

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5435-03
Bill No.: HCS for HB 2388
Subject: Nursing and Boarding Homes; Licenses-Professional
Type: Original
Date: April 12, 2010

Bill Summary: This legislation includes residential care facilities that continue to meet the requirements of residential care facilities II in effect on August 27, 2006, for purposes of nursing home administration requirements. This legislation modifies provision related to cemeteries. This legislation amends laws relating to the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects. This legislation requires employers to verify the licensure status of applicants for nursing positions. This legislation adds to the list of entities that are required to report disciplinary action against health care professionals. This legislation requires expanded-functions permits for dental hygienists performing certain duties. This legislation amends the requirements for licensure of wholesale drug distributors. This legislation makes other legislative changes.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Dental Board	\$0	\$61,710	\$1,851
Pharmacy	\$0	(\$11,250)	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$50,460	\$1,851

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
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 2011	FY 2012	FY 2013
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator, Department of Elementary and Secondary Education, Department of Highways and Transportation, Department of Revenue, Department of Public Safety, Missouri Consolidated Health Care Plan, Department of Conservation, Missouri State Highway Patrol, Missouri State Treasurer, City of Centralia, Parkway School District** and the **Department of Mental Health** each assume the proposal would have no fiscal impact on their respective agencies.

In response to similar proposals from this year, officials from the **Division of Budget and Planning, Missouri Veterans Commission** and the **St. Louis County** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of Administration-Administrative Hearing Commission (AHC)** assume this legislation will not significantly alter AHC caseload. However, if other similar legislation pass, there will be fiscal impact. If there are more cases, or more complex cases, there could be a fiscal impact.

Oversight assumes the AHC could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the AHC would be reflected in future budget request.

Officials from the **Office of the Secretary of State** assume authority is given to the Department of Social Services and the Department of Health and Senior Services to promulgate rules. These rules will be printed by our Division in the Missouri Register and the Code of State Regulations. Based on experience with other Departments, the rules, regulations, and forms issued by the Department of Social Services and the Department of Health and Senior Services could require as many as 54 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes, and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of publishing related to this proposal. If multiple bills pass which require publishing at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Social Services (DSS)** assume the following:
Professional Licensing: HCS for HB 2388 (FN 5435-03) has morphed into a much larger bill covering a broad range of professional licenses including:

- Cemetery operators;
- Private investigators;
- Physician Assistants;
- Architects, professional engineers, professional landscape surveyors, and landscape architects;
- Real estate brokers;
- Dental assistants and hygienists;
- Registered nurses;
- Social workers;
- Marital and family therapists; and
- Drug distributors and manufacturers.

None of these professional licensing standards affect the DSS. There are no changes in Section 337.603(2) which specifically exempts social workers employed by any agency or Department of the state of Missouri from licensing requirements. Therefore, the exemption continues to apply to DSS staff.

Section 208.010:

Officials from the **Department of Social Services (DSS)** assume there is no fiscal impact to DSS.

Currently, funeral homes return any remaining funds from an irrevocable prearranged funeral or burial contract to the beneficiary or family member of the deceased.

This legislation would change this law so that any person receiving public assistance who has an irrevocable preneed or burial contract that has remaining funds after the services and burial, be refunded to the state of Missouri. Once the state of Missouri recoups the moneys spent in public assistance benefits for that person, the remainder would go to the family members of the deceased.

ASSUMPTION (continued)

This legislation also clarifies that any life insurance policy where the seller or provider is a beneficiary would not be considered an asset when determining eligibility or the amount of public assistance for that beneficiary.

This legislation would result in no fiscal impact to the Family Support Division (FSD). Funds that currently go to the beneficiary and family members of the deceased would now reimburse the state of Missouri for benefits paid. It is the FSD's assumption that this money will be returned to MO HealthNet Division (MHD).

The FSD does not currently count any policy that a person is named beneficiary of as an asset.

Sections 214.160 - 214.550:

Officials from the **Office of Attorney General (AGO)** state that under this proposal an endowed care trust fund would become a charitable trust, which would eliminate an immediate and active role for AGO in cemetery regulation. The AGO's ability to enforce would not be set out in statute but would likely depend upon whether the document or instrument governing the endowed care trust created a public benefit. AGO assumes that costs of any litigation related to endowed care trusts could be absorbed with existing resources. The AGO assumes that it would need .5 AAG I to adequately handle licensing and disciplinary proceedings pursuant to the proposal. The AGO estimates this new .5 AAG I will cost \$36,693 in FY 2011, \$44,525 in FY 2012, and \$45,861 in FY 2013.

