

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2077-03
Bill No.: HCS for HB 977
Subject: Health Care
Type: Original
Date: April 23, 2019

Bill Summary: This proposal adds provisions relating to social model end of life care homes.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	Less than (\$105,239 to \$888,424)	Less than (\$112,285 to \$1,367,538)	Less than (\$113,082 to \$1,351,295)
Total Estimated Net Effect on General Revenue	Less than (\$105,239 to \$888,424)	Less than (\$112,285 to \$1,367,538)	Less than (\$113,082 to \$1,351,295)

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	0 to 16.2 FTE	0 to 16.1 FTE	0 to 16.1 FTE
Total Estimated Net Effect on FTE	0 to 16.2 FTE	0 to 16.1 FTE	0 to 16.1 FTE

☒ 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
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§198.190 - Social model end of life care homes

Officials from the **Department of Health and Senior Services (DHSS), Division of Regulation and Licensure (DRL)** state §198.190 of the proposed legislation outlines the basis for the licensing of end-of-life care homes by the DRL's Section for Long-Term Care Regulation (SLCR). The department is unsure of the total amount of facilities that will need to be licensed, so a range of zero to 300 facilities was used as an estimate for fiscal note purposes.

This proposed legislation will create another licensure category, and will require rule review, promulgation, revision/creation of applications, forms, and policies and procedures to oversee the end-of-life care home licensure and inspection process. If 300 facilities are created, it will require SLCR to hire the following additional positions to start on September 1, 2019:

One (1) Health and Senior Services Manager (\$63,781 based on equivalent level managers in the division) will be needed to promulgate rules; establish policies and procedures; and create applications and forms for the end-of-life care home licensure and inspection process. This manager will oversee the implementation of the program and supervise the licensure process, including application review, issuance of licenses, and record retention.

One (1) Senior Office Support Assistant (\$27,040 based on the average starting salary in the division) will be needed to provide data entry into databases to track homes, inspections, and complaint investigations; issue licenses to homes; monitor inspection packets; and assist in imaging of records for record retention.

One (1) Accounting Specialist III (\$45,829 based on the average starting salary in the division) will be needed to review applications and attachments including leases, financial information, contracts, bonds, insurance, and affiliate disclosures.

One (1) Health Program Representative III (\$41,116 based on the average starting salary in the division) will be needed to coordinate the licensure/re-licensure process between the accounting specialist, regional offices, engineering consultation unit, and unit support staff; monitor expiration dates; provide application materials and consultation; and ensure compliance prior to issuance of licenses.

The creation of the new licensure category would also require an estimated additional 0-300 statewide inspections and triage and investigate an additional 0-600 complaints per year. If 300 inspections and 600 complaints are required, SLCR will need to hire the following additional positions to start on January 1, 2020:

ASSUMPTION (continued)

One (1) Health and Senior Services Manager (\$63,781 based on equivalent level managers in the division) will be needed to oversee facility inspectors and facility advisory nurses responsible for inspections and complaint investigations.

Two (2) Senior Office Support Assistants (\$27,040 based on the average starting salary in the division) will be needed to assist in processing inspection reports and complaint investigations, order supplies, review expense reports, and support the manager and facility inspectors.

Two (2) Facility Advisory Nurse III (\$54,892 based on the average starting salary in the division) will be needed to provide direct oversight of the facility inspectors. Due to chronic health conditions that the residents in end-of-life care homes will have, a registered nurse will be needed in order to assist in medically-related complaints.

Seven (7) Facility Inspectors (\$33,976 based on the average starting salary in the division) will be needed to conduct initial licensure inspections of homes, annual inspections, and complain investigations.

The Facility Advisory Nurses and Facility Inspectors will be telecommuters and are expected to travel extensively. It is assumed the travel costs will be \$10,118 annually for these staff.

Due to the current workload of SLCR staff, the additional duties created by the proposed legislation cannot be absorbed by the department.

Director's Office:

§198.190.8 of the proposed legislation will require 0.10 of an attorney's time to perform legal research, review records, redaction of protected information, provide day-to-day legal counsel to the program; and represent the department in legal actions. The DHSS, Office of General Counsel will need an additional 0.1 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.

