

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0607-08
Bill No.: HCS for SS for SCS for SB Nos. 63 and 111
Subject: Pharmacy; Drugs and Controlled Substances; Health Care Professionals; Health Department;
Type: Original
Date: May 6, 2015

Bill Summary: This proposal establishes the Narcotics Control Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(\$1,017,003)	(\$5,171,607)	(\$5,155,611)
Total Estimated Net Effect on General Revenue	(\$1,017,003)	(\$5,171,607)	(\$5,155,611)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	3	11	11
Total Estimated Net Effect on FTE	3	11	11

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 2016	FY 2017	FY 2018
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** provides the following information:

Section 195.453.1

Section 195.453.1 of the proposed legislation states in part:

".... The funding of the narcotics control program shall be subject to appropriations. In addition to appropriations from the general assembly, the department may apply for available grants and shall be able to accept other gifts, grants, and donations to develop and maintain the program."

DHSS assumes the costs associated with a narcotics control system will be funded with General Revenue. Also, since DHSS is not assured of any potential grant funding opportunities at this time, none of the prescription monitoring costs are assumed to be funded by grants. All costs of the narcotics control program (Sections 195.450 through 195.471 of the proposed legislation) are, therefore, assumed to be funded solely by General Revenue. At this time DHSS is not aware of any potential gifts or donations for this purpose.

Furthermore, DHSS assumes costs related to a prescription monitoring program would commence in FY 2016.

Section 195.450 through Section 195.471

One Health and Senior Services Manager (Band 1), (\$39,980 annually) will be needed to perform the following duties:

- Draft a Request for Proposal to solicit bids for the required database. Once the contract is awarded, this individual will be needed on an ongoing basis to monitor the database contract and program, maintain ongoing communication with professional organizations regarding compliance with reporting requirements, and other state and local agencies, and the public regarding the program;
- Coordinate with investigative management of the BNDD for enforcement activities and with law enforcement and regulatory agencies of this and other states for sharing data and tracking outcomes;
- Develop rules, policies, and procedures for reporting by dispensers and access to data by authorized parties;
- Provide technical assistance to program participants on matters relating to the program;
- Supervise subordinate staff involved in program implementation;
- Design and prepare reports of program data and review data collected to determine trends; and
- Provide required educational programs regarding the NCP (Section 195.468 of the proposed legislation).

ASSUMPTION (continued)

One Health Program Representative I (\$30,672 annually) will:

- Provide support to the program;
- Respond to inquiries and requests for database reports received;
- Coordinate communication with other agencies and the public, and maintain a memoranda of understanding for data sharing;
- Assist practitioners in obtaining access to the reporting subsystem of the program;
- Generate and e-mail or generate, print, and fax reports as requested by authorized individuals and agencies that cannot access this information via the internet; and
- Respond to telephone inquiries regarding the program .

One Investigative Manager (Band 1), (\$39,980 annually) will:

- Review database information;
- Assign and supervise investigations;
- Assist the manager in operating the database and supervise investigative staff; and
- Assist the manager in providing the required educational courses (Section 195.468 of the proposed legislation).

The above three positions will be hired as of September 1, 2015.

Three Investigator II positions (\$37,173 annually, each) will be needed to respond to complaints and conduct investigations. These positions are assumed to be telecommuters. These positions will be hired as of January 1, 2016. This fiscal note assumes minimal staffing and the review and referral of only the most serious issues identified in the dispensation information. Additional staff would be required to increase the level of review and investigation.

Section 195.453.5

Section 195.453.5 of the proposed legislation requires DHSS to reimburse dispensers for fees and other direct costs of transmitting the required information. Based on recent discussions with the industries affected, the dispensers who will qualify for reimbursement will fall into three categories – pharmacies, ambulatory surgical centers and individual practitioners – each transmission is expected to cost \$0.25. The number of transmissions is expected to grow three percent annually and is reflected below:

ASSUMPTION (continued)

Category	Number Statewide	-----FY 2017-----		-----FY 2018-----	
		Annual Transmissions	Reimbursement	Annual Transmissions	Reimbursement
Pharmacies	1,350	14,782,500	\$3,695,625	15,225,975	\$3,806,494
ASCs	101	248,460	\$62,115	255,914	\$63,978
Individual Practitioners	6,017	1,480,121	\$370,030	1,524,525	\$381,131
Totals	7,468	16,511,081	\$4,127,770	17,006,414	\$4,251,603

Each dispenser is expected to invoice quarterly for a total of 29,872 (7,468 dispensers X 4 quarters) annually. DHSS would also be required to hire staff in both the Division of Administration (DA) and the Division of Regulation and Licensure (DRL) to process the invoices received from dispensers.

