

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5065-01
Bill No.: HB 1916
Subject: Nursing Homes and Long-term Care Facilities
Type: Original
Date: March 23, 2018

Bill Summary: This proposal establishes the Authorized Electronic Monitoring in Long-term Care Facilities Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(\$58,994)	(\$74,029)	(\$81,304)
Total Estimated Net Effect on General Revenue	(\$58,994)	(\$74,029)	(\$81,304)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2021	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 10 pages.

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

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

☐ 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

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed language will require seven Facility Surveyors II (\$42,780 each, annually). These positions will be assigned to each of the seven Section for Long Term Care Regulation regional offices. Five of the Facility Surveyors II will be telecommuters and two will be located in regional offices. As these positions are expected to travel extensively, it is assumed that the travel cost will be \$10,000 annually for each of the investigative staff. There are currently 1,153 facilities that would fall under the requirements of this legislation. The additional Facility Surveyor II positions will handle complaint volume regarding use of monitoring devices. Each complaint regarding volume, focus, direction, etc. has the likelihood of being reported to the Elderly Abuse and Neglect Hotline, and will necessitate an investigation by Division of Regulation and Licensure (DRL). The legislation will also require on Health Program Representative II (HPR II; \$35,640 annually). The HPR II position will be responsible for overseeing the reporting of the number of authorized electronic monitoring notification and consent forms received. In addition, DRL will be required to evaluate compliance with the provisions of this legislation, such as ensuring all residents/surrogates are informed upon admission of the option to use a monitoring device, during each annual inspection of the facility.

DHSS estimates FY19 costs to the General Revenue Fund of \$570,390; FY20 costs of \$645,512; and FY21 costs of \$652,909.

Oversight assumes the DHSS, DRL would not need seven (7) additional Facility Surveyors II for the Long Term Care Regulation regional offices to handle complaints relating to electronic monitoring devices until data is gathered on the actual number of complaints generated and inspected by the department. As the DHSS obtains this data, additional FTE could be requested through the appropriations process.

Oversight assumes DHSS would not need additional rental space for 1 new FTE Health Program Representative II 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.

Officials from the **Tri-County Care Center** assume this proposal would have an annual fiscal impact on their organization of \$35,000 - \$40,000 per year. Costs would include attorney fees to create and update forms including resident permission forms; updating and creating policies and procedures; maintaining the program; and training and retraining staff to work and monitor the devices, etc.

ASSUMPTION (continued)

Oversight notes there are approximately 34 nursing home facilities in the state that are operated by local governments. If only 3 facilities incurred costs similar to those assumed by Tri-County Care Center, local governments would incur costs exceeding \$100,000 annually. For fiscal note purposes, Oversight will present costs to local governments as “(Unknown)”.

Officials from the **Department of Corrections (DOC)** state the bill contains two new misdemeanor charges. Since misdemeanor charges are not under the purview of the DOC, these charges will have no impact on DOC. The bill also creates a new Class D felony for tampering with the surveillance equipment to conceal a felony. This is similar in intent to current statutes, which were class D felonies prior to the change in classification on January 1, 2017:

575.020.001, RSMo, a class E felony for concealing a felony

575.030.001, RSMo, a class E felony for hindering prosecution of a felony

575.100.001, RSMo, a class E felony for tampering with physical evidence in a felony prosecution.

In FY 2017, forty-two person were found guilty of concealing, hindering, or tampering with evidence in a felony matter (18 were incarcerated and 24 were given probationary terms). In light of this data, the DOC estimates the number of offenders from the standard response of a new non-violent class E felony: one person sent to prison and two persons to probation each year. The standard response for a new non-violent class D felony determines the sentence length. For incarceration, the sentence is 5 years with the time to first release at 1.7 years; for probation, the term is 3.0 years. The full impact to DOC occurs in FY2023, with an increase of three persons to incarceration and eight persons to field supervision.

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

ASSUMPTION (continued)

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

	# 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 and 2% inflation)
Year 1	1	(\$6,206)	(\$5,172)		2	absorbed	\$0	(\$5,172)
Year 2	2	(\$6,206)	(\$12,660)		4	absorbed	\$0	(\$12,660)
Year 3	3	(\$6,206)	(\$19,370)		6	absorbed	\$0	(\$19,370)
Year 4	3	(\$6,206)	(\$19,758)		7	absorbed	\$0	(\$19,758)
Year 5	3	(\$6,206)	(\$20,153)		8	absorbed	\$0	(\$20,153)
Year 6	3	(\$6,206)	(\$20,556)		8	absorbed	\$0	(\$20,556)
Year 7	3	(\$6,206)	(\$20,967)		8	absorbed	\$0	(\$20,967)
Year 8	3	(\$6,206)	(\$21,386)		8	absorbed	\$0	(\$21,386)
Year 9	3	(\$6,206)	(\$21,814)		8	absorbed	\$0	(\$21,814)
Year 10	3	(\$6,206)	(\$22,250)		8	absorbed	\$0	(\$22,250)

Oversight assumes the DOC could absorb the minimal costs for FY19.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility which would be a new class B misdemeanor.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

ASSUMPTION (continued)

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 **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

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.

