

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1629-01
Bill No.: HB 719
Subject: Health Care
Type: Original
Date: February 18, 2019

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 2020	FY 2021	FY 2022	Fully Implemented (FY 2024)
General Revenue	Less than (\$122,669 to \$285,225)	Less than (\$112,825 to \$296,648)	Less than (\$119,623 to \$305,520)	Less than (\$120,416 to \$310,405)
Total Estimated Net Effect on General Revenue	Less than (\$122,669 to \$285,225)	Less than (\$112,825 to \$296,648)	Less than (\$119,623 to \$305,520)	Less than (\$120,416 to \$310,405)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2024)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2024)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2024)
General Revenue	0.2 to 2.2	0 to 2	0 to 2	0 to 2
Total Estimated Net Effect on FTE	0.2 to 2.2	0 to 2	0 to 2	0 to 2

☒ 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 2020	FY 2021	FY 2022	Fully Implemented (FY 2024)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§198.610 - 198.630 - Electronic monitoring in long-term care facilities

Officials from the **Department of Health and Senior Services (DHSS)** provide the following assumptions:

Director's Office:

§198.628.3 of the proposed legislation requires the promulgation of rules, which include the following duties (not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The Department of Health and Senior Services (DHSS), Office of General Counsel will need an additional .1 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

Oversight assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for 0.1 FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Oversight assumes since DHSS states their responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs.

Division of Regulation and Licensure:

§§198.612, 198.614, and 198.628 of the proposed legislation requires the Division of Regulation and Licensure (DRL), Section for Long-Term Care Regulation (SLCR) to create a notification and consent form for authorization of electronic monitoring to be conducted in a facility resident's room, and to promulgate rules to adopt the form.

It is assumed it will take a Health and Senior Services Manager (\$63,781 based on equivalent level managers in the division) approximately 200 hours to promulgate state rules, policies and procedures, and forms. Based on 2,080 working hours per year, this would require 0.1 FTE to assume these duties (200 hours ÷ 2,080 hours per year = 0.1) for a total one-time personal service cost of \$6,378 (\$63,781 X 0.1) in FY20.

ASSUMPTION (continued)

Oversight assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent. In addition, Oversight assumes the DHSS would not need additional rental space for 0.1 FTE. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Oversight assumes since DHSS states their responsibility to promulgate state rules, policies and procedures, and forms will require additional resources, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs.

DHSS, DRL states there are 520 Skilled Nursing Facilities/Intermediate Care Facilities (SNF/ICF) and 653 Residential Care Facilities/Assisted Living Facilities (RCF/ALF) in Missouri. It is assumed it will take a survey staff (\$47,892 based on the average starting salary of a Facility Advisory Nurse II) approximately one-half hour per facility to include the additional survey process changes of ensuring facilities comply with the provisions of this legislation for a total of 587 hours ($520 + 653 \times 0.5 = 587$) dispersed among the approximate 200 survey staff. Based on 2,080 working hours per year, this would require 0.28 FTE to assume these duties ($587 \text{ hours} \div 2,080 \text{ hours per year} = 0.28$) for a total personal service annual cost of \$13,410 ($\$47,892 \times 0.28$).

The department anticipates being able to absorb these costs. However, until the FY 2020 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the DHSS, DRL will be able to accomplish the additional duties required with existing staff and resources and will reflect no fiscal impact for the DHSS for the additional survey time required under this section of the legislation.

DHSS officials state §198.626 requires SLCR to report annually the total number of authorized electronic monitoring notification and consent forms received from facilities to the Attorney General. This would require SLCR to create the manner for submission of the forms and ensure facilities comply with the provisions of this subsection.

SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be received from facilities. It is estimated the number received could range from zero to 2,000 or more. At the higher range, the following additional staff would be needed to handle the requirements of this subsection.

One Health and Senior Services Manager (\$63,781 based on equivalent level managers in the division with pay plan) will be needed to ensure facility compliance and coordinate the annual reporting to the Attorney General.

ASSUMPTION (continued)

One Health Program Representative II (\$35,990 based on the average starting salary in the division with pay plan) will be responsible for the collection of the notification and consent forms and generating the annual report.