Oversight assumes the AGO could absorb any costs within existing resources. If the AGO experiences an increase in licensing and disciplinary proceedings that would require additional funding, the AGO could request the funding through the appropriations process.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY09 average of \$16.04 per offender, per day, or an annual cost of \$5,855 per inmate) or through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender, per day or an annual cost of \$1,354 per offender).

The DOC assumes the narrow scope of the crime will not encompass a large number of offenders, the low felony status of the crime enhances the possibility of plea-bargaining or

ASSUMPTION (continued)

imposition of a probation sentence, and the probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another. Therefore, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Sections 327.031 - 327.411:

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** state the proposal adds one board member to the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects. With the addition of this member, the board will incur increased personal service and expense and equipment costs. The members of the board receive per diem on average of 51 days annually. Additionally, the board receives reimbursement of necessary expenses for an average of four (4) meetings per year. The cost estimates for the implementation of this legislation include \$2,550 per diem for the additional board member and \$1,484 in mileage, hotel, and meal reimbursement of \$4,034 for FY 11; \$4,079 for FY 12; and \$4,124 for FY 13.

Oversight assumes the Missouri Board of Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects fund has a sufficient balance to cover the increase in costs for the additional board member. However, if necessary, the Board may need to adjust licensing fees to help cover the additional expenses.

Sections 332.011 & 332.098:

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** state the legislation will give the Missouri Dental Board the authority to issue permits to dental assistants and dental hygienists authorizing them to perform expanded function dental procedures. There are no mechanisms in place which enable the board to determine the number of dental assistants currently working in Missouri. The estimates provided are assumptions based on the number of dentists practicing in Missouri. Private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

There are currently 3,300 licensed dentists in Missouri. Assuming each dentist has two dental assistants/dental hygienist, there are 6,600 potential expanded function dental

ASSUMPTION (continued)

assistants/hygienists. Assuming a licensure fee of \$10, with renewal every five (5) years, the anticipated revenue is \$66,000 (6,600 X \$10) every five years. A three percent (3%) annual growth rate is assumed.

Printing and postage expenses for the first year include printing notification, applications, letterhead and envelopes, as well as costs associated with mailings associated with initial registration. Subsequent year's printing and postage is based on a board of similar size. The DIFP estimates FY 12 printing and postage costs of \$4,290 and FY 13 costs of \$129 (6,600 X 3% = 198 X \$0.65).

During the first year of implementation, costs are calculated for the design, program and implementation of the licensure program for new boards. The DIFP estimates \$540 in licensure system costs.

Oversight assumes the Dental Board can absorb the design and implementation costs to set up the new licensure program in FY 11.

Section 335.081:

Officials from the **Department of Social Services (DOS)** states that as long as a person does not hold themselves out to be a licensed nurse in this state, the provisions of Section 335.011 to 335.096 cannot be construed as prohibiting certain actions.

Section 1.1 requires that prior to hiring a registered nurse, licensed practical nurse, or advanced practice nurse, an employer shall verify that the applicant has a current valid license to practice nursing. However, this section does not apply to employment that does not require the possession of a current, valid license.

Section 1.2 requires employers to have a system in place to verify the licensure of these practitioners coinciding with the license renewal.

There is no cost to the MO HealthNet Division (MHD) associated with Section 335.081(10).

Sections 1.1-2: Most physicians' offices and clinics already have verification and tracking systems. If they do not, they may see an increase in their administrative costs but it is not anticipated to be significant.

ASSUMPTION (continued)

Most institutions, hospitals and nursing facilities have these types of verification and tracking systems in place and already meet these requirements. However, if these facilities did incur a cost, those costs would not be reflected in the Medicaid per diem rates until the cost report that captures the costs is used for a rate base. Currently, rates are based on 1995 cost reports and the MHD does not have any plans to rebase on a more current rate base.

The MHD bases other hospital reimbursement (i.e., add-on payments) for a given year on the fourth prior year cost report. Since the legislation would probably be effective in August, 2010, the costs would begin to be reflected in 2011 cost reports. The MHD would use 2011 cost reports to establish reimbursement for SFY15.

Therefore, there would not be a fiscal impact for facilities that would be passed on to the MHD for FY11, FY12 and FY13, but starting FY15 there could be an impact, but the amount is unknown.

Sections 338.333, 338.335 & 338.337:

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume the legislation will have a net decrease to state revenue due to the possible decrease in the number of fees received from wholesale drug distributors who will no longer be required to register with the board.

The Board of Pharmacy estimates that approximately 25 of the 1,168 wholesale drug distributors in this state are out-of-state wholesale drug distributors who will not have to renew their license as they only deal with medical devices and not drug distribution. Wholesale drug distributors renew in October of every odd numbered year.

