

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0510S.02P
 Bill No.: Perfected SS for SB 63
 Subject: Administration, Office of; Boards, Commissions, Committees, and Councils; Civil Penalties; Crimes and Punishment; Drugs and Controlled Substances; Health Care Professionals; Medicaid/Mo Healthnet; Nurses; Pharmacy; Physicians
 Type: Original
 Date: March 30, 2021

Bill Summary: This proposal modifies provisions relating to the monitoring of certain controlled substances and modifies the expiration date of the RX Cares for Missouri Program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue Fund	(\$1,546,113)	(\$681,718)	(Could Exceed (\$768,137)
Total Estimated Net Effect on General Revenue	(\$1,546,113)	(\$681,718)	(Could Exceed (\$768,137)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Board of Pharmacy Fund (0637)*	(Less than \$300,000)	(Less than \$300,000)	(Less than \$300,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(Less than \$300,000)	(Less than \$300,000)	(Less than \$300,000)

*Oversight notes Senate Amendment 3 modifies the expiration date of the existing RX Cares for Missouri Program from August 28, 2019, to August 28, 2026. DCI indicated this program is still operational and planned expenditures for FY '21 are estimated at \$300,000. Oversight reflects the cost of continuation of the program in the fiscal note.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Federal Funds	\$0	\$0	(Could Exceed \$288,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	<u>\$0</u>	<u>\$0</u>	(Could Exceed \$288,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue Fund	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a previous version, officials from the **Office of Administration – Information Technology (ITSD)** stated section 195.450 establishes within the Office of Administration the Joint Oversight Task Force for Prescription Drug Monitoring which shall be authorized to supervise the collection and use of patient dispensation information for prescribed controlled substances. While the members of the task force shall serve without compensation, members may be reimbursed for actual and necessary expenses from moneys appropriated to the Office of Administration. The Office of Administration shall provide technical legal and administrative support services as required by the joint task force, and shall be authorized to hire such staff as are necessary. OA estimates this will require 2 additional FTE, with a fiscal impact of \$110,000 annually as follows:

1 Legal Counsel \$65,000

1 Administrative Office Support position: \$35,000

Reimbursements for meals, travel, and other necessary expenses: \$10,000

ITSD also assumes Section 195.450 also stipulates the joint oversight task force shall enter into a contract with a vendor through a competitive bid process for operation of the prescription drug monitoring program. The vendor shall be responsible for the collection and maintenance of patient dispensation information submitted to the vendor. Each dispenser will submit to the vendor 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 twenty-four hours. A paper form alternative must be available for those provided a waiver for electronic submission.

There are Custom off the Shelf solutions that are utilized by other surrounding states, and those estimates will be used for the purpose of this fiscal note. The fiscal impact to General Revenue is estimated to be (\$1,390,652) in FY22 for contracted database development and associated program start-up costs. Ongoing contracted costs for operation of the prescription drug monitoring program would be affected by a number of variables including the frequency of data collection, the number of prescriptions being written and filled, the number of pharmacies reporting, and the number of practitioners checking patient drug histories. These costs are estimated to be (\$512,500) in FY2023, and (\$525,313) in FY2024. Any federal funding that may be available to offset costs associated with program start-up or administration are unknown at this time. Other federal funding sources which may become available to offset the costs described above are also unknown at this time.

In response to a previous version, officials from the **Department of Social Services (DSS)** stated this proposal modifies provisions relating to the monitoring of certain controlled substances and assume the following:

DSS assumed Section 195.420(2)(3) states the Board Members would get no compensation but may be reimbursed for their actual and necessary expenses from money appropriated to the Office of Administration.

DSS assumed Section 195.450(3)(3) the joint oversight task force shall be authorized to cooperate with the MO HealthNet division within the Department of Social Services for the purposes of applying for and accepting any available federal money or other grants to develop and maintain the program.

The fiscal impact for MO HealthNet would be \$120,000 initial setup and connection fee for the first year and then \$240,000 for the first year and then annually to remain connected to the database. DSS would assume the \$120,000 to be at 90/10 split between Federal Funds and General Revenue and the \$240,000 to be at 75/25. The costs would be assumed to start in 2024.

Oversight will reflect the following cost:

General Revenue – Could Exceed \$72,000
(\$12,000 (10% of \$120,000) + \$60,000 (25% of \$240,000))

Federal Funds – Could Exceed \$288,000
(\$108,000 (90% of \$120,000) + \$180,000 (75% of \$240,000))

Oversight notes that these expenses will begin in FY 2024 but it should be noted that the database connection is an ongoing cost.