Oversight does not have any information to the contrary. Therefore, Oversight range the costs to the General Revenue (GR) Fund as provided by DHSS for fiscal note purposes. This range will include 0 to 2 FTE (\$0 to approximately \$185,000 in personal service costs, fringe benefits and equipment and expense).

Officials from the **Department of Corrections (DOC)** state the proposed legislation establishes the Authorized Electronic Monitoring in Long-term Care Facilities Act and creates a class D felony offense when a person knowingly hampers, obstructs, tampers with, or destroys a video or audio recording that belongs to a resident in order to conceal or commit a felony offense.

HB 675 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 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 (Mocode 29010)
575.030.001, RSMo, a class E felony for hindering prosecution of a felony (Mocode 29030)
575.100.001, RSMo, a class E felony for tampering with physical evidence in a felony prosecution. (Mocode 29110)

In FY 2018, twenty-six persons were found guilty of concealing, hindering, or tampering with evidence in a felony matter (8 were incarcerated, 5 received a 120-day sentence, and 13 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 initial impact to DOC, with enactment of HB 675, is an annual increase of one person to incarceration and two persons to probation. The full impact occurs in FY 2024 with an increase of three persons to incarceration and eight persons to field supervision.

ASSUMPTION (continued)

	# 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 2% inflation)
Year 1	1.0	(\$6,287)	(\$5,239)	2	absorbed	\$0	(\$5,239)
Year 2	2.0	(\$6,287)	(\$12,825)	4	absorbed	\$0	(\$12,825)
Year 3	3.0	(\$6,287)	(\$19,623)	6	absorbed	\$0	(\$19,623)
Year 4	3.0	(\$6,287)	(\$20,015)	7	absorbed	\$0	(\$20,015)
Year 5	3.0	(\$6,287)	(\$20,416)	8	absorbed	\$0	(\$20,416)
Year 6	3.0	(\$6,287)	(\$20,824)	8	absorbed	\$0	(\$20,824)
Year 7	3.0	(\$6,287)	(\$21,241)	8	absorbed	\$0	(\$21,241)
Year 8	3.0	(\$6,287)	(\$21,665)	8	absorbed	\$0	(\$21,665)
Year 9	3.0	(\$6,287)	(\$22,099)	8	absorbed	\$0	(\$22,099)
Year 10	3.0	(\$6,287)	(\$22,541)	8	absorbed	\$0	(\$22,541)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the costs provided by DOC for fiscal note purposes.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising 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. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

ASSUMPTION (continued)

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 where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

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.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Oversight notes that the **Missouri Office of Prosecution Services (MOPS)** have stated the proposal would not have a measurable fiscal impact on their organization. The creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

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

ASSUMPTION (continued)

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 that the **Office of Attorney General** and **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other nursing homes 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.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2024)
GENERAL REVENUE FUND				
<u>Costs - DHSS</u> (§§198.610 to 198.630)		\$0 to...	\$0 to...	\$0 to...
Personal service	(\$10,690) to (\$93,833)	(\$100,679)	(\$101,766)	(\$103,822)
Fringe benefits	(\$818 to \$47,172)	(\$55,928)	(\$56,235)	(\$56,859)
Equipment and expense	(\$5,922 to \$38,981)	(\$27,216)	(\$27,896)	(\$29,308)
Total <u>Costs</u> - DHSS	(\$17,430 to \$179,986)	\$0 to (\$183,823)	\$0 to (\$185,897)	\$0 to (\$189,989)
FTE Change - DHSS	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2024)
GENERAL REVENUE FUND (continued) <u>Costs - DOC</u> (§198.620) Increase in incarceration costs	(\$5,239)	(\$12,825)	(\$19,623)	(\$20,416)
<u>Costs - SPD</u> (§198.620) Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Less than (\$122,669 to \$285,225)</u>	<u>Less than (\$112,825 to \$296,648)</u>	<u>Less than (\$119,623 to \$305,520)</u>	<u>Less than (\$120,416 to \$310,405)</u>
Estimated Net FTE Change on the General Revenue Fund	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE
<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2024)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may have an impact on small businesses that provide electronic monitoring equipment and services and any facility as defined in the bill.

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 if the facility permits electronic monitoring and the devices comply with the facility's policies. The bill requires a resident, his or her representative, or his or her parent, if the resident is under 18 years of age, and the facility 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).

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).

FISCAL DESCRIPTION (continued)

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).

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 but could 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



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