

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2452-05
BILL NO.: SB 598
SUBJECT: Modifies Division of Aging Reporting and Waives Sovereign Immunity
TYPE: Original
DATE: January 17, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	(\$8,790,006) to (\$9,226,377)	(\$23,240,551) to (\$23,779,905)	(\$23,835,306) to (\$24,390,841)
Total Estimated Net Effect on <u>All</u> State Funds*	(\$8,790,006) to (\$9,226,377)	(\$23,240,551) to (\$23,779,905)	(\$23,835,306) to (\$24,390,841)

* Totals do not include unknown costs expected to exceed \$100,000 annually.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Federal	(\$238,138) to (Unknown)	(\$478,935) to (Unknown)	(\$491,267) to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds*	(\$238,138) to (Unknown)	(\$478,935) to (Unknown)	(\$491,267) to (Unknown)

* Unknown costs expected to exceed \$100,000 annually.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 17 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health, Office of State Courts Administrator, and Department of Mental Health** assume that this proposal will not fiscally affect their agencies.

Officials from the **Office of Attorney General (AGO)** stated that based upon the large number of hotline calls received by the Division of Aging, the AGO assumes that the waiver of sovereign immunity contained in this proposal will result in significant increase in cases handled by the Litigation Division. Therefore, the AGO projects a need for one additional Assistant Attorney General III (AAG III) at \$45,000 each, five additional AAG I's (\$31,500), two Legal Secretaries (\$18,000) and two Paralegals (\$19,500). The new FTE would require the accompanying expense and equipment items including building rental costs (\$35,400 annually).

Oversight notes that for a proposal that waives the sovereign immunity of state employees in the Division of Family Services and Division of Aging, the AGO required the same amount of staff that they require for this proposal. This proposal waives the sovereign immunity of the Division of Aging only. Therefore, Oversight has adjusted the FTE required for this proposal to one additional AAGIII and one Legal Secretary. Building rental costs are not included as Oversight assumes office space can be found for only two additional employees. Costs were charged to the General Revenue Fund.

Officials from the **Office of Administration - Risk Management Section (RMS)** stated that they contacted officials in the insurance industry and risk management consultants and these officials suggested the cost impact could be determined by taking 1 to 2% of the divisions operating budget for services minus any pass through funds. RMS contacted the Department of Social Services - Division of Aging (DA) and was told that the budget costs less pass through funds for DA was \$52,364,499. The RMS is using a conservative approach and has used a 1% risk factor for a total fiscal impact to the Legal Expense Fund paid from the General Revenue Fund of \$436,371, \$539,354, and \$555,535 for Fiscal Years 2001, 2002, and 2003, respectively.

Oversight will range the costs to the Legal Expense Fund from \$0 to the amounts indicated above.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DOSS)** stated that the Division of Aging, Division of Legal Services, and the Division of Medical Services will be affected by this proposal.

SOVEREIGN IMMUNITY

Officials from the **Division of Aging (DA)** stated the Institutional Services (DAIS) does not provide direct care or treatment to long-term care facility residents except in emergency situations falling under the division's scope of authority (i.e., facility closings where staff abandon the residents). Rather, Institutional Services is statutorily authorized to license and to conduct inspection activities in specific types of facilities. Institutional Services acts as the state survey agency for the Health Care Financing Administration (HCFA) conducting surveys and making recommendations for action related to certification of facilities accepted for participation in the federal Medicare and/or Medicaid programs. Institutional Services performs state licensure activities related to adult day care, residential care facilities I, residential care facilities II, intermediate care facilities and skilled nursing facilities. Additionally, Institutional Services staff conduct investigations of alleged elderly and disabled adult abuse/neglect or regulatory violations occurring in long-term facilities. They assumed the proposed legislation does not increase above the existing level the division's risk of litigation related to injury directly caused by staff interacting with facility residents.

DA believes any damages awarded as a result of the Division of Aging's or an employee's actions performed within their respective scopes of authority while conducting the division's or an individual employee's official duties including actions and/or appropriate inactions on behalf of the state would be covered under the provisions of section 105.711, RSM0 relating to the "State Legal Expense Fund". Expenditures from the "State Legal Expense Fund" are managed by the commissioner of administration with the approval of the Attorney General. Therefore, any request associated with an increase in the state legal expense fund appropriation to cover potential expenditures resulting from the proposed legislation have not been included in this cost estimate, but would be anticipated to come from the Attorney General's office. At the point that the "State Legal Expense Fund" should become exhausted, the Attorney General would need to seek additional appropriation authority to cover damage awards or the respective division could be held responsible for all or a portion of any overages. Federal regulations prohibit the use of program funds for such a purpose and the division would have only state general revenue funds available for payments.

