

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5500-03
Bill No.: SB 906
Subject: Boards, Commissions, Committees, and Councils; Certificate of Need; Disabilities; Elderly; Health Care; Health and Senior Services Department; Hospitals; Nursing Homes and Long-term Care Facilities
Type: Original
Date: March 12, 2018

Bill Summary: This proposal modifies provisions of law relating to health care facilities and certificates of need.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(Could exceed \$4,314,552)	(Could exceed \$8,523,983)	(Could exceed \$12,905,559)
Total Estimated Net Effect on General Revenue	(Could exceed \$4,314,552)	(Could exceed \$8,523,983)	(Could exceed \$12,905,559)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
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 2019	FY 2020	FY 2021
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income and expenditures could exceed \$15 million annually and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	2	2	2
Federal	1	1	1
Total Estimated Net Effect on FTE	3	3	3

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 2019	FY 2020	FY 2021
Local Government	Unknown	Unknown	Unknown

FISCAL ANALYSIS

ASSUMPTION

§197.305 - No CON for Major Medical Equipment

Officials from the **Department of Health and Senior Services (DHSS)** state this section of the proposal removes major medical equipment from the definition of a new institutional health service; therefore, a Certificate of Need (CON) would not be required for major medical equipment.

DHSS generates an average of \$76,136 of General Revenue from major medical equipment applications. Using a 2.5 percent annual growth rate, the total fiscal impact projected to General Revenue will be a reduction of equipment applications fees of \$66,659 ($\$76,136$ (FY 2017 fees) $\times 1.025 \times 1.025 = \$79,990 \times 10/12$) for FY2019; \$81,990 for FY2020; and \$84,040 for FY2021.

§197.310 - Missouri Health Facilities Review Committee members

DHSS states section 197.310 of the proposal removes the Missouri Health Facilities Review Committee (MHFRC) from the Certificate of Need (CON) program. In FY 2017, travel expenses for MHFRC members was \$4,944. Applying a 2.5 percent annual growth rate, DHSS projects a reduction in travel expenses of \$4,329 ($\$4,944$ (FY17 travel expenses) $\times 1.025 \times 1.025 = \$5,194 \times 10/12$) for FY19; \$5,324 for FY20; and \$5,457 for FY21.

In order to absorb all the activities currently performed by the board members, the CON program would require one additional FTE. Currently the CON is statutorily held at 2 FTE. This additional FTE, an Administrative Office Support Assistant (AOSA, \$28,668 annually), would assume the administrative support duties currently being handled by the Health Program Representative II and Manager, allowing them to fulfill the previous duties assigned to the committee.

Oversight assumes DHSS would not need additional rental space for 1 new FTE for this single proposal. However, Oversight notes, depending on the number of proposals passed during the legislative session, that cumulatively, DHSS may need additional rental space or capital improvements as determined by the Office of Administration, Facilities Management, Design and Construction.

§197.323 - Granting of Certificates of Need

DHSS officials state section 197.323.2 of the proposal states that no consideration shall be given to any other licensed beds located more than 15 miles from the applying facilities in all non-urban area and 10 miles in all urban areas.

ASSUMPTION (continued)

Section 197.323.3 of the proposal states that no consideration shall be given to any application for new or additional licensed beds unless the applicant can demonstrate that the average occupancy of all facilities within the service area of the project site has been equal to or greater than eight-five percent during the four most quarters.

Based on a random sampling of 2017 applications, only 10 percent of the applications submitted met the 80 percent occupancy requirement. Therefore DHSS assumes that 90 percent of the applications will not be submitted upon implementation of this proposal. In 2017 DHSS generated \$267,678 of General Revenue from new long-term care bed applications. If 90 percent of these were not received, the fiscal impact to General Revenue would be a reduction of \$240,910 in application fees. Using a 2.5 percent annual growth rate, the total fiscal impact projected to General Revenue will be a reduction of application fees of \$210,922 (\$240,910 (FY 2017 fees) x 1.025 x 1.025 = \$253,106 x 10/12) for FY2019; \$259,434 for FY2020; and \$265,920 for FY2021.

§208.225 - Nursing Facility Rebasing for Capital Expenditures

DHSS officials state the proposal amends section 208.225 by changing the way the Nursing Facility per diem rate is calculated by the Department of Social Services (DSS). DHSS defers to the DSS, MO HealthNet Division (MHD) to calculate the fiscal impact of altering long-term care facility (nursing home) provider rates; however, the resulting calculated rate would affect home- and community-based (HCBS) expenditures.

