

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4354S.01I
Bill No.: SB 921
Subject: Civil Penalties; Commerce and Insurance, Department of; Contracts and Contractors; Federal - State Relations; Insurance - Health; Pharmacy
Type: Original
Date: March 31, 2022

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Officials from the Missouri Consolidated Health Care Plan (MCHCP) stated 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. However, should the language allow retail pharmacies to supply and bill for specialty drugs, then MCHCP would likely have an unknown increased cost of over \$250,000. Oversight has reflected a \$0 or Unknown cost to various state and local funds that pay for health insurance.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
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.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on All Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

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 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Sections 103.200-376.414 – Payments for Prescription Drugs

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state 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 of over \$250,000.

Oversight will range the fiscal impact to MCHCP as \$0 (the language would not preclude MCHCP from 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, Federal Funds and Local Political Subdivisions.

Officials from the **Office of Administration - Administrative Hearing Commission**, the **Department of Commerce and Insurance**, the **Department of Social Services**, the **Missouri Department of Conservation**, the **Missouri Department of Transportation**, **Kansas City** and the **City of Springfield** 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 Public Safety - Missouri Highway Patrol** defer to the MoDOT for the potential fiscal impact of this proposal.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in **Oversight**'s database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Cost</u> - MCHCP Specialty Pharmacy for Specialty Drugs §§103.200-376.414 p. 3	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
OTHER STATE FUNDS			
<u>Cost</u> - MCHCP Specialty Pharmacy for Specialty Drugs §§103.200-376.414 p. 3	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
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>
FEDERAL FUNDS			
<u>Cost</u> - MCHCP Specialty Pharmacy for Specialty Drugs	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
ESTIMATED NET EFFECT TO FEDERAL 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 – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
Cost - MCHCP Specialty Pharmacy for Specialty Drugs §§103.200-376.414 p. 3	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</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 is related to payments for prescription drugs. Beginning March 1, 2024, and annually thereafter, a pharmacy benefits manager (PBM) utilized by the Missouri Consolidated Health Care Plan shall file a report with the Plan for the immediately preceding calendar year regarding rebates, as defined in the bill. The report shall include:

- (1) The aggregate dollar amount of rebates collected from pharmaceutical manufacturers;
- (2) The aggregate dollar amount of the rebates that were not passed on to the Plan, and
- (3) The aggregate dollar amount of all fees and payments received from pharmaceutical manufacturers.

The Plan shall establish a form for the reporting that minimizes administrative burden and cost. Documents, materials, and other information submitted to the Plan shall not be subject to disclosure or 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, except to the extent they are reported in the aggregate. The Plan shall annually report to the General Assembly the aggregate dollar amount of pharmaceutical rebates and provide information describing the rebate practices of health carriers utilizing pharmacy benefits managers. The Plan may impose a penalty of up to \$7,500 on its PBM for each violation of these provisions (Section 103.200, RSMo).

The bill 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 and no PBM shall penalize or restrict a health carrier or enrollees from obtaining services from a contracted pharmacy (Section 338.015).

Additionally, the bill 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. 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. The bill provides standardized definitions for the terms "generic" and "rebate" applicable to PBMs and health carriers, 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).

The bill 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. 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).

The bill specifies that health carriers or pharmacy benefits managers cannot discriminate against a covered entity, as defined in the Public Health Service Act, or a pharmacy licensed under Chapter 338 with which a covered entity has contracted to dispense 340B drugs on behalf of the covered entity. The Director of the Department of Commerce and Insurance shall enforce these rules and impose a civil penalty that shall not exceed \$5000 per violation per day on any pharmacy benefits manager that violates these provisions (Section 376.414).

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

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SOURCES OF INFORMATION

Office of Administration - Administrative Hearing Commission

Department of Commerce and Insurance

Department of Public Safety

Missouri Highway Patrol

Department of Social Services

Missouri Department of Conservation

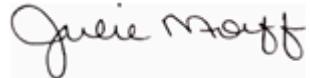
Missouri Department of Transportation

Office of Administration

Missouri Consolidated Health Care Plan

Kansas City

City of Springfield



Julie Morff

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March 31, 2022



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March 31, 2022