Each invoice will take 10 minutes to process in DRL and 10 minutes to process in DA. Three different job categories will work together as follows to pay an invoice. In DRL, an Office Support Assistant will take 2½ minutes to open the invoice, log it into the tracking system and forward it to the Account Clerk II. In DRL, an Account Clerk II will take five minutes to determine and assign the account coding and forward to the Accountant I for review and approval. In DRL, the Accountant I will take 2½ minutes to verify the coding and funding availability and approve the document for central processing. In DA, an Office Support Assistant will take 2 ½ minutes to open the invoice and distribute it to the Account Clerk II. This position is also responsible for filing the documents after the payment processing is complete. In DA, the Account Clerk II will take five minutes to review, audit, and enter the payment documents from DRL into SAM II. In DA, the Accountant I will take 2½ minutes to apply final approval to the payment. The additional FTE required for invoice processing is as follows:

29,872 invoices X 20 minutes per invoice = 597,440 minutes to process invoices. 597,440 minutes / 60 minutes per hour = 9,957 hours. 9,957 hours/2,080 = 4.79 FTE (rounded to 5.00), broken down as follows:

ASSUMPTION (continued)

Job Title	Percent of the Time to Process a Claim	DRL FTE	DA FTE	Salary	Total Annual Salaries
Office Support Assistant	25	0.625	0.625	\$22,932	\$28,665
Account Clerk II	50	1.25	1.25	\$25,572	\$63,930
Accountant I	25	0.625	0.625	\$30,672	\$38,340
Totals	100	2.5	2.5		\$130,935

It is assumed these positions will be hired on January 1, 2017.

Oversight assumes the DHSS would not hire partial FTEs. However, to keep the total number of new staff at the 5 FTE DHSS has indicated would be necessary to process the claims, Oversight assumes DHSS would hire 1 FTE OSA, 3 FTE Account Clerk II, and 1 FTE Accountant I.

DHSS provided the response for the **Office of Administration (OA), Information Technology Services Division (ITSD)**. ITSD states it is assumed that every new IT project/system will be bid out because all ITSD resources are at full capacity.

Support from ITSD will be needed to assist DHSS to establish and maintain an application to monitor the prescribing and dispensing of Schedule II, III and IV controlled substances by all professionals licensed to prescribe or dispense such substances in this state. Each dispenser will submit to DHSS in electronic format the required information in accordance with transmission standards established by the American Society for Automation in Pharmacy, or any successor organization, and shall report data within every seven days. A paper form alternative must be available for those provided a waiver for electronic submission by DHSS.

Infrastructure costs were calculated using the FY 2015 State Data Center (SDC) Cost Allocation Plan (CAP) document. ITSD is assuming the use of an application built for the State of Missouri and hosted in the SDC. Three servers will be needed for development, test, and production with 100 gb of disk storage each.

It is estimated that FY 2016 ITSD costs to the General Revenue (GR) Fund will total \$736, 201; FY 2017 GR costs will total \$342,878; and FY 2018 GR costs will total \$219,3074.

ASSUMPTION (continued)

Section 195.468

DHSS is currently required to provide education courses and information by Section 195.198, RSMo, and assumes the new requirements will be met with existing resources.

Total General Revenue (GR) costs for this proposal, including ITSD costs, are estimated to be \$1,017,003 for FY 2016; \$5,153,267 for FY 2017; and \$5,129,795 for FY 2018.

Officials from the **OA, Facilities Management, Design and Construction (FMDC)** state the anticipated rental costs for the additional space needed by the DHSS is estimated at \$32,200 per year (8 FTE X 230 sq.ft./FTE = 1,840 sq.ft. X \$17.50/sq.ft. = \$32,200).

Oversight will adjust the rental space costs provided by DHSS to reflect the costs anticipated by FMDC.

Officials from the **Office of State Public Defender (SPD)** state, for the purpose of this proposed legislation, the SPD cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with any of the proposed new crimes relating to dispensation of pharmaceutical monitoring.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Oversight assumes county prosecutors could absorb any increase in cases referred to prosecutors within existing resources.

Officials from the **Department of Corrections (DOC)** state the penalty provision component of this bill resulting in potential fiscal impact for DOC is for up to a class D. Based upon historical data, the DOC assumes that approximately 1 offender would be sentenced to incarceration under this new legislation and up to 9 offenders will be sentenced to supervision after year 5.

ASSUMPTION (continued)

The FY 2014 average cost of supervision is \$6.72 per offender per day or an annual cost of \$2,453 per offender. The DOC cost of incarceration is \$16.725 per day or an annual cost of \$6,105 per offender.

The DOC assumes the proposal would have the following long term costs. A 2% inflationary factor has been included.

FY 2016 (10 months)	\$9,176
FY 2017	\$18,737
FY 2018	\$26,768
FY 2019	\$29,907
FY 2020	\$30,505
FY 2021	\$31,115
FY 2022	\$31,738
FY 2023	\$32,372
FY 2024	\$33,020
FY 2025	\$33,680

Oversight assumes the DOC can absorb the minimal costs associated with this proposal for FY 2016.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the OA, **Administrative Hearing Commission (AHC)** anticipate that this legislation will not significantly alter its caseload. However, if similar bills pass, resulting in more cases, there will be a fiscal impact.

