

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4212S.07T
 Bill No.: Truly Agreed To and Finally Passed SS for SCS for HCS for HB Nos. 2116, 2097, 1690 & 2221
 Subject: Disabilities; Elderly; Health Care; Health Care Professionals; Department of Health and Senior Services; Hospitals; Department of Mental Health; Nursing Homes and Long- Term Care Facilities
 Type: Original
 Date: June 2, 2022

Bill Summary: This proposal modifies provisions relating to visitation rights of patients.

FISCAL SUMMARY

191.1400

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue*	\$0 to (\$1,570,626)	\$0 to (\$1,903,598)	\$0 to (\$1,922,635)
Total Estimated Net Effect on General Revenue	\$0 to (\$1,570,626)	\$0 to (\$1,903,598)	\$0 to (\$1,922,635)

*Costs to the Department of Mental Health depend upon whether or not there is a declaration of emergency pursuant to chapter 44 relating to infectious, contagious, communicable, or dangerous diseases.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§191.1400 – No Patient Left Alone Act

Officials from the **Department of Health and Senior Services (DHSS)** state §191.1400(10) provides that a compassionate care visitor of a patient or resident of a health care facility may report any violation of the provisions of this section by a health care facility to the department of health and senior services. The department shall begin investigating any such complaint filed under this subsection within thirty-six hours of receipt of the complaint. The purpose of such investigation shall be to ensure compliance with the provisions of this section and any such investigation shall otherwise comply with the complaint processes established by section 197.080 for a hospital, section 197.268 for a hospice facility, and section 198.532 for a long-term care facility.

The addition in this bill will require an investigation into compassionate care violations within 36 hours of such complaint being filed. This will require staff throughout the Division be on-call to investigate concerns in hospice, hospitals and long-term care- on weekends and holidays. These additional requirements have an unknown fiscal impact to the Section for Long-term Care Regulation (SLCR). SLCR staff are currently on-call to initiate complaints and investigate Abuse and Neglect complaints within 24 hours, however, placing such time constraints for investigation into this type of complaint could limit SLCR's ability to investigate Abuse and Neglect and other high priority quality of care complaints in a timely manner.

§191.2290 – Essential Caregiver Program Act

DHSS states §191.2290.3 of the proposal provides “During a state of emergency declared pursuant to chapter 44 relating to infectious, contagious, communicable, or dangerous diseases, a facility shall allow a resident or patient who has not been adjudged incapacitated under chapter 475, a resident's or patient's guardian, or a resident's or patient's legally authorized representative to designate an essential caregiver for in-person contact with the resident or patient in accordance with the standards and guidelines developed by the department under this section. Essential caregivers shall be considered as part of the resident's or patient's care team, along with the resident's or patient's health care providers and facility staff.” The DHSS will have to develop “standards and guidelines” regarding essential caregiver’s in-person visitation at a hospital. Although not specified, this will likely be done through the standard rule promulgation process.

It is assumed it will take two (2) Nurse Managers (average salary \$69,630) a total of approximately 160 hours to make the required change in Chapter 198 for LTC and Chapter 197 for Hospitals. Based on 2,080 working hours per year, this would require 0.08 FTE (160 hour ÷

2,080 hours per year) to accomplish these duties for personal service costs of \$4,642 ($\$69,630 \times 0.08 \times 10/12$) plus fringe benefits of \$2,525, for a total cost of \$7,167 in FY 2023 .

DHSS state §191.2290.6 requires that a facility may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven days. The department may deny the facility's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health risk. A facility may request from the department an extension of a suspension for more than seven days provided, that the department shall not approve an extension period for longer than seven days at a time.

Oversight assumes any costs that may be incurred can be absorbed with existing resources. If additional funding and resources are needed, DHSS may request additional funding through the appropriations process.

§630.202 – Mental health facilities and Essential Caregiver Act

Officials from the **Department of Mental Health (DMH)** state §630.202 applies the Essential Caregiver Act to the Department of Mental Health (DMH) during declared emergencies. This section includes requiring twenty-four hour in-person access for an essential caregiver as necessary and appropriate for the well-being of the resident or client. Visitation in DMH hospitals is very different from non-Department of Mental Health facilities and cannot be effectively implemented in the same way. This would create substantial risk and cost for DMH facilities, particularly those housing forensic clients. Forensic facilities have separate visitation areas for the safety of all within the building, and the logistics of allowing 24-hour visitation access would strain DMH staff and facility capabilities. DMH would need to provide staff in these facilities to ensure the safety and security of both clients and staff.

In order to provide 24-hour access to clients, staff coverage will need to be established in each facility. Due to the difficulty in hiring staff for DMH facilities, current FTE would be utilized to provide necessary oversight for visitation, relief and patient escorting, causing an increase to current overtime costs. DMH estimates a total General Revenue cost for FY23 is \$1,570,626, FY24 is \$1,903,598, and FY25 is \$1,922,635.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the fiscal impact provided by DMH as a range of \$0 (no emergency declared) to DMH's estimates.

