

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1428-02  
Bill No.: HB 622  
Subject: Health Care  
Type: Original  
Date: February 8, 2019

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Bill Summary: This proposal modifies the law regarding certificate of need.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(\$281,656 or \$380,557)	(\$349,404 or \$468,085)	(\$361,106 or \$479,787)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$281,656 or \$380,557)</b>	<b>(\$349,404 or \$468,085)</b>	<b>(\$361,106 or \$479,787)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	0 or -2	0 or -2	0 or -2
<b>Total Estimated Net Effect on FTE</b>	<b>0 or -2</b>	<b>0 or -2</b>	<b>0 or -2</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Local Government</b>	<b>\$1,549</b>	<b>\$1,549</b>	<b>\$1,549</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

#### **§§197.705, 198.530, 208.169 and 354.095 - Certificate of Need**

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation would eliminate Missouri Certificate of Need laws in the state, including §§197.300 and 197.366.

In the FY 2019 Budget, the Certificate of Need Program was cut from the DHSS budget and the duties were absorbed by the Division of Regulation and Licensure (DRL) Director's Office. DRL is responsible for regulating long-term care facilities. This will require changes to state rules and regulations, section policies and procedures, manuals, and forms. It is assumed it will take approximately 12 additional hours to make the necessary changes. The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

Since §§197.300 and 197.366 are being eliminated, the Certificate of Need (CON) would not be required for the implementation of institutional health service projects.

DHSS generates an average of \$434,663 in General Revenue (GR) a year from CON application fees and CON project cost overrun fees. Using a 2.5 percent annual growth rate, the total fiscal impact projected to GR will be a reduction of fees of \$380,557 ( $\$434,663 \text{ average fees} \times 1.025 \times 1.025 = \$456,668 \times 10/12$ ) for FY 2020; \$468,085 for FY 2021; and \$479,787 for FY 2022.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect the reduction in CON application fees provided by the DHSS for fiscal note purposes.

**Oversight** notes this proposal repeals section 197.310 relating to the Missouri Health Facilities Review Committee (MHFRC). The DHSS FY 2020 budget states costs for the MHFRC for FY 2016 were \$106,744; FY 2017 were \$97,227; and FY 2018 were \$95,689 (Governor Recommended \$118,681). The DHSS 2019 budget request was for \$118,681, but the Governor's Recommendation was \$0. DHSS has stated they are still operating this program by using resources within the Division of Regulation and Licensure. Since this proposal is eliminating the MHFRC and CON program, Oversight assumes the DHSS could have a savings of up to \$118,681 annually and a 2 FTE reduction for staff allocated to the MHFRC. However, Oversight notes these resources may be reallocated back to the Division of Regulation and Licensure. Oversight will range this savings as \$0 or \$118,681 and 0 or a reduction of 2 FTE.

ASSUMPTION (continued)

**Oversight** assumes the elimination of CON application fees and overrun costs could positively impact hospitals and nursing homes run by local governments. DHSS provided information stating in FY 2018, CON fees paid by nursing homes and hospitals owned/operated by local governmental agencies totaled approximately \$1,549. Oversight assumes eliminating CON requirements would save local governments \$1,549 annually.

Officials from the **Tri-County Care Center (Audrain County)** state repealing the entire Certificate of Need (CON) law would leave Missouri open to the construction of unneeded nursing facilities, thereby lowering the average occupancy rate for skilled nursing facilities. The current average occupancy for skilled nursing facilities is approximately 72 percent. Many of the new facilities would be built in areas with the lowest occupancy rates, like St. Louis County, Jackson, Platte and Clay counties around the Kansas City area, and the greater Springfield area, including Greene County.

New facilities are paid higher reimbursement rates than existing nursing facilities. It is estimated that repealing the CON law will eventually attract at least 40 new skilled and 80 new assisted living facilities to Missouri. New facilities tend to attract new nursing home residents away from older, existing facilities, as well as staff, thereby creating greater competition for already scarce labor in the healthcare marketplace, resulting in increased wages overall. The cost for increased wages is then factored into the calculation by MO HealthNet for each new facility's permanent Medicaid per diem rate since its rate is based on actual, allowable costs after the second year of operation. It is estimated for a single facility, this increased cost to the Medicaid program would, on average, be over \$15 per patient per day or \$394,200 annually for a 100-bed facility with average occupancy. The exacerbation of the scarce labor market will put greater pressure on rural facilities, which are already having trouble attracting qualified labor requiring them to increase their labor costs. It is estimated the cost to the state over a three-fiscal year period would be at least \$15,768,000 to fund unneeded and unnecessary skilled nursing home beds.

**Oversight** does not have any information to the contrary. Oversight assumes the assumptions made about the number of new facilities that may be built in the state to be speculative. Oversight will not present a fiscal impact for the responding nursing facility as it did not provide a fiscal impact for their facility.

Bill as a whole

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

ASSUMPTION (continued)

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the AGO has sufficient staff and current resources to handle any potential increase in litigation costs and will reflect no impact to the AGO for fiscal note purposes.

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 \$5,000. 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 require additional resources.

**Oversight** notes officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Mental Health** and the **Department of Social Services** assume this proposal will not fiscally impact their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will no impact to these organizations for fiscal note purposes.

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other nursing homes and hospitals were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to [www.legislativeoversight.mo.gov](http://www.legislativeoversight.mo.gov).

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>GENERAL REVENUE FUND</b>			
<u>Savings - DHSS (§197.310)</u>			
Repeal of MHFRC	<u>\$0 or \$98,901</u>	<u>\$0 or \$118,681</u>	<u>\$0 or \$118,681</u>
FTE Change - DHSS	0 or -2 FTE	0 or -2 FTE	0 or -2 FTE
<u>Loss - DHSS (§§197.300 and 197.366)</u>			
Reduction in CON fees	<u>(\$380,557)</u>	<u>(\$468,085)</u>	<u>(\$479,787)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(\$281,656 or \$380,557)</u></b>	<b><u>(\$349,404 or \$468,085)</u></b>	<b><u>(\$361,106 or \$479,787)</u></b>
Estimated Net FTE Change on the General Revenue Fund	0 or -2 FTE	0 or -2 FTE	0 or -2 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2020 (10 Mo.)	 FY 2021	 FY 2022
<b>LOCAL GOVERNMENTS</b>			
<u>Savings - Local Governments</u>			
Reduction in CON fees	<u>\$1,549</u>	<u>\$1,549</u>	<u>\$1,549</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS</b>	<b><u>\$1,549</u></b>	<b><u>\$1,549</u></b>	<b><u>\$1,549</u></b>

FISCAL IMPACT - Small Business

The elimination of Certificate of Need may impact small business building contractors.

FISCAL DESCRIPTION

This bill repeals the Missouri Certificate of Need Law (Sections 197.300 to 197.366, RSMo).

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 Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Social Services  
Office of Secretary of State  
Tri-County Care Center



Kyle Rieman  
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February 8, 2019

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February 8, 2019