

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3935-06
Bill No.: SCS for SBs 1063 & 827
Subject: Insurance - Medical; Hospitals; Health Care; Health Care Professionals; Attorney General - State; Insurance Dept.; Physicians
Type: Original
Date: March 25, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Insurance Dedicated	(\$56,416 to \$256,416)	(\$61,230 to \$261,230)	(\$61,567 to \$261,567)
General Revenue	(Unknown exceeding \$215,473)	(Unknown exceeding \$240,533)	(Unknown exceeding \$246,740)
Conservation Commission	(Unknown to exceeding \$100,000)	(Unknown to exceeding \$100,000)	(Unknown to exceeding \$100,000)
Total Estimated Net Effect on <u>All</u> State Funds	(Unknown exceeding \$271,889)	Unknown exceeding \$301,763)	(Unknown exceeding \$308,307)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri House of Representatives (MHR)** stated there should be no fiscal impact to their organization. The MHR is assuming that any costs incurred by the House Members would be absorbed by the departments.

Officials from the **Office of the Governor, Department of Social Services, Department of Economic Development** and **Department of Public Safety - Missouri Highway Patrol** assume the proposed legislation will have no fiscal impact on their organizations.

Officials from the **Department of Highways and Transportation (DHT)** stated this legislation will have no fiscal impact on MHTC. However, the third item of this legislation which requires health care plans to provide coverage for patient care costs incurred as a result of phase III or IV of a clinical trial that is approved and undertaken for the purposes of the prevention, early detection, or treatment of cancer, will have a fiscal impact on the Highway & Patrol Medical Plan. The Highway & Patrol Medical Plan is not expressly included in the new legislation, but section 104.801 RSM0. would require the Medical Plan to offer similar coverage and currently, the Medical Plan does not cover costs for clinical trials.

The DHT officials are assuming that if health carriers are required to cover the cost of services needed to administer the drugs or use the device under evaluation in the clinical trial, that manufacturers and distributors or providers of the drugs or devices would no longer pay for any of the related costs. Assuming that this is true, the DHT feels that the fiscal impact to the Medical Plan would be very significant. Without knowing the types of drugs, procedures, illnesses or how many individuals would participate, it is impossible to calculate a fiscal impact to the Medical Plan.

Historically, the department and the plan members have shared in any premium increases necessary because of increases in benefits. The costs may be shared in the long run (meaning shared between three categories: absorbed by the plan, state appropriated funds, and/or costs to individuals covered under the plan). However, the department (commission) must make a decision on what portion they will provide. Until the commission makes a decision, we can only provide the cost to the medical plan.

Officials from the **Missouri Consolidated Health Care Plan (HCP)** stated the proposed legislation adds provisions other bills introduced this session. Including the language regarding the addition of section 334.113 addressing the non-compete clause in contracts between hospitals and physicians does not fiscally impact HCP. However, by adding section 376.429 addressing coverage for cancer clinical trials, a fiscal impact would occur.

ASSUMPTION (continued)

Requiring the medical plan to cover Phase I, Phase II, Phase III or Phase IV clinical trials for

cancer and other life threatening conditions could result in an increase in the plan's financial risk. Since the treatments may vary and only a few providers would be able to administer the treatments, the cost could be significant. To reduce this risk, the plan may transfer these additional costs to the members through an increase of premium. Since the type of treatments, their associated costs, and the number of patients cannot be estimated, the overall cost is unknown but could be significant.

The proposed legislation does include an exclusion for "items and services customarily provided by the research sponsors free of charge for any enrollee in the trial". However, if health plans are required to cover the routine patient care costs incurred for drugs and devices" that have been approved by the FDA, the sponsors of such programs may cut the funding to these programs and rely on the health plans' reimbursement for funding. Again, should this occur, the plans may transfer the additional costs to the members through increased premiums.

The proposed legislation also creates the "Mandate Benefit Review Commission" within the Department of Insurance to review the projected costs for all existing state and federal mandates. The Commission should recommend any mandates to be repealed by January 2004. The Commission would also review any proposed health benefit mandate and report on the fiscal impact. The creation of this commission does not fiscally impact the HCP.

Finally, the proposed legislation creates the "Missouri Health Care Cost Antitrust Task Force" to study the effects of consolidation of health carriers and hospitals in Missouri in regards to higher costs for health care consumers. This portion of the substitute does not fiscally impact the HCP.

Officials from the **Missouri Department of Conservation (MDC)** stated the proposed legislation would have an unknown fiscal impact on MDC funds, but could exceed \$100,000 annually depending on claim experience.