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 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 Commerce and Insurance**, the **Department of Labor and Industrial Relations**, the **Department of Public Safety - Missouri State Highway Patrol** and **Missouri Veterans Commission**, the **Department of Revenue**, the **Department of Social Services**, the **Office of the State Public Defender**, the **Kansas City Health Department**, the **Newton County Health Department**, the **St. Louis County Health Department**, the **Missouri Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Officials from the **Department of Corrections (DOC)** state this version does not include §191.1437 which exempts the DOC. If the proposed legislation (§§191.1400 and 191.2290/630.202) does not apply to offenders in the custody of the DOC, the DOC will assume a no impact. If this legislation does apply to those incarcerated offenders, there will be an operational impact to the department.

Oversight does not have any information to the contrary. For fiscal note purposes, Oversight notes that 191.1400.11 contains very similar language to 191.1437 and assumes the provisions of this proposal do not apply to incarcerated offenders and there will be no fiscal impact on the DOC.

In response to a previous version of this proposal, officials from the **Hermann Area Hospital District** assumed the proposal would have no 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 this agency.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other local public health agencies, nursing homes, and hospitals were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Costs – DMH (§630.202) p. 4</u>	\$0 to...	\$0 to...	\$0 to...
Overtime salaries	(\$1,151,992)	(\$1,396,214)	(\$1,410,177)
Overtime fringe benefits	(\$418,634)	(\$507,384)	(\$512,458)
<u>Total Costs – DMH</u>	(\$1,570,626)	(\$1,903,598)	(\$1,922,635)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to</u> <u>(\$1,570,626)</u>	<u>\$0 to</u> <u>(\$1,903,598)</u>	<u>\$0 to</u> <u>(\$1,922,635)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This bill establishes the "No Patient Left Alone Act". This bill specifies that, a health care facility, defined as a hospital, hospice, or long-term care facility, must allow a resident, patient, or guardian of such, to permit in-person contact with a compassionate care visitor during visiting hours. A compassionate care visitor may be the patient's or resident's friend, family member, or other person requested by the patient or resident. The compassionate care visitation is a visit necessary to meet the physical or mental needs of the patient or resident, including end-of-life care, assistance with hearing and speaking, emotional support, assistance with eating or drinking, or social support.

A health care facility must allow a resident to permit at least two compassionate care visitors simultaneously to have in-person contact with the resident during visitation hours. Visitation hours must include evenings, weekends, and holidays, and must be no less than six hours daily. Twenty-four hour visitation may be allowed when reasonably appropriate. Visitors may leave

and return during visitor hours. Visitors may be restricted within the facility to the patient or resident's room or common areas and may be restricted entirely for reasons specified in the bill. By January 1, 2023, the Department of Health and Senior Services must develop informational materials for patients, residents, and their legal guardians regarding the provisions of this bill. Health care facilities must make these informational materials accessible upon admission or registration and on the primary website of the facility.

A compassionate care visitor may report any violation of the No Patient Left Alone Act by a health care facility to the Department of Health and Senior Services, as specified in the bill. The Department must investigate any such complaint within 36 hours of receipt. No health care facility will be held liable for damages in an action involving a liability claim against the facility arising from compliance with the provisions of this bill; provided no recklessness or willful misconduct on the part of the facility, employees, or contractors has occurred.

This bill established the "Essential Caregiver Program Act". During a state of emergency declared pursuant to Chapter 44 relating to infectious, contagious, communicable, or dangerous diseases, a facility must allow a resident or client who has not been adjudged incapacitated under Chapter 475, a resident's or client's guardian, or a resident's or client's legally authorized representative to designate an essential caregiver for in-person contact with the resident or client in accordance with the standards and guidelines developed by the Department under this section. Essential caregivers must be considered a part of the resident's or client's care team, along with the residents or client's health care providers and facility staff.

The hospital or facility must inform, in writing, a resident or their guardian or representative of this right to in-person essential care. The Department of Health and Senior Services and the Department of Mental Health must develop relevant standards and guidelines as described in the bill.

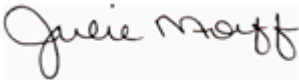
A hospital or facility may petition for suspension of in-person visitation for a period of up to seven days for good cause. A suspension cannot be extended for more than 7 consecutive days or for more than 14 consecutive days in a 12 month period or for more than 45 total days in a 12 month period.

The provisions of this bill will not apply to those residents whose condition necessitates limited visitation for reasons unrelated to the stated reason for the declared state of emergency. A facility, its employees, and its contractors will be immune from civil liability for: (1) An injury or harm caused by or resulting from exposure of a contagious disease or harmful agent; and (2) Acts or omissions by essential caregivers who are present in the facility, as a result of the implementation of the Caregiver Program. This immunity will not apply to any act or omission of the facility, its employees, or its contractors that constitutes recklessness or willful misconduct.

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

Attorney General's Office
Department of Commerce and Insurance
Department of Health and Senior Services
Department of Mental Health
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety –
 Missouri State Highway Patrol
 Missouri Veterans Commission
Department of Social Services
Office of the State Public Defender
Kansas City Health Department
Newton County Health Department
St. Louis County Health Department
Hermann Area Hospital District
Missouri Office of Prosecution Services
Office of the State Courts Administrator



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