ASSUMPTION (continued)

To the extent that the division's General Revenue funds are diverted to pay damages in excess of the appropriation level made available to the Attorney General for such purposes, there would be a corresponding loss of federal funds. The fiscal impact of exhaustion of the state's legal expense fund cannot be readily determined as the proposed legislation does not set any limitations on liability.

Oversight has included the potential costs to the state's Legal Expense Fund as estimated by the Office of Administration - Risk Management Section.

Institutional Services interprets the independent contractor provision to strengthen the mandate for adequate oversight and performance monitoring of contracts with entities entered into by the Division of Aging, Department of Social Services and are not interpreting the provision as being contrary to federal statutes and regulations that differentiate independent contractors from employees. The approximately 1,300 long-term care facilities in Missouri are not independent contractors of the Division of Aging. Choices regarding placement of residents in a specific facility are made by other than the Division of Aging and reimbursements for care, treatment and ancillary services for residents are made by HCFA for Medicare participants, the Division of Medical Services for Medicaid eligibles, long-term insurance providers and individuals and their families. Therefore, the level of required contact with these providers is not increased as a result of this proposed legislation. Other contracts entered into by Institutional Services for provision of quality improvement technical assistance and independent monitoring of poor performing facilities can be managed within the increased staffing levels identified with this cost estimate.

However, the proposed legislation will have a cost impact on Institutional Services operations. We anticipate that legal actions previously considered to fall within the scope of the sovereign immunity provision or to lack merit may now proceed through the judicial system for review and determination of status. Resources will need to be allocated by Institutional Services to ensure adequate representation of the division and staff performing duties within their scope of authority. With no statistics available related to the number of cases not pursued as a result of sovereign immunity, we based our cost estimate on the following assumptions:

- One class action type lawsuit filed for each occurrence of the following types of incidences. In the absence of statistical data, our best estimate of the suits likely to occur would be those brought by residents or families of residents residing in facilities receiving notices of noncompliance (211 in 1999); Medicare/Medicaid facilities cited for substandard quality of care (90) and Medicare/Medicaid facilities cited for immediate jeopardy (73) and Class I/II/III violations where the investigator determined the report to be valid and not captured in the preceding categories (Total I/II/III complaint reports 7,399 x 3.75% estimated to file suit =

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248).

DA experience with preparing materials for litigation related to these types of actions indicated an average of 300 hours of staff time is devoted to these complex types of cases (Total staff hours required = 622 (211 + 90 + 73 + 248) suits x 300 hours = 186,600 hours).

- One lawsuit filed for each report of a Class I violation where the investigator determined the report to be invalid or where one of the actions noted in the preceding paragraph did not occur (Total Class II reports 1,529 x (33% (invalid) + 11% (unable to verify or other)) = 671). (Total staff hours required = 200 hours x 671 suits = 134,200 hours).
- One lawsuit filed for each report of a Class II violation where the investigator determined the report to be invalid or where one of the actions noted in above paragraphs did not occur (Total Class II reports 4,580 x (16.5% (invalid) + 8.5% (unable to verify or other)) = 1,145). Our experience with preparing materials to be provided for litigation or to meet the needs of the public for information indicate an average of 100 hours of staff time is devoted to these types of cases (Total staff hours required = 100 x 1,145 suits = 114,500 hours).
- Total staff hours anticipated for all types of actions = 435,300 staff hours. Each staff person routinely works 1,840 hours per year indicating the need for an additional 237 staff.

Historically, these hours are represented by both professional and clerical support staff activities. We are estimating that 92% of the activities would require professional staff involvement (administrative level - Program Manager I, Facility Advisory Nurse III, Facility Surveyor III; field supervisory level - FAN III and FS III; and field survey level - FAN II and FS II) and the remaining 8% of the activities being completed by clerical support (Clerk Steno II and Clerk Typist II) running copies, typing letters, pulling files, etc. Professional staff routinely conduct state inspections, federal surveys, complaint investigations and complete required supporting documentation. The number of staff contained in this fiscal note represents the required increase related to preparation and participation in legal actions. Distribution of workload, in fact, would have all DAIS staff working on litigation based on participation in state inspections, federal surveys, and complaint investigations.