Currently, recipients of Home- and Community-based services (HCBS) are limited to a maximum monthly cost not to exceed 60% of the average monthly cost of nursing facilities, as calculated by DSS, MHD. Any increase or decrease in the average monthly cost will equate to a corresponding increase or decrease to the monthly maximum allowable cost of HCBS that eligible participants would potentially utilize. With many factors unknown, including the adjusted calculated rate, DHSS expects additional costs of \$0 to unknown (65.203% Federal; 34.797% GR).

Officials from the **Department of Social Services (DSS), MO HealthNet Division (MHD)** state MHD estimates 2 additional FTE (Senior Auditors) would be needed to audit/adjust rates for nursing homes. MHD estimates this will cost:

FY19 total: \$141,536 (GR \$70,768, FF \$70,768)
FY20 total: \$155,124 (GR \$77,562, FF \$77,562)
FY21 total: \$156,782 (GR \$78,391, FF \$ 78,391)

ASSUMPTION (continued)

MHD used the average rate increase for rate adjustments granted in 2002 - 2018 for the impact of the "Adjust Capital Rate Only" scenario (adjusted for increase in nursing facility rates between 2002-2018 + 3.8% inflation for SFYs 19-21). MHD only used allowable nursing facility related capital expenditures to determine qualifying facilities (excludes capital expenditures for non-allowable items such as construction in progress, vehicles, land, etc.) or non-nursing facility related items (Residential Care Facilities (RCFs), apartments, etc.). MHD assumes a range due to different rates recalculated for the capital costs compared all costs.

Costs associated with Adjustment to Capital Rate-only are listed first in the range. NOTE: Based on discussions with MHD officials, **Oversight** determined the second numbers in the range are based on the scenario "all costs incurred during the facility fiscal year during which such capital expenditures were made".

FY19 total: \$3,587,477 (GR \$1,248,334; FF \$2,339,143) to \$11,265,259 (GR \$3,919,972; FF \$7,345,287);

FY20 total: \$7,375,477 (GR \$2,566,445; FF \$4,809,032) to \$23,160,562 (GR \$8,059,181; FF \$15,101,381);

FY21 total: \$11,379,933 (GR \$3,959,875; FF \$7,420,058) to \$35,724,542 (GR \$12,431,069; FF \$23,293,473).

Grand estimated total with new FTE:

FY19 total: \$3,729,012 (GR \$1,319,102; FF \$2,409,911) to \$11,406,794 (GR \$3,990,740; FF \$7,416,055);

FY20 total: \$7,530,602 (GR \$2,644,007; FF \$4,886,594) to \$23,315,687 (GR \$8,136,743; FF \$15,178,943);

FY21 total: \$11,536,715 (GR \$4,038,266; FF \$7,498,449) to \$35,881,324 (GR \$12,509,460; FF \$23,371,864).

Oversight assumes DSS would not need additional rental space for 2 new FTE for this single proposal. However, Oversight notes, depending on the number of proposals passed during the legislative session, that cumulatively, DSS may need additional rental space or capital improvements as determined by the Office of Administration, Facilities Management, Design and Construction.

ASSUMPTION (continued)

Oversight notes there are approximately 34 nursing home facilities in the state that are operated by local governments. If the provisions of this proposal pass, these local governments may receive an increase in the Medicaid reimbursement amounts they receive if they have incurred capital expenditures of \$2,000 per bed or for all costs incurred during the facility fiscal year during which such capital expenditures were made as provided for by this proposal. At this time **Oversight** is unable to determine the increase in reimbursements/revenue these districts would receive. For fiscal note purposes only, Oversight will show an Unknown positive fiscal impact to local government nursing home districts.

Officials from **Tri-County Care Center** responded to **Oversight's** request for a statement of fiscal impact but did not provide an impact. Tri-County indicated the changes proposed would reduce costs as a result of reducing unneeded facilities.

Bill as a whole

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if the proposal results in a significant increase in litigation.

Officials from the **Office of State Courts Administrator (OSCA)** state this proposal may have some impact, but there is no way to quantify that impact at the present time. Any significant changes will be reflected in future budget requests.

Officials from the **Department of Mental Health**, the **Office of the Governor**, the **Missouri Ethics Commission** and **St. Louis County** each assume the proposal would not fiscally impact their respective agencies.

Officials from **St. Louis City** and **Jackson County** did not respond to **Oversight's** request for a statement of fiscal impact.

Officials from the following **hospitals**: Barton County Memorial Hospital, Bates County Memorial Hospital, Cass Regional Medical Center, Cedar County Memorial Hospital, Cooper County Memorial Hospital, Excelsior Springs Hospital, Golden Valley Memorial Hospital, Hermann Area District Hospital, Putnam County Memorial Hospital, Samaritan Hospital, the University of Missouri Health System and Washington County Memorial Hospital did not respond to **Oversight's** request for a statement of fiscal impact.