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.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§198.612 - 198.630)</u>			
Personal service	(\$29,700)	(\$35,996)	(\$36,356)
Fringe benefits	(\$17,811)	(\$21,479)	(\$21,586)
Equipment and expense	<u>(\$11,483)</u>	<u>(\$3,894)</u>	<u>(\$3,992)</u>
Total <u>Costs - DHSS</u>	<u>(\$58,994)</u>	<u>(\$61,369)</u>	<u>(\$61,934)</u>
FTE Change - DHSS	1 FTE	1 FTE	1 FTE
<u>Costs - DOC (§198.620)</u>			
Increase in incarceration and parole costs	\$0	<u>(\$12,660)</u>	<u>(\$19,370)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$58,994)</u>	<u>(\$74,029)</u>	<u>(\$81,304)</u>
Estimated Net FTE Change on the General Revenue Fund	1FTE	1 FTE	1 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2019 (10 Mo.)	 FY 2020	 FY 2021
LOCAL GOVERNMENTS - NURSING HOME DISTRICTS			
<u>Costs - Nursing Home Districts (§§198.612 - 198.630)</u>			
Increase in facility expenditures due to electronic monitoring	<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

This proposal may have an administrative impact on small business long-term care facilities.

FISCAL DESCRIPTION

This bill creates the "Authorized Electronic Monitoring in Long-Term Care Facilities Act."

The bill permits a resident of any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility to conduct authorized electronic monitoring of the resident's room using electronic monitoring devices. The bill requires a resident, his or her representative, or his or her parent, if the resident is under 18 years of age, to consent in writing to electronic monitoring before electronic monitoring can occur in a resident's room. The bill delineates who may consent on behalf of a resident if the resident lacks the capacity to understand the nature and consequences of electronic monitoring and how such consent must be obtained. A resident or roommate may consent to monitoring with any conditions he or she may choose and may request the device be turned off or blocked at any time. Prior to electronic monitoring a resident must obtain written consent of any other resident residing in the room and must obtain written consent of any new roommate before recording can resume. Consent may be withdrawn by a resident or roommate at any time and such withdrawal must be noted in the resident's clinical record. As specified in the bill, a facility must make a reasonable attempt to accommodate a resident who wants electronic monitoring but whose roommate will not consent to monitoring (Section 198.612, RSMo).

The bill permits electronic monitoring to begin only after a notification and consent form has been completed and submitted to the facility. A resident must notify the facility in writing of his or her intent to install an electronic monitoring device. The bill specifies what must be included in a notification and consent form and requires the Department of Health and Senior Services to create such form within 60 days of the effective date of these provisions. If the department fails to timely create the form, the Attorney General must create a form to be used until the department creates a form (Section 198.614).

The bill requires a resident who elects to conduct electronic monitoring to do so at his or her own expense. If the monitoring system requires Internet, it is the responsibility of the resident to contract with an Internet provider for such services. The facility must make a reasonable attempt to accommodate a resident's installation needs. The electronic monitoring device must be in a conspicuously visible location and a facility is prohibited from charging a resident a fee for the electricity used by a device (Section 198.616).

FISCAL DESCRIPTION (continued)

If a resident of a facility conducts electronic monitoring, a sign must be clearly and conspicuously posted at all building entrances accessible to visitors and at the entrance to a resident's room where such monitoring is occurring. Such signs must state specified information and a facility is responsible for installing and maintaining the signage (Section 198.618).

The bill prohibits any person or entity from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room or any video or audio recording obtained from such device without the permission of the resident. Violation of this provision is a class B misdemeanor. A person or entity who violates this provision in the commission of or to conceal a misdemeanor offense is guilty of a class A misdemeanor. A person or entity who violates this provision in the commission of or to conceal a felony offense is guilty of a class D felony (Section 198.620).

The bill prohibits a facility from accessing any video or audio recording through an authorized electronic monitoring device without the written consent of the resident. Except as required by the Freedom of Information Act, a recording or copy of a recording must only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident. The bill requires a resident to provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the recording was made during the time period that the conduct at issue occurred (Section 198.622).

Subject to rules of evidence and procedure, any recording created through authorized electronic monitoring under the provisions of the bill may be admitted into evidence in a civil, criminal, or administrative proceeding if the contents of the recording have not been edited or artificially enhanced and the video includes the date and time events occurred (Section 198.624).

Each facility must report to the department the number of authorized electronic monitoring notification and consent forms received annually and the department must report the total number of forms received annually to the Attorney General (Section 198.626).

The bill prohibits a facility from being civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident for any purpose not authorized by these provisions. No facility must be held civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted in accordance with these provisions (Section 198.628).

FISCAL DESCRIPTION (continued)

The bill prohibits a person from intentionally retaliating or discriminating against any resident for consenting to authorized electronic monitoring under these provisions or preventing the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required under these provisions (Section 198.630).

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 Attorney General
Department of Health and Senior Services
Department of Corrections
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
Tri-County Care Center

Ross Strobe



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