FY12:	\$450	Renewal Fee
	<u>25</u>	Decreased Number of Wholesale Drug Distributors
	\$11,250	Decrease in Revenue Biennially

Sections 344.010 & 344.020:

Officials from the **Department of Health and Senior Services** states the Bureau of Nursing Home Administrators (BNHA) would administer examinations of prospective Residential Care Facilities (RCF) administrators and issues the licenses. The increase in applications and testing can be handled with existing staff.

ASSUMPTION (continued)

The proposed legislation would require BNHA to promulgate new rules pertaining to qualifications for prospective RCF Administrator including new definitions. The rules would be promulgated and administration of testing for RCF licensure would be accomplished through existing staff.

BNHA is currently implementing an automated system that will allow current and prospective administrators to apply for examinations, pay fees, and update information. In order to implement the changes resulting from passage of this legislation, BNHA would need to work with the Information Technology Services Division (ITSD) to modify the application. ITSD would conduct an analysis assessing the necessary modifications and accompanying costs. The impact for this modification is unknown at this time.

Oversight assumes the DHSS could absorb the additional ITSD modifications that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the DHSS would be reflected in future budget request.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
DENTAL BOARD FUND (332.011 & 332.098)			
<u>Income</u> - Department of Insurance, Financial Institutions and Professional Registration			
Dental assistant/hygienist licensing fees	\$0	\$66,000	\$1,980
<u>Costs</u> - Department of Insurance, Financial Institutions and Professional Registration			
Equipment and expenses	<u>\$0</u>	<u>(\$4,290)</u>	<u>(\$129)</u>
ESTIMATED NET EFFECT ON DENTAL BOARD FUND	<u>\$0</u>	<u>\$61,710</u>	<u>\$1,851</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
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**PHARMACY FUND (338.333, 338.335
 & 338.337)**

Loss - Department of Insurance, Financial
 Institutions and Professional Registration

Loss of Renewal Fee Income	<u>\$0</u>	<u>(\$11,250)</u>	<u>\$0</u>
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**ESTIMATED NET EFFECT ON
 PHARMACY FUND**

<u>\$0</u>	<u>(\$11,250)</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

Sections 332.011 & 332.098:

Small business dental offices may be impacted by this proposal if they pay the permit fee for their dental assistants and hygienists to perform expanded-function duties.

Sections 344.010 & 344.020:

A nursing home administrator's license is issued to an individual, not a business. However, there may be instances where an assisted living facility (ALF) or a residential care facility (RCF) may voluntarily pay the administrator's license fee for their employee.

FISCAL DESCRIPTION

Sections 332.011 & 332.098:

This proposal requires all dental assistants and dental hygienists to obtain a permit from the Missouri Dental Board in the Division of Professional Registration within the Department of

FISCAL DESCRIPTION (continued)

Insurance, Financial Institutions and Professional Registration in order to perform expanded-functions duties. "Expanded-functions duties" are defined as reversible acts that would be considered the practice of dentistry that the board specifies by rule may be delegated to a dental assistant or dental hygienist who possesses an expanded-functions permit.

Nothing in the proposal will be construed as making it unlawful for a licensed dentist to perform any dental services that would be considered expanded-functions duties or dental assistants, certified dental assistants, or expanded-functions dental assistants to polish teeth. The board is prohibited from establishing any rule allowing the delegation of acts to a dental assistant which would conflict with the practice of dental hygiene. Expanded-functions permits must be renewed every five years, and the board is authorized to establish rules regarding the issuance and renewal of the permits.

Sections 338.333, 338.335 & 338.337:

The proposed legislation exempts certain wholesale drug distributors who distribute medical devices in this state from obtaining a license for out-of-state distribution sites from the State Board of Pharmacy within the Department of Insurance, Financial Institutions and Professional Registration if a licensed Missouri wholesale drug distributor is responsible for all shipments received from the out-of-state distribution sites.

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

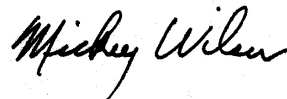
SOURCES OF INFORMATION

Department of Insurance, Financial Institutions and Professional Registration
Office of the Attorney General
Office of the Secretary of State
Office of Administration-Administrative Hearing Commission
Division of Budget and Planning
Office of the State Courts Administrator
Department of Elementary and Secondary Education
Department of Highways and Transportation
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Revenue

SEC:LR:OD (12/02)

SOURCES OF INFORMATION (continued)

Department of Social Services
Department of Public Safety
Missouri Consolidated Health Care Plan
Department of Conservation
Missouri State Highway Patrol
Missouri State Treasurer
Missouri Veterans Commission
St. Louis County
City of Centralia
Parkway School District

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

Mickey Wilson, CPA
Director
April 12, 2010