

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5429-01
Bill No.: HB 1977
Subject: Health Care; Health Care Professionals; Health Department; Health, Public
Type: Original
Date: March 28, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(Greater than \$2,145,339)	(Greater than \$2,145,339)	(Greater than \$2,145,339)
Total Estimated Net Effect on General Revenue Fund	(Greater than \$2,145,339)	(Greater than \$2,145,339)	(Greater than \$2,145,339)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume this proposal would not fiscally impact their agency.

Officials from the **Department of Health and Senior Services (DOH)** assume that this proposal requires the DOH to investigate all complaints. DOH would expect the fiscal impact to exceed \$100,000.

DOH states this proposal would require DOH to develop and implement a new program to oversee this requirement. DOH would also be required to work closely with many other state departments who license and/or register some of the entities listed in the definition of "health care facility." DOH states this proposal would require DOH to develop and implement an investigative and fining protocol which will include a significant number of new FTE.

In addition to the new requirements in this proposed legislation, DOH expects to see an increase in the number of complaints filed against health care facilities, as defined in Chapter 197 and 198, for inadequate staffing. This increase will require additional survey/inspector FTE to assume this increase in complaints.

ASSUMPTION (continued)

Officials from the **Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the proposal. SOS is provided with core funding to handle a certain amount of normal activity resulting from each years legislative session. The fiscal impact for Administrative Rules is less than \$1,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, 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 our office can sustain with our core budget. Therefore, 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.

Officials from the **Office of Attorney General (AGO)** state this proposal requires the AGO to consult with DOH in drafting rules to implement these provisions. Further, because the proposal eliminates the option of mandatory overtime in health-care facilities, there will be many occasions in which staffing will fall below mandated levels and the facilities' Medicare reimbursement could be denied. AGO assumes that this may create some additional costs.

AGO assumes costs are unknown, but under \$100,000.

Oversight assumes the AGO can absorb any costs relating to drafting rules.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** state DMS assumes this proposal would have no fiscal impact. DMS states no additional staffing hours are being added to hospital staffing, therefore, DMS does not believe there will be additional costs to the hospital Medicaid program. DMS states there would not be an increase in total hours for the nursing home program. Therefore, DMS does not believe there will be additional cost to the nursing home Medicaid program. DMS states this proposal would have no fiscal impact on Missouri Medicaid programs that pay through a fee schedule.

Officials from the **Department of Mental Health (DMH)** state currently under Chapter 197, RSMo DMH is exempt. If the intent of this proposal is it to keep within the same exemption then the DMH would have no fiscal impact. However, if the intention of this legislation is to include the DMH then the fiscal impact is explained as follows:

DMH has 11 psychiatric facilities and 6 (9 sites) developmental disabilities habilitation centers which would be impacted significantly by this proposal. These facilities are operated 24 hours a day, 7 days a week, and 365 days per year to provide essential health and safety to severely ill

ASSUMPTION (continued)

and disabled Missourians. State (civil and criminal commitment mandates) and Federal (EMTALA requirements) statutes severely limit the degree to which these state operated facilities can deny admission and service. Similarly, Federal regulations tied to the reimbursement for services in intermediate care facilities for the mentally retarded-Title XIX; for services to Medicare eligible recipients in our psychiatric facilities; and for services to Medicaid-"Psych under 21" eligible recipients in our children's inpatient/residential programs, dictate certain staffing levels to secure funding. In addition, DMH has a large number of community partners who operate health care/assisted living agencies that provide essential around-the-clock residential services and supports for persons with mental illness and mental retardation/developmental disabilities. These private community, largely non-profit agencies would be significantly impacted as well.

DMH currently must rely on employee overtime to meet critical client needs as client needs are increasing and available workforce is decreasing. In those times when there are insufficient numbers of staff who will volunteer and other avenues of supplementing staff are exhausted, mandatory overtime is required.

To adequately satisfy the requirements of this bill, DMH state operated facilities would be required to significantly increase their available workforce to insure that no employee could be required/mandated to work overtime to compensate for the absence of another employee or to meet an unexpected, temporary increase in client service need or face considerable fines. This solution, theoretically, assumes that there is additional workforce resources who are available, willing and competent to work.