In response to a previous version, officials from the **Department of Corrections (DOC)** stated this proposal establishes the “Joint Oversight Task Force for Prescription Drug Monitoring” with the intention of monitoring prescription drugs administered in the state of Missouri. Any unauthorized use of patient dispensation information collected under this section is punishable as a class E felony.

Since this is a new offense, the department will use a standard class E felony response. For each new nonviolent class E felony, the department estimates one person will be sentenced to prison and two to probation. The average sentence for a nonviolent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 2 additional offenders in prison and 7 additional offenders on field supervision by FY 2024.

Non-violent E felony:

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	1	(\$7,756)	(\$6,463)	2	absorbed	\$0	(\$6,643)
Year 2	2	(\$7,756)	(\$15,822)	4	absorbed	\$0	(\$15,822)
Year 3	2	(\$7,756)	(\$16,139)	7	absorbed	\$0	(\$16,139)
Year 4	2	(\$7,756)	(\$16,461)	7	absorbed	\$0	(\$16,461)
Year 5	2	(\$7,756)	(\$16,791)	7	absorbed	\$0	(\$16,791)
Year 6	2	(\$7,756)	(\$17,127)	7	absorbed	\$0	(\$17,127)
Year 7	2	(\$7,756)	(\$17,469)	7	absorbed	\$0	(\$17,469)
Year 8	2	(\$7,756)	(\$17,818)	7	absorbed	\$0	(\$17,818)
Year 9	2	(\$7,756)	(\$18,175)	7	absorbed	\$0	(\$18,175)
Year 10	2	(\$7,756)	(\$18,538)	7	absorbed	\$0	(\$18,538)

Oversight does not have any information to the contrary. However, Oversight assumes, for fiscal note purposes, the proposed fiscal impact provided by DOC to be minimal and absorbable within current funding levels. Therefore, for fiscal note purposes, Oversight assumes no fiscal impact for the DOC.

In response to a previous version, officials from the **Missouri State Public Defender (SPD)** stated that they cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) concerning controlled substances, which are classified as felonies. Section 195.450 RSMo. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

Officials from the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **Department of Health and Senior Services**, the **Department of Public**

Safety - Missouri Highway Patrol, the Office of the Secretary of State and the Department of Commerce and Insurance each assume the proposal will have no fiscal impact on their organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

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In response to a previous version, officials from the **Office of Administration - Administrative Hearing Commission** anticipate that this legislation will not significantly alter its caseload. If similar bills pass, resulting in more cases, there will be a fiscal impact. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

Senate Amendment 3

Oversight notes this legislation is similar to SB 519 from this year and modifies the expiration date of the RX Cares for Missouri Program from August 28, 2019, to August 28, 2026. DCI indicated this program is still operational and planned expenditures for FY '21 are estimated at \$300,000. (Current expenditures as of 11/30/20 are \$52,290). Listed below are past expenditures for this program.

1. FY 2019 - \$174,198 (media services)
2. FY 2020 - \$220,3861 (medication collection/destruction)
3. FY 2021 - \$ 52,290 (medication collection/destruction) as of 11/30/2020 (The Board has not received any invoices after 11/30/2020)

For fiscal note purposes, Oversight will reflect an annual cost to the Board of Pharmacy Fund (0637) (cost of continuance of this program) of less than \$300,000.

Senate Amendment 4

Oversight assumes Senate Amendment 4 allows the Joint Oversight Task Force to be subject to the Sunshine Law and will have no fiscal impact on state or local governments.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Cost – DSS Initial Setup and Program Fees</u>	\$0	\$0	(Could Exceed \$72,000)
<u>Costs – OA p. 3</u>			
Personal service	(\$83,333)	(\$101,000)	(\$102,010)
Fringe benefits	(\$48,025)	(\$57,968)	(\$58,308)
Equipment and expense	(\$24,103)	(\$10,250)	(\$10,506)
Database development & program administration	(\$1,390,652)	(\$512,500)	(\$525,313)
<u>Total Costs – OA</u>	<u>(\$1,546,113)</u>	<u>(\$681,718)</u>	<u>(\$696,137)</u>
FTE Change – OA	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$1,546,113)</u>	<u>(\$681,718)</u>	<u>(Could Exceed \$768,137)</u>
Estimated Net FTE Change to the General Fund	2 FTE	2 FTE	2 FTE

