than March 1, 2022, and annually thereafter, the pharmacy benefits manager ("PBM") utilized by the Missouri Consolidated Health Care Plan ("the Plan") shall file a report with the Plan for the immediately preceding calendar year regarding rebates, as defined in the act. The report shall include certain information regarding the Plan, including the aggregate dollar amount of rebates collected from pharmaceutical manufacturers, the aggregate dollar amount of the rebates that were not passed on to the Plan, and the aggregate dollar amount of all fees and payments received from pharmaceutical manufacturers. (Section 103.200.2)

The Plan shall establish a form for the reporting, in consultation with its PBM, designed to minimize administrative burden and cost. (Section 103.200.3) Documents, materials, and other information submitted to the Plan under these provisions shall not be subject to disclosure, except to the extent they are reported in the aggregate. The Plan shall not disclose any information under these provisions in a manner that would compromise the financial, competitive, or proprietary nature of the information, or allow a third party to identify rebate values for a particular outpatient prescription drug. (Section 103.200.4) The Plan shall also annually report to the General Assembly the aggregate dollar amount of pharmaceutical rebates received for covered drugs utilized by enrollees during the calendar year. (Section 103.200.5(1))

FISCAL DESCRIPTION (continued)

The Plan shall annually produce and provide to the General Assembly a report for the immediately preceding calendar year describing the rebate practices of health carriers that use pharmacy benefits managers, as specified in the act. (Section 103.200.5(2)) The Plan may impose a penalty of up to \$7,500 on its PBM for each violation of these provisions. (Section 103.200.6)

The act specifies that certain provisions of law pertaining to pharmacists and pharmacies shall not be construed to prohibit patients' ability to obtain prescription services from any licensed pharmacist "or pharmacy", and repeals language specifying that the provisions do not remove patients' ability to waive their freedom of choice under a contract with regard to payment or coverage of prescription expenses. (Section 338.015.1) Under the act, no PBM shall penalize or restrict a health carrier or enrollees from obtaining services from a contracted pharmacy, as defined in current law. (Section 335.015.4)

Additionally, the act repeals a provision of law specifying that certain PBM regulations shall not apply with regard to Medicare Part D, or other health plans regulated partly or wholly under federal law. (Former section 376.387.5) Pharmacy benefits managers shall notify health carriers and pharmacies in writing of any potential conflict of interest, including but not limited to common ownership or any other relationship between the PBM and any other health carrier or pharmacy with which the PBM contracts. (Section 376.387.5) The act provides standardized definitions for the terms "generic" and "rebate" applicable to PBMs and health carriers (Section 376.387.6-7), and specifies that PBMs shall owe a fiduciary duty to the state or any health carrier, health benefit plan, or political subdivision with which it contracts. (Section 376.387.8)

The act repeals a portion of a definition to specify that certain provisions relating to the maximum allowable cost of a prescription drug are applicable to all pharmacies, rather than only to contracted pharmacies. (Section 376.388.1(1)) If the reimbursement for a drug to a contracted pharmacy is below the pharmacy's cost to purchase the drug, the PBM shall sustain an appeal and increase reimbursement for the pharmacy and other contracted pharmacies to cover the cost of purchasing the drug. (Section 376.388.5)

This act specifies that no entity subject to the jurisdiction of Missouri shall act as a pharmacy benefits manager without a license issued by the Department of Commerce and Insurance. (Section 376.393.2) The Department may cause a complaint to be filed with the Administrative Hearing Commission against the holder of a PBM license for the reasons specified in the act. Proceedings shall be conducted before the Administrative Hearing Commission as provided by law. The Department may take action against a PBM's license, as specified in the act, upon a finding that a rule has been violated. (Section 376.393.3)

FISCAL DESCRIPTION (continued)

No later than March 1, 2022, and annually thereafter, health carriers shall certify to the Department that the health carrier has accounted for all rebates, as defined in the act, when calculating the premium for its health benefit plans. (Section 376.2066)

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

Missouri Consolidated Health Care Plan
Department of Commerce and Insurance
Office of Administration
 Administrative Hearing Commission
Office of Administration
Missouri Department of Conservation
Department of Transportation
Department of Public Safety
 Missouri Highway Patrol
Department of Social Services



Julie Morff
Director
March 10, 2020



Ross Strope
Assistant Director
March 10, 2020