ASSUMPTION (continued)

Officials from the following **nursing home districts**: Clark County, Knox County, Loch Haven, Maple Lawn, Monroe Manor, Scotland County and Sunnyview did not respond to **Oversight's** request for a statement of fiscal impact.

Oversight notes there could be some indirect impact from this proposal including construction costs or a brief temporary increase in CON applications before the effective date; however, **Oversight** only reflects the direct fiscal impact of legislation in fiscal notes.

<u>FISCAL IMPACT - State Government</u>	FY 2019	FY 2020	FY 2021
	(10 Mo.)		
GENERAL REVENUE FUND			
<u>Savings - DHSS (\$197.310)</u>			
Reduction in travel expenses	\$4,329	\$5,324	\$5,457
<u>Costs - DHSS (\$197.310)</u>			
Personal service	(\$23,890)	(\$28,955)	(\$29,244)
Fringe benefits	(\$16,085)	(\$19,388)	(\$19,473)
Equipment and expense	<u>(\$15,653)</u>	<u>(\$9,019)</u>	<u>(\$9,245)</u>
Total <u>Cost</u> - DHSS	<u>(\$55,628)</u>	<u>(\$57,362)</u>	<u>(\$57,962)</u>
FTE Change - DHSS	1 FTE	1 FTE	1 FTE
<u>Costs - DSS (\$208.225)</u>			
Personal service	(\$35,650)	(\$43,208)	(\$43,640)
Fringe benefits	(\$19,207)	(\$23,175)	(\$23,304)
Equipment and expense	(\$10,843)	(\$4,957)	(\$5,081)
Capital rate increase/rebasing	<u>(\$1,248,334 to</u>	<u>(\$2,566,445 to</u>	<u>(\$3,959,875 to</u>
	<u>\$3,919,972)</u>	<u>\$8,059,181)</u>	<u>\$12,431,069)</u>
Total <u>Costs</u> - DSS	<u>(\$1,314,034 to</u>	<u>(\$2,637,785 to</u>	<u>(\$4,031,900 to</u>
	<u>\$3,985,672)</u>	<u>\$8,130,521)</u>	<u>\$12,503,094)</u>
FTE Change - DSS	1 FTE	1 FTE	1 FTE
<u>Costs - DHSS (\$208.225)</u>			
Change in HCBS expenditures	\$0 to	\$0 to	\$0 to
	(Unknown)	(Unknown)	(Unknown)

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
(continued)			
<u>Loss - DHSS (§197.305)</u>			
Reduction in CON application fees (major medical equipment)	(\$66,659)	(\$81,990)	(\$84,040)
<u>Loss - DHSS (§197.323.3)</u>			
Reduction in CON application fees (85% occupancy requirement)	(\$210,922)	(\$259,434)	(\$265,920)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Could exceed \$4,314,552)</u>	<u>(Could exceed \$8,523,983)</u>	<u>(Could exceed \$12,905,559)</u>
Estimated Net FTE Change on the General Revenue Fund	2 FTE	2 FTE	2 FTE

FEDERAL FUNDS

<u>Income - DSS (§208.225)</u>			
Increase in nursing home reimbursements	\$2,339,143 to \$7,345,287	\$4,809,032 to \$15,101,381	\$7,420,058 to \$23,293,473
Increase in program reimbursements	<u>\$65,700</u>	<u>\$71,340</u>	<u>\$72,025</u>
Total <u>Income - DSS</u>	\$2,404,843 to \$7,410,987	\$4,880,372 to \$15,172,721	\$7,492,083 to \$23,365,498
<u>Income - DHSS (§208.225)</u>			
Increase in HCBS reimbursements	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
Total <u>All Income</u>	<u>Could exceed \$7,410,987</u>	<u>Could exceed \$15,172,721</u>	<u>Could exceed \$23,365,498</u>