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
FEDERAL FUNDS			
<u>Cost – DSS Initial Setup and Program Fees</u>	<u>\$0</u>	<u>\$0</u>	<u>(Could Exceed \$288,000)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>(Could Exceed \$288,000)</u>
BOARD OF PHARMACY FUND (0637)			
<u>Cost – DCI Renewed sunset date from 2019 to 2026 for the RX Cares for Missouri Program SA 3 p. 6</u>	<u>(Less than \$300,000)</u>	<u>(Less than \$300,000)</u>	<u>(Less than \$300,000)</u>
ESTIMATED NET EFFECT TO THE BOARD OF PHARMACY FUND (0637)	<u>(Less than \$300,000)</u>	<u>(Less than \$300,000)</u>	<u>(Less than \$300,000)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

Licensed pharmacies and individual practitioners dispensing Schedule II, III, and IV controlled substances may incur a fiscal impact by obtaining the computer hardware and software and for

additional work hours related to entering and transmitting dispensation data. This dispensing information is already maintained and documented by law; however, the proposed legislation would require the dispensation log information to be submitted within twenty-four hours of dispensing to the patient. Any costs incurred may be partially offset by being able to immediately access controlled substance dispensing data from the database. An additional economic impact could occur if a dispenser is assessed a fine for not reporting as required by the proposed legislation.

FISCAL DESCRIPTION

This act establishes the "Joint Oversight Task Force of Prescription Drug Monitoring" within the Office of Administration, with members selected from the Board of Registration for the Healing Arts, the Board of Pharmacy, the Board of Nursing, and the Missouri Dental Board. The Task Force shall enter into a contract with a vendor, through a competitive bid process, to collect and maintain patient controlled substance prescription dispensation information submitted by dispensers throughout the state as specified in the act. Such information shall be retained by the vendor for no more than 3 years before deletion from the program.

The Task Force may apply for and accept any grants or other moneys to develop and maintain the program and shall work cooperatively with the MO HealthNet Division to apply for and accept federal moneys and other grants for the program.

The vendor shall treat patient dispensation information and any other individually identifiable patient information submitted under this act as protected health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any regulations promulgated thereunder. Such information shall only be accessed and utilized in accordance with the privacy and security provisions of HIPAA and the provisions of this act. Such information shall also be considered a closed record under state law.

The patient dispensation information submitted under this act shall only be utilized for the provision of health care services to the patient. Prescribers, dispensers, and other health care providers shall be permitted to access a patient's dispensation information collected by the vendor in the course of providing health care services to the patient. The vendor shall also provide dispensation information to the individual patient, upon his or her request. The MO HealthNet Division shall have access to dispensation information for MO HealthNet recipients.

The vendor shall provide patient dispensation information to any health information exchange operating in the state, upon the request of the health information exchange and at a cost not to exceed the cost of the technology connection or recurring maintenance of the connection. Any health information exchange receiving information under this act shall comply with the provisions of this act regarding privacy and security and permitted uses of dispensation information.

The Task Force may provide data to public and private entities for statistical, research, or educational purposes after removing identifying information.

No patient dispensation information shall be provided to law enforcement or prosecutorial officials or any regulatory body, professional or otherwise, for purposes other than those explicitly set forth in HIPAA and any regulations promulgated thereunder. No dispensation information shall be used to prevent an individual from owning or obtaining a firearm or as the basis for probable cause to obtain an arrest or search warrant as part of a criminal investigation.

Dispensers who knowingly fail to submit the required information or who knowingly submit incorrect dispensation information shall be subject to a penalty of \$1,000 per violation. Any persons who are authorized to have patient dispensation information under this act and who purposefully disclose such information or who purposefully use it in a manner and for a purpose in violation of this act shall be guilty of a Class E felony.

These provisions shall supersede any local law, ordinance, order, rule, or regulation in this state for the purpose of monitoring the prescription or dispensation of prescribed controlled substances within the state. Any such program operating prior to August 28, 2021, shall cease operation when the vendor's program is available for utilization by dispensers throughout the state. The Task Force may enter into an agreement with such program to transfer patient dispensation information from the program to the program operated by the vendor under this act.

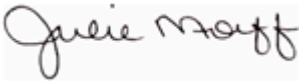
This act modifies the expiration date of the RX Cares for Missouri Program from August 28, 2019, to August 28, 2026.

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

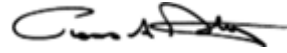
SOURCES OF INFORMATION

Office of Administration
Administrative Hearing Commission
Department of Commerce and Insurance
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety
Missouri Highway Patrol
Office of the State Public Defender
Missouri Office of Prosecution Services
Joint Committee on Administrative Rules
Office of the State Courts Administrator

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