- In determining field staff requirements, the following assumptions were made: the addition of three to four survey teams (three staff per team) results in the need for one additional supervisory level FAN III or FS III; clerical staff are based upon each nine to ten professional positions requiring one additional support position. Central office administrative positions are based upon: the addition of thirty to thirty-one survey teams, seventeen supervisors and eighteen clerical support (approximately 224 staff) resulting in an additional workload in administrative review, compliance, training, and survey quality review requiring two additional Program Manager I positions and the addition of nine quality and monitoring staff positions and clerical staff are based upon each five

ASSUMPTION (continued)

professional positions requiring one additional support position.

Staff required:

Administrative Staff	PM I	2 FTE
	FAN III	6 FTE
	FS III	3 FTE
	Clerk Steno II	2 FTE
Field Supervisory Level Staff	FAN III	11 FTE
	FS III	6 FTE
Field Survey Staff	FAN II	126 FTE
	FS II	63 FTE
Regional Support Staff	Clerk Typist	<u>18 FTE</u>
Total Institutional Service Staff Required		<u>237 FTE</u>

Based on previous experience, the following amounts represent the average annual expense of an Institutional Services FTE:

- Rent (Statewide Average - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)
- Other Expenses - \$5,447 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

Staff will be located as follows:

Central Office	13 FTE (2 PM I, 6 FAN III, 3 FS III and 2 CS II positions);
Springfield (Greene County):	39 FTE (2 FAN III, 1 FS III, 22 FAN II, 11 FS II & 3 CT II);
Poplar Bluff (Butler County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Kansas City (Jackson County):	39 FTE (2 FAN III, 1 FS III, 22 FAN II, 11FS II & 3 CT II)
Cameron (DeKalb County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Macon (Macon County):	25 FTE (1 FAN III, 1 FS III, 14 FAN II, 7 FS II & 2 CT II);
Jefferson City (Cole County):	32 FTE (1 FAN III, 1 FS III, 18 FAN II, 9 FS II & 3 CT II);
St. Louis City:	39 FTE (2 FAN III, 1 FS III, 22 FAN II, 11FS II & 3 CT II)

In addition to the above standard costs, systems furniture for the new staff in Jefferson city, Poplar Bluff, Kansas City and Macon will be needed at a cost of \$4,100 per FTE. Notebook PCs
ASSUMPTION (continued)

with docking stations will be needed for professional staff at a cost of \$5,620 each and desktop PCs will be needed for clerical staff at a cost of \$2,039 each.

Home and Community Services

The Division of Aging, Home & Community Services (HCS) assumes that the Division of Legal Services would determine the cost of litigation and that the division assumes that the liability for employees acting in good faith as outlined in section 660.608 RSMo will not be waived under the provisions of this bill.

HCS assumes that the waiver of sovereign immunity proposed under the bill will encompass all services and activities of division staff. Although employees will continue to be covered by the state legal expense fund (105.711 RSMo) the proposed bill will expose the state budget to liability and damages for negligent acts and omissions that harm eligible adults as defined in statute (660.250 RSMo).

Under current law (Chapter 105 RSMo) the state is not liable for actions by state employees that are beyond their scope of authority or official capacity nor do such actions expose the state to damages under the provisions of the state legal expense fund. In cases such as these, employees are held personally liable for their actions. The proposed bill expands the liability of the state and further exposes the budget to include "injuries directly inflicted by employees".

In FY99 there were approximately 14,099 total hotline reports made to the division relating mainly to cases of abuse, neglect, and exploitation. Of the total hotline calls approximately 1,864 were Class I calls (Imminent danger or an emergency situation), 10,471 were Class II hotline calls (Direct or immediate relationship to the health, safety, or welfare of the reported adult, but which does not create imminent danger), and 1,764 were Class III calls (Non-protective situation; not a Class I or Class II). Based on the large number of cases being investigated by division staff it could be estimated that by the waiving of the division's sovereign immunity there would be a significant increase in the number of suits that are being brought against the division.

Although it is the division's contention that staff are performing these investigations and their duties to the best of their ability and within the confines of their scope of authority, by waiving sovereign immunity in cases where it was perceived the division was negligent more would be going to trial because the division would be in essence liable for those negligent acts (real or perceived). Therefore, division staff would have to prepare these additional cases for trial
ASSUMPTION (continued)

regardless of whether the case made it to trial or not.