§198.190.9 of the proposed legislation requires the promulgation of rules and regulations, which include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The DHSS, Office of General Counsel will need an additional 0.1 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.

ASSUMPTION (continued)

The DHSS assumes this proposal will result in total costs to the General Revenue (GR) Fund of \$0 to \$810,702 of FY 2020; costs of \$0 to \$1,259,571 in FY 2021; and costs of \$0 to \$1,273,108 in FY 2022.

Oversight assumes the two 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 the two 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 legal 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 as well as, promulgate rules, establish guidelines, implement strategies, make evidence-based system changes and create policy recommendations, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65% and rental space costs.

Oversight notes the provisions of §198.190.2(1) provides that applications/renewals are to be accompanied by a non-refundable fee. The fee, to be determined by the DHSS, shall not exceed one hundred dollars. In addition, §198.190.2(6) provides that licenses shall be valid for a period not to exceed two years.

Oversight assumes DHSS will provide that licenses will be valid for two years. For fiscal note purposes, Oversight assumes 0 to 300 facilities will be licensed during FY 2020 and the DHSS will set the fee at \$100 per application. Therefore, for fiscal note purposes, Oversight assumes licensing fee revenue to GR of \$0 to \$25,000 for FY 2020 (10 months). Since it is assumed that licenses will be for a two-year period, there will be no licensing/renewal fee revenue for FY 2021; licensing/renewal fee revenue for FY 2022 will be assumed to be \$0 to \$30,000.

Officials from the **Department of Corrections (DOC)** state this legislation adds provisions relating to social model end of life care homes, creating a class A misdemeanor for unlawful licensure and a class E felony for violations of these provisions in regards to abuse or neglect of residence.

With the passage of FN 2077-03N, it is estimated that the annual increase to the DOC is one person to incarceration and two to probation. The average sentence length totals 3.4 years (2.1 years incarcerated and 1.3 years of parole). The probationary term is 3 years. The full impact occurs in the third year (FY2022); two more persons are incarcerated and 7 more persons are supervised in the field.

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	(\$6,287)	(\$5,239)	2	absorbed	\$0	(\$5,239)
Year 2	2	(\$6,287)	(\$12,825)	4	absorbed	\$0	(\$12,825)
Year 3	2	(\$6,287)	(\$13,082)	7	absorbed	\$0	(\$13,082)
Year 4	2	(\$6,287)	(\$13,344)	7	absorbed	\$0	(\$13,344)
Year 5	2	(\$6,287)	(\$13,611)	7	absorbed	\$0	(\$13,611)
Year 6	2	(\$6,287)	(\$13,883)	7	absorbed	\$0	(\$13,883)
Year 7	2	(\$6,287)	(\$14,160)	7	absorbed	\$0	(\$14,160)
Year 8	2	(\$6,287)	(\$14,444)	7	absorbed	\$0	(\$14,444)
Year 9	2	(\$6,287)	(\$14,732)	7	absorbed	\$0	(\$14,732)
Year 10	2	(\$6,287)	(\$15,027)	7	absorbed	\$0	(\$15,027)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the impact provided by DOC in the fiscal note.

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 competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crimes regarding nursing homes. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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

ASSUMPTION (continued)

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 **Office of Administration (OA), Administrative Hearing Commission (AHC)** state the AHC anticipates that this legislation will not significantly alter its caseload. If similar bills pass resulting in more cases, there will be a fiscal impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect no fiscal impact for the AHC for fiscal note purposes.

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a fiscal impact on their organization. However, 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 **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.

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.

ASSUMPTION (continued)