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
FEDERAL FUNDS (continued)			
<u>Costs - DSS (\$208.225)</u>			
Personal service	(\$35,650)	(\$43,208)	(\$43,640)
Fringe benefits	(\$19,207)	(\$23,175)	(\$23,304)
Equipment and expense	(\$10,843)	(\$4,957)	(\$5,081)
Capital rate increase/rebasing	<u>(\$2,339,143 to \$7,345,287)</u>	<u>(\$4,809,032 to \$15,101,381)</u>	<u>(\$7,420,058 to \$23,293,473)</u>
Total <u>Costs</u> - DSS	<u>(\$2,404,843 to \$7,410,987)</u>	<u>(\$4,880,372 to \$15,172,721)</u>	<u>(\$7,492,083 to \$23,365,498)</u>
FTE Change - DSS	1 FTE	1 FTE	1 FTE
<u>Costs - DHSS (\$208.225)</u>			
Increase in HCBS expenditures	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
Total <u>All Costs</u>	<u>(Could exceed \$7,410,987)</u>	<u>(Could exceed \$15,172,721)</u>	<u>(Could exceed \$23,365,498)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change on Federal Funds	1 FTE	1 FTE	1 FTE
<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
LOCAL GOVERNMENTS - NURSING HOME DISTRICTS			
<u>Income - Nursing Home Districts (\$208.225)</u>			
Increase in program reimbursements	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - NURSING HOME DISTRICTS			
	<u>Unknown</u>	<u>Unknown</u>	<u>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 act modifies several provisions relating to health care facilities, including: (1) Missouri Health Facilities Review Committee; (2) certificates of need (CON) for major medical equipment; (3) CON applications; (4) long-term care CON need formula; (5) CON appeals; and (6) long-term care facility Medicaid per diem reimbursement rates.

MISSOURI HEALTH FACILITIES REVIEW COMMITTEE

Currently, the Missouri Health Facilities Review Committee administers the CON process in Missouri. This act repeals the committee and places the responsibility over CON with the Department of Health and Senior Services.

CON FOR MAJOR MEDICAL EQUIPMENT (Sections 197.305 and 197.315)

This act removes the requirement to obtain a certificate of need for major medical equipment.

CON APPLICATIONS (Sections 197.315 and 197.330)

Under current law, a CON can be forfeited if no capital expenditure on an approved project is incurred within 6 months of approval. The applicant may seek an extension from the Missouri Health Facilities Review Committee. This act prohibits the granting of an extension for approved long-term care projects for which no substantial capital expenditure has been incurred within 3 years of the original approval date. Any applicant whose request for an extension is not granted under this act shall be permitted to apply for a new certificate of need.

Under current law, the Missouri Health Facilities Review Committee issues a written decision on a CON application within 100 days of filing. Failure to do so shall constitute approval of and final administrative action on the application. This act removes that provision so that the Department's failure to act within the statutory time frame to issue a decision on an application shall not constitute approval of the application.

FISCAL DESCRIPTION (continued)

LONG-TERM CARE CON NEED FORMULA (Sections 197.315, 197.318, and 197.323)

This act removes the word "available" when referencing licensed long-term care beds.

Under this act, the Department shall apply the following when determining whether or not to grant a CON for any new or additional licensed long-term care beds:

- No consideration shall be given to any other licensed beds located more than 15 miles from the applying facilities in all non-urban areas and 10 miles in all urban areas;
- Within the 10 or 15-mile service area, the following need formula shall apply: (1) for intermediate care and skilled nursing facilities (ICF/SNF), 53 beds per 1,000 population aged 65 and older minus the current number of ICF/SNF beds; (2) for residential care and assisted living facilities (RCF/ALF), 25 beds per 1,000 population aged 65 and older minus the current number RCF/ALF beds; and (3) for long-term care hospital beds (LTCH), one-tenth of a bed per 1,000 population minus the current number of LTCH beds; and
- No CON shall be granted unless the applicant can demonstrate that the average occupancy of all facilities in the same category within the service area of the project site has been equal to or greater than 80% during the four most recent quarters.

CON APPEALS (Section 197.335)

Under current law, a CON applicant may appeal the decision of the Missouri Health Facilities Review Committee within 30 days of the issuance of the committee's decision. This act allows any affected person who is a provider of the same services as those offered by the CON applicant to appeal the Department's decision within the same time frame.

LONG-TERM CARE FACILITY MEDICAID PER DIEM REIMBURSEMENT RATES
(Section 208.225)

Under this act, any intermediate care facility or skilled nursing facility participating in MO HealthNet that incurs total capital expenditures in excess of \$2,000 per bed shall be entitled to obtain a recalculation of its Medicaid per diem reimbursement rate based on its additional capital costs or all costs incurred during the facility fiscal year during which such capital expenditures were made.

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 and Senior Services
Department of Social Services -
 MO HealthNet Division
Office of Attorney General
Department of Mental Health
Office of the Governor
Missouri Ethics Commission
Office of State Courts Administrator
St. Louis County
Tri-County Care Center

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope", with a stylized flourish at the end.

Acting Director
March 12, 2018