- It is estimated that the divisions highest source of potential litigation would come from the Class I hotlines, as these are our clients with the highest degree of risk or injury. If we estimate that 15% of these cases may need to be prepared for litigation (15% of 1,864) this would be 280 cases. If we estimate that there is medium range of risk, or 10% of the 10,471

Class II hotlines, then 1,047 cases might result in litigation. It is estimated that there would be a negligible percentage or 5% of 1,764 Class III would result in 88 cases that might result in litigation. An estimated 1,415 cases every year could result in litigation against the division. It is estimated that approximately 110 hours are spent to prepare these cases to go to trial. It is estimated that the potential 1,415 cases x 110 hours are spent to prepare these cases to go to trial. It is estimated that the potential 1,415 cases x 110 hours of staff preparation time will result in 155,650 staff hours. Each staff person routinely works 1,840 hours per year indicating a need for 85 new staff.

- Currently the Home and Community Services Social Service Worker staff conduct approximately 22,074 screenings for Missouri Care Options which could provide a minimal risk to the division if it was felt there was negligence in any way. It is estimated that approximately 2% might lead to litigation under the waiver of sovereign immunity. 22,074 cases x 2% x 20 staff hours (minimal time is estimated)/1840 hours would result in a need for 5 new staff.
- The person receiving ongoing case management from the Division of Aging is another population that constitutes a potential for suits. The number of ongoing cases not included in the above two analyses can be calculated by subtracting the Missouri Care Options screenings and the hotline calls from the total number of DA customers. These ongoing cases are expected to have a relatively low potential for suit (approximately 1%). Preparation time for these type of suits is expected to be 110 hours. Subtracting the two above referenced populations (the Missouri Care Options screenings and the hotline calls = 36,173) from the total number of DA customers (65,491) leaves a total population of 29,318. It is estimated that the potential 293 suits (29,318 x 1%) times 110 staff hours to prepare these cases will result in 32,230 staff hours. Each staff person routinely works 1,840 hours per year indicating a need for 18 new staff.
- In determining the type of staff needed, DA estimates that approximately 60% of the case preparation time would be done by social Service Workers and approximately 40% of the case preparation time would be done by supervisory staff and clerical staff. This would result in the division hiring the following additional staff:

Clerk Typist II positions	21
Social Service Worker positions	66
Area Supervisor positions	<u>21</u>

ASSUMPTION (continued)

Total Staff 108 FTE

Independent Contractors

Under current policy, independent contractors are responsible for selection and supervision of employees authorized to provide services reimbursed under public monies. Contract language holds agencies solely responsible for acts of their employees. DA assumes the intent of this

provision is to strengthen oversight and performance monitoring of contracts and assumes this provision does not conflict with federal statutes that differentiate independent contractors from employees. The waiver of immunity by the state exposes the budget to acts of negligent selection, supervision, inspection, or control over independent contractors.

- Currently, there are 400 in-home service provider agencies. There were approximately 40 agencies (10%) that were found out of substantial compliance in the last fiscal year. These agencies could possibly provide risk or harm to the clients causing the division to be exposed to potential suit. Preparing a case for court is a very timely process, usually requiring about 225 hours total staff time per case. These 40 cases x 225 hours to prepare each case is 9,000 hours/1840 hours would result in the need for five additional monitoring staff to prepare cases for litigation. The division will need two Aging Program Specialist II positions and three Aging Program Specialist I positions (Monitors). The division also need one Clerk Typist II positions to provide support to the additional Monitoring staff and support the activities of the unit. These six new FTE will be located in Central Office in Jefferson City.

Although the division estimates that there will be other situations that will place the division at risk for suit, such as acts committed by a negligent provider, it is believed that these would not involve a significant amount of additional staff time.