Officials from the **Department of Health and Senior Services (DOH)** stated the DOH would hire 1.0 FTE Research Analyst III. The analyst would be assigned duties related to file preparation and management of the public use data files for all the categories of information that are reported by the health care facilities. This analyst would also be responsible for the data reporting and analysis activities, including the preparation of web-based information, for the new category of data on the prospective pricing information. The proposed legislation excludes the data reporting by free-standing diagnostic centers. For this reason, we have reduced the number of Research Analyst IIIs needed to 1.0 FTE.

ASSUMPTION (continued)

The DOH would also hire a Management Analysis Specialist II to perform the data collection, analysis and legislative reporting on the community benefits plans activities affecting the nonprofit hospitals. The MAS II position would also be responsible for performing any information and data support activities for the Mandated Benefit Review Commission and the

Missouri Health Care Antitrust Task Force.

The DOH would hire a Research Manager-Band I to oversee, coordinate and supervise the new data collection, analysis, reporting and rule-making activities that are required by this bill. The new data reporting categories of prospective pricing information and the community benefits plans require significant research on appropriate contact and analysis, based on experience in other states. The new set of data activities is also potentially sensitive and requires appropriate supervision.

The department would hire a 1.0 FTE Senior Office Support-Keyboarding staff to provide clerical support for the new set of mandated activities. This position would involve support of the data collection and report preparation activities, including data entry, mailings, communications with health care facilities and other clerical support tasks. In addition, this person would be expected to provide clerical support for regulatory and rule-making activities that would be required.

Officials from the **Office of the Secretary of State (SOS)** state this bill creates a public use data file that provides patient abstract data and financial data for health care services, provides for a community benefits plan report by nonprofit hospitals, establishes standards for charity care and community benefits, reviews proposals for health care coverage, creates the Mandated Benefit Review Commission and a Missouri Health Care Cost Antitrust Task Force. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services could require as many as 75 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be \$4,624 [(75 pp x \$27) + (113 pp x \$23)].

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

ASSUMPTION (continued)

Officials from the **Department of Insurance (INS)** stated the INS would require one Health Care Economist (Research Analyst IV) to review and analyze data, work with experts, provide support to commission and prepare required benefit reports. One Research Analyst I-II is required to prepare and conduct surveys, collect data, run statistical reports and assist in preparing reports and analysis required under legislation. The INS assumes that the commission

will contract with experts in the areas of health research, biostatistics, and actuarial science in conducting the benefit reviews. Contractual costs are estimated from \$50,000-\$250,000 per year depending on number and type of benefits reviewed. Meeting costs for commission and task force are calculated at \$100 per day for non governmental members (10 total), 4 meetings per year. Therefore, the INS estimates the fiscal impact of the proposed legislation to be \$356,869 for FY 03, \$372,671 for FY 04, and \$375,795 for FY 05.

Oversight is ranging the costs proposed for the contractual cost range provided by the INS.

Officials from the INS also stated that insurers and HMOs would be required to amend their policies to comply with the legislation. Amendments must be filed with the INS. The INS estimates that 171 insurers and 26 HMOs would be required to file at least one amendment to their policy form with a filing fee of \$50, resulting in revenue of \$9,850. The INS has reached capacity in policy form reviews and the additional workload created by this legislation will cause delays in policy form reviews. Additional staff are not being requested for this part of the proposed legislation, but if multiple proposals are passed during the legislative session which require policy form amendments, the INS will need to request additional staff to handle the increase in workload.

Officials from the **Department of Mental Health (DMH)** stated the DMH believes that the state operated hospitals do not meet the definition of non-profit hospitals. Assuming that the DMH does not fall under the definition as a health carrier, then the fiscal impact to the DMH is zero.

Officials from the **Office of Administration (COA)** assume the proposed legislation will not fiscally impact their agency unless they would be required to provide the staff necessary for the Mandated Benefit Review Commission. If the COA is required to provide staff, there would be some cost, but the cost is unknown at the present time. For purposes of this fiscal note, the COA assumes the proposed legislation will not have a fiscal impact.

Officials from the **Office of Attorney General** assume any costs associated with the proposed legislation can be absorbed within existing resources.