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 **Department of Public Safety (DPS), Division of Fire Safety, the Department of Social Services, the Office of State Courts Administrator, the Adair County Health Department, the Andrew County Health Department, the Bollinger County Health Center, the Clay County Public Health Center and the Columbia/Boone County Department of Public Health and Human Services** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Income - DHSS (\$198.190)</u>			
Licensing/renewal fees p. 5	\$0 to \$25,000	\$0	\$0 to \$30,000
<u>Costs - DHSS (\$198.190) p. 3-5</u>	\$0 to...	\$0 to...	\$0 to...
Personal service	(\$391,679)	(\$656,254)	(\$662,816)
Fringe benefits	(\$234,540)	(\$400,265)	(\$402,249)
Equipment and expense	<u>(\$181,966)</u>	<u>(\$198,194)</u>	<u>(\$203,148)</u>
Total <u>Costs - DHSS</u>	\$0 to (\$808,185)	\$0 to (\$1,254,713)	\$0 to (\$1,268,213)
FTE Change - DHSS	0 to 16.2 FTE	0 to 16.1 FTE	0 to 16.1 FTE
<u>Costs - DOC (\$198.190) p. 5-6</u>			
Increase in incarceration costs	(\$5,239)	(\$12,825)	(\$13,082)
<u>Costs - SPD (\$198.190) p. 6</u>			
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>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Less than (\$105,239 to \$888,424)</u>	<u>Less than (\$112,285 to \$1,367,538)</u>	<u>Less than (\$113,082 to \$1,351,295)</u>
Estimated Net FTE Change on the General Revenue Fund	0 to 16.2 FTE	0 to 16.1 FTE	0 to 16.1 FTE

FISCAL IMPACT - Local Government

FY 2020
(10 Mo.)

FY 2021

FY 2022

\$0

\$0

\$0

FISCAL IMPACT - Small Business

This proposal will have a direct fiscal impact on small business social model end of life care homes as these homes will have pay licensing fees and be inspected by the department.

FISCAL DESCRIPTION

This proposal changes licensing provisions related to social model end of life care homes. Applicants for licenses will have to submit a non-refundable fee as determined by the Department of Health and Senior Services in an amount not to exceed one hundred dollars. Licenses will be valid for a period designated by the department, but the period shall not exceed two years from the date of issuance.

The department shall inspect the home and if it is not in compliance with the provisions and standards established, the department shall inform the operator or designee of the violation and provide a written report of any deficiencies. If there is a violation of a class I standard, immediate corrective action is to be taken by the operator or designee and a written plan of correction shall be submitted to the department. The operator or designee shall have five working days following receipt of a written report and correction order regarding a violation of a class I standard and ten working days following receipt of the report and correction order regarding violations of class II or class III standards, to submit a plan of correction for the department's approval that contains specific dates for achieving compliance.

If there is a violation of a class I standard, the department is to conduct an unannounced reinspection within twenty days of the exit interview to determine if the violation has been corrected. If there is a violation of any class II standard and the plan of correction is acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar days from the date of the exit conference to determine the status of all previously cited violations. If there is a violation of class III standards sufficient to establish that the home was not in substantial compliance, an unannounced reinspection shall be conducted within one hundred twenty days of the exit interview.

The department may revoke a license in any case in which it finds that the operator failed or refused to comply with class I or II standards or failed or refused to comply with class III

FISCAL DESCRIPTION (continued)

standards where the aggregate effect of the noncompliance presents either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result, the operator refused to allow representatives of the department to inspect the home for compliance with standards or denied representatives of the department access to residents and employees necessary to carry out the duties set forth, the operator demonstrated financial incapacity to operate and conduct the home, the operator or any of the principal of the home has ever been convicted of or pled guilty or nolo contendere to a felony offense concerning the operation of a facility or program that provides care to children or adults, or the operator or any of the principals of the home is listed on the employee disqualification list maintained by the department.

The department shall make at least one inspection per year. However, the department may reduce the frequency of inspections to once per licensing period if the home is found to be in substantial compliance.

Any person aggrieved by an official action of the department may seek a determination by the administrative hearing commission.

The department shall promulgate rules necessary to implement the provisions of this proposal.

Any person who violates any provision of this proposal by making materially false statements in order to obtain a license or renewal is guilty of a class A misdemeanor. Any person violating this subsection wherein abuse or neglect of a resident has occurred is guilty of a class E felony.

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

SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Corrections
Department of Public Safety -
 Division of Fire Safety
Department of Social Services
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of Administration -
 Administrative Hearing Commission
Office of State Courts Administrator

SOURCES OF INFORMATION (continued)

Office of Secretary of State
Office of State Public Defender
Adair County Health Department
Andrew County Health Department
Bollinger County Health Center
Clay County Public Health Center
Columbia/Boone County Department of Public Health and Human Services



Kyle Rieman
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April 23, 2019

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Assistant Director
April 23, 2019