Sixty-six new Social Service Worker II positions will be needed in county offices across the state. The Social Service Workers are responsible for the investigation of hotline reports of in-home service clients within 24 hours, pre-long-term care screenings, eligibility determination, and authorization of state funded in-home services. Also included in their responsibilities is the monitoring and revisions of care plans and to ensure the needs of clients are being met. The new FTE will be placed in the following counties/locations:

ASSUMPTION (continued)

7 each in: Wainwright
6 each in: Jackson
4 each in: Prince Hall
3 each in: Greene, Boone
2 each in: Pike, Adair, Buchanan, Jefferson, Clay, St. Francois
1 each in: Butler, Scott, Saline, Livingston, Douglas, Cape Girardeau, Stoddard, Vernon,

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Nodaway, Pulaski, Howell, Dunklin, Wayne, Andrew, Randolph, Jasper, New Madrid, Cass, Taney, Pemiscott, Clinton, Crawford, St. Charles, Texas, Dekalb, Marion, Wright, Ste. Genevieve, Pettis, Grundy, Phelps

Twenty-one Area Supervisors positions will be needed to enhance oversight of Social Service Workers to the level required by the bill. Area Supervisors provide oversight and supervision to the Social Service Workers and are accountable for the performance of the Social Service Workers including case review, evaluation and guidance. Area Supervisors often act as the first point of contact for complaint resolution when clients are dissatisfied with services or staff. The new FTE will be placed in the following counties/locations:

3 each in: Wainwright
2 each in: Jackson
1 each in: Greene, Wayne, Cooper, Jasper, Gasconade, Taney, Saline, Macon, Butler, Buchanan, Warren, Cape Girardeau, Livingston, St. Charles, New Madrid, Nodaway

Additionally, twenty-one Clerk Typist II positions will be needed to provide the necessary support to the Area Supervisors and the activities of the unit. The clerk typist positions will be located with the Area Supervisors.

Based on previous experience, the following amounts represent the average annual expense of a Home & Community Services FTE:

- Rent (Statewide Average) - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)
- Other Expenses - \$3,091 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

ASSUMPTION (continued)

In addition to the above standard costs, systems furniture for the new staff in Howell, Taney, Texas, Wright, Dunklin, Pemiscot, St. Francois, Stoddard, Cass, Clay, Jackson, Pettis, Andrew, Buchanan, Nodaway, Boone, Crawford, Gasconade, Macon, and Pulaski counties, at Prince hall in St. Louis City and at Central Office in Jefferson City will be needed at a cost of \$4,100 per FTE. Desktop PCs will be needed for new staff at a cost of \$2,039 each.

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Administrative Services

The addition of 237 Institutional Services FTE and 114 Home and Community Services FTE will result in the need for additional support staff. A 44% increase in total Division of Aging Staff will necessitate additional staff to perform support functions such as training, human resources, accounting, and automation.

- Currently, DA has two Institutional Services trainers. An increase of Institutional Services personnel from 277.5 to 514.5 will require that DA double the number of Institutional Services trainers. DA will need one Facility Advisory Nurse III Trainer position and one Training Technician II position. Currently DA has two Home and Community Services trainers. An increase of Home and Community Services personnel from 483 to 597 will require one additional Training Technician II position. The addition of three trainers will require one Clerk Typist II position to provide clerical support to the training unit.
- Currently DA has four staff in the Human Resources Section. A 44% increase in total personnel will necessitate an increase of 2 staff in this unit. DA will need one Personnel Analyst II position and one Personnel Clerk position.
- Currently DA has six staff in the Accounting and Budgeting Section. A 44% increase in total personnel will necessitate an increase of 2 staff in this unit. DA will need one Account Clerk II position and one Accountant I position.
- Currently DA has ten staff in the Information Support Unit. A 44% increase in total personnel will necessitate an increase of 4 staff in this unit. DA will need four Computer Information Technologist III positions.

New staff in the Training, Human Resources and Accounting and Budgeting sections will be located in Central Office in Jefferson City. The Computer Information Technologist positions will be located one each in Springfield (Greene County), Kansas City (Jackson County), Macon (Macon County) and St. Louis City (Wainwright Building).

ASSUMPTION (continued)

Based on previous experience, the following amounts represent the average annual expense of an Administrative Services FTE:

- Rent (Statewide Average) - \$2,360 per FTE (\$11.80 per sq. ft. x 200 sq. ft.)
- Utilities - \$320 per FTE (\$1.60 per sq. ft. x 200 sq. ft.)
- Janitorial/Trash - \$200 per FTE (\$1.00 per sq. ft. x 200 sq. ft.)

- Other Expenses - \$6,041 per FTE (includes travel, office supplies, professional development, telephone charges, postage and all other expenses not itemized above.)

In addition to the above standard costs, systems furniture for the new staff in Jefferson City, Kansas City and Macon will be needed at a cost of \$4,1,000 per FTE. Desktop PCs will be needed for all new staff at a cost of \$2,039 each.