Officials from the **Missouri Senate, Barton County Memorial Hospital, Cass Medical Center, Cooper County Memorial Hospital, Excelsior Springs Medical Center, Lincoln County Memorial Hospital, Pemiscot Memorial Hospital, Phelps County Regional Medical Center, Ray County Memorial Hospital, Samaritan Memorial Hospital, Ste. Genevieve County Memorial Hospital** and **UM** did not respond to our request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Filing Fees	<u>\$9,850</u>	<u>\$0</u>	<u>\$0</u>
<u>Costs - Department of Insurance</u>			

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
Personal Service Costs (2 FTE)	(\$60,646)	(\$74,595)	(\$76,459)
Fringe Benefits	(\$21,839)	(\$26,862)	(\$27,533)
Equipment and Expense	(\$16,266)	(\$11,230)	(\$11,567)
	<u>(\$50,000 to</u>	<u>(\$50,000 to</u>	<u>(\$50,000 to</u>
Contractual Costs	<u>\$250,000)</u>	<u>\$250,000)</u>	<u>\$250,000)</u>
Total <u>Costs</u> - Department of Insurance	<u>(\$66,266 to</u>	<u>(\$61,230 to</u>	<u>(\$61,567 to</u>
	<u>\$266,266)</u>	<u>\$261,230)</u>	<u>\$261,567)</u>

ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$56,416 to</u>	<u>(\$61,230 to</u>	<u>(\$61,567 to</u>
	<u>\$256,416)</u>	<u>\$261,230)</u>	<u>\$261,567)</u>

GENERAL REVENUE

<u>Costs - All State Departments</u>			
Increase in Insurance Premiums	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

Costs - Department of Health and Senior
Services

Personal Service Costs (4 FTE)	(\$120,704)	(\$148,466)	(\$152,178)
Fringe Benefits	(\$43,466)	(\$53,463)	(\$54,799)
Equipment and Expense	(\$51,303)	(\$38,604)	(\$39,763)
Total <u>Cost</u> - Department of Health and Senior Services	<u>(\$215,473)</u>	<u>(\$240,533)</u>	<u>(\$246,740)</u>

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown</u>	<u>(Unknown</u>	<u>(Unknown</u>
	<u>exceeding</u>	<u>exceeding</u>	<u>exceeding</u>
	<u>\$215,473)</u>	<u>\$240,533)</u>	<u>\$246,740)</u>

**CONSERVATION COMMISSION
FUND**

Costs - Missouri Department of
Conservation

Increase in Insurance Claims	<u>(Unknown to</u>	<u>(Unknown to</u>	<u>(Unknown to</u>
	<u>exceeding</u>	<u>exceeding</u>	<u>exceeding</u>
	<u>\$100,000)</u>	<u>\$100,000)</u>	<u>\$100,000)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND	<u>(Unknown to exceeding \$100,000)</u>	<u>(Unknown to exceeding \$100,000)</u>	<u>(Unknown to exceeding \$100,000)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

The proposed legislation could negatively impact small businesses if an increase in insurance premiums is passed on by health insurance carriers.

DESCRIPTION

This act creates provisions relating to insurance mandates, health data, provision of charity care and clinical trials.

EXPANDED ACCESS TO DATA - This act repeals the portion of the law which prohibits the Department of Health from disclosing the data submitted by hospitals and ambulatory surgical centers to the public. Under the current law, this raw data is not accessible to the public. The public can only receive reports or studies based upon this data. This data will now be public information in a format known as a public use data file subject to individual privacy laws.

PROSPECTIVE PRICING INFORMATION - This act also requires hospitals and ambulatory surgical centers to provide prospective pricing information regarding their most health care services to the Department of Health. The pricing data must be submitted in a format that is understandable to lay persons so that health care consumers can compare prices of future health care services.

DESCRIPTION (continued)

MANDATED BENEFIT REVIEW COMMISSION - This act establishes the Mandated Benefit Review Commission within the Department of Insurance. The Commission will be comprised of the Director of the Department of Insurance, the Director of the Department of Health, 4 members of the General Assembly (2 Senate/2 House - nonvoting advisory capacity), and 6 individuals appointed by the governor with the advice and consent of the Senate (2 health insurance purchasers, 2 employers (small and large), and 2 employees who pay a percentage of their employer sponsored health insurance. The Commission must be established by October 1, 2002 (Sections 376.1575 -376.1596).

Once the Commission has been established, it must review all existing state mandated benefits and issue a report to the General Assembly by the tenth legislative day in January 2004. The report shall discuss the projected costs of all state and federal mandates and the Commission shall recommend to the General Assembly which mandated benefits should be repealed from state law.

The Commission shall also review all mandated benefits proposed by member of the General Assembly. Whenever a bill containing a mandated benefit is proposed, the Committee having jurisdiction over the proposal shall determine whether the Committee favors the proposed mandate or not. If the Committee is in favor of the mandate, the Committee may refer the matter to the Commission for its review. The Committee must review the proposed mandate and issue a report to the committee. The report must contain the social impact of mandating the benefit (see section 376.1590 for factors), the financial impact of mandating the benefit, the medical efficacy of mandating the benefit, and the effects of balancing the social, economic and medical efficacy considerations. Once a review and evaluation of the mandated benefit has been made by the commission, the committee shall review the commission's findings. No proposed mandate may be enacted into law unless the commission has reviewed the mandate.

