

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4883-02
Bill No.: HB 2240
Subject: Health Care; Health Care Professionals; Health, Public; Insurance-Medical
Type: Original
Date: March 11, 2008

Bill Summary: This legislation regulates the use of switch communications to encourage patients to switch from their current medication to a different medication.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(Unknown but Greater than \$136,810)	(Unknown but Greater than \$136,810)	(Unknown but Greater than \$136,810)
Total Estimated Net Effect on General Revenue Fund	(Unknown but Greater than \$136,810)	(Unknown but Greater than \$136,810)	(Unknown but Greater than \$136,810)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

*Incomes and costs of unknown but greater than \$63,190 for FY09, FY10 and FY11 would net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator** assume the proposal would have no fiscal impact on their agency.

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

Officials from the **Office of 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 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.

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.

Officials from the **Department of Mental Health (DMH)** assume the proposal establishes requirements for communication by entities other than a primary health care provider to encourage patients/consumers to switch from their current medication to a different medication. It does not appear that the proposal would place any direct requirements or obligations on the DMH that would result in a direct fiscal impact.

Officials from the **Department of Health and Senior Services (DHSS)** states the proposal would require DHSS to promulgate rules regarding the use of "switch communications" by health benefit plans. DHSS currently has no involvement with regulation of health benefit plans and no expertise regarding "switch communications".

If regulation of switch communications by health benefit plans were to be performed by DHSS, the fiscal impact is unknown, but expected to exceed \$100,000.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DSS)** states Section 1 defines "switch communication" as a communication that recommends a patient's medication be switched to a different medication than originally prescribed. It does not require switch communications to be sent by health benefit plans, it just requires DHSS to promulgate regulations governing those switch communications that are made. The definition also contemplates that the "switch communication" is a recommendation, not that the "switch" has been made.

The remainder of section 2, as well as section 3 discusses the requirements for the switch communication.

Medicaid, MO HealthNet Division (MHD) Fee for Service is not included as a health benefit plan or health carrier under chapter 376, but MHD Managed Care plans are included.

The communication and administrative requirements in subsection 2 and 3 would likely result in a cost to the managed care plans, which could in turn, result in a cost to the MHD because the managed care plans may pass the cost along to the state when they re-bid their contracts.

The cost to the MHD would be unknown, but greater than \$100,000.

Oversight notes that states can earn the federal medical assistance percentage (FMAP) on Medicaid program expenditures. The Social Security Act requires the Secretary of Health and Human Services to calculate and publish the actual FMAP each year. The FMAP is calculated using economic indicators from state and the nation as a whole. Missouri's FMAP for FY09 is a 63.19% federal match. The state matching requirement is 36.81%.

Officials from the **Office of Prosecution Services (OPS)** have not responded to Oversight's request for fiscal information.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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GENERAL REVENUE FUND

Costs - Department of Health and Senior Services

Regulation of Switch Communications Costs	(Unknown but Greater than \$100,000)	(Unknown but Greater than \$100,000)	(Unknown but Greater than \$100,000)
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Costs - Department of Social Services

Increase in Managed Care Contracts	(Unknown but Greater than \$36,810)	(Unknown but Greater than \$36,810)	(Unknown but Greater than \$36,810)
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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown but Greater than \$136,810)</u>	<u>(Unknown but Greater than \$136,810)</u>	<u>(Unknown but Greater than \$136,810)</u>
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FEDERAL FUNDS

Income - Department of Social Services
Federal Assistance

Unknown but Greater than \$63,190	Unknown but Greater than \$63,190	Unknown but Greater than \$63,190
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Costs - Department of Social Services
Increase in Managed Care Contracts

(Unknown but Greater than \$63,190)	(Unknown but Greater than \$63,190)	(Unknown but Greater than \$63,190)
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Local Government

FY 2009
(10 Mo.)

FY 2010

FY 2011

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation requires the Department of Health and Senior Services to establish rules governing switch communications from health benefit plans and specifies that the term "switch communication" is a communication that recommends a patient's medication be switched to a different medication than originally prescribed by the primary health care professional.

The Department's rules must include:

- (1) Requirements for the review and approval of the switch communication by the Department;
- (2) Procedures for verifying the accuracy of the switch communication;
- (3) A requirement that all switch communications contain a statement that the message is a promotional announcement from the participant's health care insurer; and
- (4) A requirement that if the switch communication contains information regarding potential therapeutic substitution, the communication must explain that medications in the same therapeutic class have different risks and benefits and may work differently on different patients.

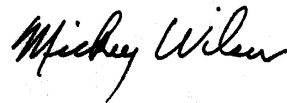
All switch communications must clearly disclose any financial interest that the health care insurer, pharmacy benefits manager, prescriber, or their agent has in the patient's decision to switch medications. Any person who issues or delivers or causes to be issued or delivered a switch communication that has not been approved, provides a misrepresentation or false statement in a switch communication, or commits any other material violation of the provisions of the legislation will be subject to a fine of up to \$25,000.

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 the Attorney General
Office of the State Courts Administrator
Department of Mental Health
Department of Health and Senior Services
Department of Social Services
Office of the Secretary of State

Not Responding: Office of Prosecution Services

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

Mickey Wilson, CPA
Director
March 11, 2008