OFFICE OF MEDICAL DIRECTOR

The Division of Aging will also develop and establish statewide policies and standards for implementing the activities of the Medical Director Program including qualifications and the training of regional staff. The proposal requires the establishment of the Office of Medical Director. The Division of Aging will require one FTE for a Physician, one FTE for Aging Program Administrator, three FTE for Home and Community Area Supervisor, two FTE for Aging Program Specialist II, thirty-two FTE for Social Service Workers II and five Clerk Typists II to implement the requirements for the new Office of Medical Director. Eight of the Social Service Worker II's will be needed to investigate additional hotline calls. Twenty-four Social Service Worker II's are needed to investigate all hotline calls within 24 hours. The Division of Aging would need the accompanying expense and equipment items for the new FTE. The Division of Aging will also incur costs for mailing brochures.

Costs were split between state and federal funds, with most of the costs charged to the General Revenue Fund.

Officials from the **Division of Legal Services (DLS)** stated that it is anticipated that this legislation will result in numerous suits being filed against the Division of Aging and the employees of those agencies. This is especially so because there are no liability limits established for recoveries under SB 640 thus encouraging lawsuits to be filed. The second sentence of Section 207.024 and Section 660.673 arguable waives official immunity for DA employees thus exposing them to individual liability and excluding them from representation by the Attorney General.

ASSUMPTION (continued)

Recent data shows that DA receives on an annual basis approximately 21,400 hotline calls relating to abuse, neglect, or exploitation of the elderly. If in even only 1% of the hotline calls someone believed that DA had been negligent, there could be some 214 such lawsuits filed each year. Based on 214 cases and 40 hours/case, this would require 4 new attorneys and two clerical support. The Division of Aging assumes they would require four Attorneys (\$34,992) to provide

guidance and advice to the Division of Aging and its employees and provide assistance to the Office of Attorney General. The Division of Aging would require two Clerk Typists III's (\$17,000) to provide clerical support to the Attorneys. The new FTE would require the accompanying expense and equipment items.

Officials from the **Division of Medical Services (DMS)** stated the proposal will have a fiscal impact on their division. The proposal would require the in-home providers to contract with a physician to provide evaluation or care on an as-needed basis. Currently the in-home providers are not required to contract with a physician. This requirement would increase administrative costs of the in-home providers. It is assumed the Medicaid in-home rates would be increased to allow for the higher administrative costs.

The proposal would allow the Medical Director to require a specified number of random visits by a nurse to the in-home client who has filed a complaint or has a complaint filed on their behalf. It is assumed the number of nurse visits would increase.

If the Medicaid in-home rates for Personal Care Homemaker Chore and Respite were increased by 10 cents, the fiscal impact would be \$1,106,885. This estimate is based on FY 99 actual units of service. Increased nurse visits would also impact the Division of Medical Services. The rate for a nurse visit is currently \$37.08 for an in-home visit and \$27.30 for a visit to a client who lives in a RCF. The increased utilization from these visits is unknown. The overall fiscal impact is unknown, but projected to be greater than \$100,000 for both state and federal funds.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Costs - Legal Expense Fund</u>			
Court Costs and Damage Awards from Sovereign Immunity Court Cases	\$0 to (\$436,371)	\$0 to (\$539,354)	\$0 to (\$555,535)
<u>Costs - Office of Attorney General</u>			
Personal Service (2 FTE)	(\$52,500)	(\$64,575)	(\$66,190)

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
Fringe Benefits	(\$16,144)	(\$19,857)	(\$20,353)
Expense and Equipment	(\$30,832)	(\$16,799)	(\$17,293)
Total <u>Costs</u> - Office of Attorney General	(\$99,476)	(\$101,231)	(\$103,836)
<u>Costs - Department of Social Services - Division of Aging</u>			
Personal Service (401 FTE)	(\$3,703,804)	(\$15,185,601)	(\$15,565,241)
Fringe Benefits	(\$1,138,920)	(\$4,669,572)	(\$4,786,312)
Expense and Equipment	(\$3,724,162)	(\$3,148,215)	(\$3,242,661)
Total <u>Costs</u> - Division of Aging	(\$8,566,886)	(\$23,003,388)	(\$23,594,214)
<u>Costs - Department of Social Services - Division of Legal Services</u>			
Personal Service (6 FTE at 60%)	(\$71,705)	(\$88,232)	(\$88,232)
Fringe Benefits	(\$17,418)	(\$21,433)	(\$21,969)
Expense and Equipment	(\$34,521)	(\$26,267)	(\$27,055)
Total <u>Costs</u> - Division of Legal Services	(\$123,644)	(\$135,932)	(\$137,256)
<u>Costs - Department of Social Services - Division of Medical Services</u>			
Increased Costs from Increased Nurse Visits and Higher Administrative Costs to In-home Providers	(Unknown)	(Unknown)	(Unknown)
TOTAL ESTIMATED EFFECT ON GENERAL REVENUE FUND*	(\$8,790,006) TO (\$9,226,337)	(\$23,240,551) TO (\$23,779,905)	(\$23,835,306) TO (\$24,390,841)