For purposes of this fiscal note a minimum/maximum estimation is offered with an expectation that actual fiscal impact would land somewhere in between. The minimum liability was estimated utilizing available, but limited data on current use of mandatory overtime. The maximum liability was estimated on the assumption that all overtime has the potential of becoming mandatory. To approximate the additional workforce needed, overtime usage data was collected from the various facilities and annualized to project future need. This assumes that employee absences, vacancies and patient need fluctuations are similar from year to year. Annual overtime hours were allocated to direct care and licensed nursing personnel based on the percentage of those employee categories represented in facilities. Needed FTE were multiplied by an average of market salaries for the positions within the category, (direct care=developmental aides, psychiatric aides, and security aides; licensed nursing personnel= registered nurses and LPNs) to arrive at fiscal impact. Listed below is an estimate of the direct care and licensed nursing personnel needed; and associated salary costs.

ASSUMPTION (continued)

	FTE	Salaries
Minimum Fiscal Impact:		
MRDD Habilitation Centers:	43.54	\$ 962,656
Psychiatric Facilities:	<u>38.21</u>	<u>\$ 1,082,683</u>
Total	81.75	\$ 2,045,339

	FTE	Salaries
Maximum Fiscal Impact:		
MRDD Habilitation Centers:	324.33	\$ 7,791,782
Psychiatric Facilities:	<u>152.84</u>	<u>\$ 4,326,453</u>
Total	477.17	\$12,118,235

DMH states there would be additional expense and equipment costs associated with training requirements, security aide uniforms, etc. that could not be estimated at this time. Other service providing disciplines were not included in this calculation, such as activity therapists, occupational therapists, physical therapists, social workers, psychologists. It is possible that this proposal could create some unexpected demands among these employees that result in additional fiscal liabilities. The use of agency or contracted personnel as substitutes for state employees (FTE) were not analyzed in relation to this fiscal note as per diem rates are equivalent or higher than state salaries.

Given the current direct care/service employee recruitment/retention difficulties that DMH facilities have historically experienced, it is likely that should additional FTE resources be provided, vacancies would persist. If unsuccessful in securing the additional personnel to avoid mandatory overtime, DMH would be subject to hefty fines. To approximate the impact of such fines, where available, information on the recent use of mandatory overtime was collected and annualized. Total hours were divided into traditional 8 hour shifts to estimate the number of mandatory overtime violations. DMH is again assuming that the need for mandatory overtime remains similar from year to year.

Potential Fiscal Impact for 1 year, if fines assessed:

MRDD Habilitation Centers:	Up to \$169,545,000
Psychiatric Facilities:	Up to \$149,040,000
Total	Up to \$318,585,000

ASSUMPTION (continued)

Oversight assumes the proposal would include DMH facilities. Oversight will present the cost of the minimum additional employees rather than the fines.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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GENERAL REVENUE

Costs - Department of Health and Senior Services

Programs costs	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)
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Costs - Department of Mental Health

Programs costs	(Greater than \$2,045,339)	(Greater than \$2,045,339)	(Greater than \$2,045,339)
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ESTIMATED NET EFFECT ON GENERAL REVENUE	(Greater than \$2,145,339)	(Greater than \$2,145,339)	(Greater than \$2,145,339)
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<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small business which are considered health care facilities could be fiscally impacted by this proposal.

DESCRIPTION

This proposal establishes the Safe Patient Care Act to regulate the mandatory overtime of health care workers except in the case of an unforeseeable emergency when the employer has exhausted all reasonable efforts to obtain staffing and overtime is not required to fill vacancies resulting from chronic staff shortages. Employers are not required to exhaust reasonable efforts to obtain staffing in the event of a declared national, state, or municipal disaster or other catastrophic event

DESCRIPTION (continued)

that increases the need for health care services. Employers must document in writing and make available to the Department of Health and Senior Services that reasonable efforts were used to obtain staffing prior to asking employees to work overtime.

An employee may voluntarily agree to work overtime; however, any contract or agreement that compels, coerces, or forces an employee to work overtime is contrary to public policy and will be void. Employers are prohibited from retaliating, discriminating, discharging, dismissing, or threatening to report the individual to a licensing body or regulatory agency.

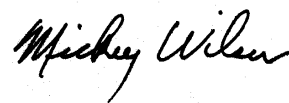
An employer will be subject to a penalty not to exceed \$10,000 per violation unless the employer violates this provision on four or more occasions; in which case, the penalty will not exceed \$15,000 per occurrence. The employer may also be liable to the employee in the form of reinstatement, promotion, payment of lost wages and benefits, and other equitable relief.

The department in consultation with the Attorney General is required to develop rules to ensure the compliance of the provisions of the bill.

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 State Courts Administrator
Department of Health and Senior Services
Secretary of State
Office of Attorney General
Department of Social Services -
Division of Medical Services
Department of Mental Health



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