In response to the previous version of this proposal , officials from the **Office of the Secretary of State (SOS)** stated many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

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.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Joint Committee on Administrative Rules**, the **OA, General Services Division** and **Division of Purchasing and Materials Management** and the **Office of State Courts Administrator** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE FUND			
<u>Costs - DOC (\$195.465)</u>			
Increased probation and parole costs	\$0	(\$18,737)	(\$26,768)
<u>Costs - DHSS (§§195.015 - 195.471)</u>			
Personal service	(\$147,951)	(\$356,353)	(\$359,554)
Fringe benefits	(\$76,942)	(\$185,321)	(\$186,986)
Equipment and expense	(\$55,909)	(\$140,548)	(\$111,393)
Dispenser reimbursements (§195.453.5)	\$0	(\$4,127,770)	(\$4,251,603)
Total <u>Costs - DHSS</u>	<u>(\$280,802)</u>	<u>(\$4,809,992)</u>	<u>(\$4,909,536)</u>
FTE Change - DHSS	3 FTE	11 FTE	11 FTE
<u>Costs - OA-ITSD</u>			
IT consultant fees and on-going support	(\$731,916)	(\$337,608)	(\$213,905)
Equipment and expense	(\$4,285)	(\$5,270)	(\$5,402)
Total <u>Costs - OA-ITSD</u>	<u>(\$736,201)</u>	<u>(\$342,878)</u>	<u>(\$219,307)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$1,017,003)</u>	<u>(\$5,171,607)</u>	<u>(\$5,155,611)</u>
Estimated Net FTE Change on the General Revenue Fund	3 FTE	11 FTE	11 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small business pharmacies and dispensing individual practitioners may have an unknown impact resulting from obtaining computer hardware and software. In addition, these small businesses may have an unknown impact resulting from the time it takes to enter their dispensing information and transmitting it to the data collection location. Although this information is currently maintained and documented by law, this proposal requires the information to be periodically submitted in an approved electronic format.

FISCAL DESCRIPTION

This proposal establishes the Prescription Drug Monitoring Act. The Department of Health and Senior Services is required to establish and maintain a program to monitor the prescribing and dispensing of all Schedule II through Schedule IV controlled substances by all licensed professionals who prescribe or dispense these substances in Missouri using an existing data aggregation platform through the State Data Center within the Office of Administration. The provisions of this proposal shall be subject to appropriations and also may be funded with federal or private moneys.

A dispenser shall electronically submit to the Department information for each prescription. The Department may issue a waiver to a dispenser who is unable to submit the required information electronically. If a waiver is obtained, a dispenser can submit the required information in paper format or by other approved means. The Department shall reimburse each dispenser for the fees of transmitting the information required by this proposal.

This proposal delineates the duties of both the dispenser and the Department for communicating in real-time when there is a prescription for a Schedule II through Schedule IV controlled substance. If the Department responds with a message that there was a concern detected and describes the nature of that concern, the dispenser shall dispense or not dispense the medication according to his or her professional judgment appropriate to the concern communicated. If the response is not timely, the dispenser shall dispense or not dispense the medication according to his or her professional judgment.

FISCAL DESCRIPTION (continued)

The Department shall review the dispensation information and, if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the Department shall notify the appropriate law enforcement or professional regulatory entity and provide dispensation information required for an investigation. If, after staff review, it appears that there is reasonable cause to believe that a person has obtained a prescription fraudulently from more than one prescriber, the Department shall contact the prescribers, inform them of the potential problem and provide details, and request copies of medical records concerning the prescriptions of concern. The prescribers shall provide the records, if possible, by fax or electronically. If, after Department review of the provided records, it is clear that a person has obtained prescriptions under false pretenses, the entire matter shall be referred to the appropriate law enforcement or local prosecuting attorney for action. Nothing in the PDMP database shall be the sole basis for probable cause to obtain an arrest or search warrant as part of a criminal investigation.

Any person who unlawfully and knowingly accesses or discloses dispensation monitoring information or dispensers who knowingly fail to submit the required information or who knowingly submit incorrect information shall be subject to penalties and shall be guilty of a Class A misdemeanor. Any persons authorized to have dispensation information who knowingly disclose such information or who use it in a manner and for a purpose in violation of the proposal shall be guilty of a Class D felony until December 31, 2016, and a Class E felony beginning January 1, 2017. Additionally, this proposal provides a private cause of action for persons whose data has been disclosed to an unauthorized person. Recovery under this cause of action for negligent disclosure shall include liquidated damages of \$25,000 and compensatory economic and non-economic damages, attorney fees, and court costs. Punitive damages are available for intentional and malicious unauthorized disclosure.

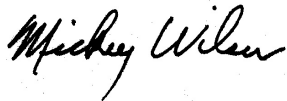
The provisions of this proposal shall not apply to Schedule II, III, and IV controlled substances prescribed or dispensed where the ultimate user is an individual under 18.

The provisions of this proposal shall expire on August 28, 2020.

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

SOURCES OF INFORMATION

Office of Attorney General
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of Administration -
 Administrative Hearing Commission
 General Services Division
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



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