CHARITABLE CARE BY NONPROFIT HOSPITALS - This act requires nonprofit hospitals to adopt a community benefits plan which will evaluate how nonprofit hospitals provide community benefits and charitable care. This must be conducted by January 1, 2004. Beginning April 1, 2004, the nonprofit hospitals must submit community benefit reports to the Department of Health outlining how their institution provides community benefits. The Department of Health is authorized to assess a \$200 per day civil penalty against nonprofit hospitals who fail to submit a report. With this information, the Department of Health is required to submit an annual report to the General Assembly beginning December 1, 2004. This act authorizes the Department of Health to develop a minimum standard for the provision of charity care and community benefits by nonprofit hospitals. This minimum standard will be used to assess whether nonprofit hospitals are eligible for MoHEFA bonds, appropriations from the tobacco fund, and appropriations from the Missouri disproportionate-share hospital program.

DESCRIPTION (continued)

THE MISSOURI HEALTH CARE COST ANTITRUST TASK FORCE - This act establishes the Missouri Health Care Cost Antitrust Task Force. The task force shall be comprised of: the Director of the Department of Insurance, the Attorney General, the Director of the Department of Health, a member representing the interests of hospitals, a member representing the interests of health carriers, and two members representing the interests fo health care consumers. The task force shall conduct a study of the current status of market concentration of health care plans and hospitals in the state. The task force shall study the effect of how the consolidation of health carriers and hospitals in Missouri has translated into higher costs for health care consumers. The task force shall also study whether such consolidation has decreased access to health care

consumers in various regions of the state. At the completion of the study, the task force shall submit a report of the findings of the study and recommendations for changes to the governor and the General Assembly. The report shall include recommendations for possible legislative proposals which would help ensure that there is competition amongst Missouri's health carriers and hospitals and to ensure that such markets forces provide an environment for affordable health care for Missouri's citizens. The report required by this section shall be submitted no later than April 1, 2003.

CANCER CLINICAL TRIALS - This act requires health insurance companies to provide coverage for routine patient care costs incurred as the result of phase III or IV of clinical trials undertaken to treat cancer. Entities providing clinical trial treatment must have sufficient expertise and training to treat a sufficient number of patients. There must be equal to or superior non-investigational treatments alternatives available before providing clinical trial treatment. Clinical trial coverage shall include coverage for drugs and devices approved by the FDA, whether or not the FDA has approved the drug or device for the patient's particular condition (SB 827) (Section 376.429).

The clinical trials will only be covered if they are approved or funded by the following entities:

1) One of the National Institutes of Health (NIH); 2) An NIH Cooperative Group of Center; 3) The FDA in the form of an investigational new drug application; 4) The federal Department of Veteran's Affairs of Defense; 5) A Missouri institutional review board which has a multiple project assurance contract approved by the Office of Protection for the Research Risks of the NIH; or 6) Research entities that meet the criteria for NIH Center support grant eligibility.

Providers participating in clinical trials shall obtain the patient's informed consent for participating in the clinical trial.

COVENANTS NOT TO COMPETE - This act clarifies the use of non- compete clauses in contracts between physicians and hospitals. A new section 334.113 is created and makes covenants not to compete enforceable except when they are part of a physician's contract with a not-for-profit health DESCRIPTION (continued)

services corporation as defined in section 354.010. Covenants with other health care facilities are enforceable as long as they:

1. Do not deny the physician access to a list of patients the physician had seen within a year of termination;
2. Provide access to patient medical records with the patient's consent and in an accessible format;
3. Provide for a buy out of the covenant by the physician at a reasonable price; and
4. Provide that the physician will not be prohibited from providing continuing treatment to

specific acutely ill patients after the contract has terminated (Section 334.113).

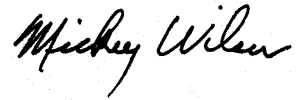
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri House of Representatives
Office of the Governor
Missouri Consolidated Health Care Plan
Department of Highways and Transportation
Missouri Department of Conservation
Department of Health and Senior Services
Department of Public Safety - Missouri Highway Patrol
Office of Secretary of State
Department of Economic Development
Department of Insurance
Department of Mental Health
Office of Administration
Office of Attorney General
Department of Social Services

SOURCES OF INFORMATION (continued)

NOT RESPONDING: Missouri Senate, Barton County Memorial Hospital, Cass Medical Center, Cooper County Memorial Hospital, Excelsior Springs Medical Center, Lincoln County Memorial Hospital, Pemiscot Memorial Hospital, Phelps County Regional Medical Center, Ray County Memorial Hospital, Samaritan Memorial Hospital, Ste. Genevieve County Memorial Hospital and UM.

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Acting Director
March 25, 2002