* Totals do not include unknown costs expected to exceed \$100,000 annually.

FEDERAL FUNDS

<u>Costs - Department of Social Services - Division of Aging</u>			
Personal Service (6 FTE)	(\$58,165)	(\$238,476)	(\$244,438)
Fringe Benefits	(\$17,886)	(\$73,331)	(\$75,165)
Expense and Equipment	(\$51,387)	(\$54,025)	(\$55,646)
Total <u>Costs</u> - Division of Aging	(\$127,438)	(\$365,832)	(\$375,249)

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>Costs - Department of Social Services -</u>			
<u>Division of Legal Services</u>			
Personal Service (6 FTE at 40%)	(\$59,415)	(\$73,110)	(\$74,938)
Fringe Benefits	(\$18,270)	(\$22,481)	(\$23,043)
Expense and Equipment	(\$23,014)	(\$17,512)	(\$18,037)
Total <u>Costs</u> - Division of Legal Services	<u>(\$100,700)</u>	<u>(\$113,103)</u>	<u>(\$116,018)</u>
<u>Costs - Department of Social Services -</u>			
<u>Division of Medical Services</u>			
Increased Costs from Increased Nurse Visits and Higher Administrative Costs to In-home Providers *	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED EFFECT	(\$228,138)	(\$478,935)	(\$491,267)
ON FEDERAL	TO	TO	TO
FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

* **Unknown costs expected to exceed \$100,000 annually.**

<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Small businesses which provide 'in-home' health care services could be affected by this proposal.

DESCRIPTION

This proposal modifies the reporting and investigation of abuse and neglect of in-home services clients. Currently, Section 660.300 requires that reports of abuse or neglect be made to the Department of Social Services. New language provides that upon receipt of a report, the Department must notify the Office of the Medical Director (Director), created in Section 660.670, if the report involves an in-home services client. The Director must then initiate an investigation within twenty-four hours of receiving a report. The Director may also remove an in-home services client from his or her home if immediate action is necessary to avoid further abuse or neglect. If a complaint is made by the client's physician, then the Director's office must

maintain contact with that physician regarding the progress of the investigation.

Current language punishes any person who abuses or neglects an in-home services client with a Class D felony. New language also subjects providers to administrative penalties of \$1000 per violation. Upon a court's finding of three or more employee violations, the Department may terminate its contract with the provider. The provider will have the right to administrative review and the right to appeal to the circuit court for a trial de novo.

A new Section 660.670 establishes the Office of the Medical Director for In-Home Services Clients. The Director must be a licensed physician and will be responsible for ensuring the adequacy of care received by in-home services clients. The Director may enter client homes at reasonable times and with client permission to ensure the provider and in-home services employees are providing the proper care.

The Director, the Department, and a physician who is contracted with the provider to provide evaluation and care on an as-needed basis are required to evaluate each client. Based on the client's needs, the group must specify the number of random visits that will be made by a registered nurse who is contracted with the provider. The Director is required to prepare and distribute to all providers, in-home services employees, clients, and client families written notices with the Director's office phone number and the procedure for filing complaints.

A new Section 660.673 waives the Division of Aging's sovereign immunity from liability and negligence damages in cases where injuries have arisen out of the care provided to in-home services clients by the Division. Immunity is waived when injuries are the direct result of the negligent selection, inspection, supervision, or control over in-home services employees or providers, including independent contractors.

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

Department of Health
Department of Mental Health
Department of Social Services
Office of State Courts Administrator
Office of Attorney General
Office of Administration

L.R. NO. 2452-05
BILL NO. SB 598
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A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large initial "J" and a cursive "e" at the end.

Jeanne Jarrett, CPA
Director
January 17, 2000