

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2385-03
Bill No.: HCS for HB 1176
Subject: Health Care; Elderly
Type: Original
Date: April 15, 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
General Revenue	Less than (\$117,430 to \$279,986)	Less than (\$100,000 to \$283,823)	Less than (\$100,000 to \$285,897)
Total Estimated Net Effect on General Revenue	Less than (\$117,430 to \$279,986)	Less than (\$100,000 to \$283,823)	Less than (\$100,000 to \$285,897)

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 10 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	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 FTE
Total Estimated Net Effect on FTE	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 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 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§§198.008 - 198.632 - Electronic monitoring in long-term care facilities

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

Director's Office:

§198.612.3 of the proposed legislation requires the promulgation of rules to implement the provisions of §§198.610 to 198.632. The director of the DHSS may promulgate all necessary rules and regulations for the administration of this section.

Office of General Counsel (OGC)

The proposed legislation requires the promulgation of rules and regulations, which include the following duties (not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The OGC 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.

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:

§§198.008- 198.632 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.

ASSUMPTION (continued)

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 ($200 \text{ hours} \div 2,080 \text{ hours per year} = 0.1$) for a total one-time personal service cost of \$6,378 ($\$63,781 \times 0.1$) in FY20.

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 SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It is estimated the number could range from zero (0) to 2,000 or more. At the higher range, the following additional staff would be needed to handle the requirements of this legislation.

ASSUMPTION (continued)

One (1 FTE) Health and Senior Services Manager (\$63,781 based on equivalent level managers in the division with pay plan) will be needed to coordinate receipt of tapes or recordings and provide technical assistance to facilities concerning forms and electronic monitoring.

One (1 FTE) Health Program Representative II (\$35,990 based on equivalent level managers in the division with pay plan) will be responsible for the collection of tape or recording evidence and assist in compiling investigation information.

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).

Division of Senior and Disability Services (DSDS)

§§198.624 - 198.626 of the proposed legislation requires persons viewing and/or listening to a videotape or recording of instances of abuse/neglect/exploitation (A/N/E) to report these instances and submit the tape(s) or recording(s) to the department for review. DSDS, Section for Adult Protective Services (APS), Central Registry Unit (CRU), reasonably anticipates the potential increase in the number of hotlines received regarding A/N/E in long-term care (LTC) facilities due to the presence of these recordings. After the initial report/hotline is taken by CRU, staff then route the reports of A/N/E to DRL for investigation if the event occurred in a LTC and was perpetrated by staff of the facility. If the alleged occurrence of abuse, neglect or exploitation is perpetrated by someone other than the staff of the facility, CRU routes the reports to APS staff for investigation. Based on current reports received, APS estimates 90% of LTC complaints are routed to DRL and 10% are routed to APS. DSDS would also assume 10% of tapes or recordings received by the department would be routed to APS for investigation.

It is assumed there will be an increase in the number of reports received in regards to A/N/E in LTCs, which will result in additional work and costs for APS. However, it is unknown how many electronic monitoring devices will be installed in LTCs; how many of these installations would result in complaints being reported to CRU; and how many tapes or recordings will be received by the department. DSDS estimates a range of 0-200 complaints will be received by CRU staff. An Adult Protective Community Worker (APCW) would field these calls. The average length of calls regarding LTCs is 30 minutes, resulting in 100 hours of additional call time ($200 \times 0.5 = 100$), or up to 0.05 CRU-APCW FTE ($100 \text{ hours} / 2,080 \text{ hours per year} = 0.05$), for a total personal service annual cost of \$1,780 ($\$35,600 \times 0.05$) per year.

ASSUMPTION (continued)

If DSDS assumes 10% of the up to 200 complaints are routed to APS, this would result in up to an additional 20 investigations (200 X 0.10) by APS-APCW staff. In SFY 2018, APS-APCW averaged 140 investigations per FTE which would be an additional 0.14 APS-APCW (20 additional investigations/140 investigations per FTE = 0.14) for a total personal service annual cost of \$4,984 (\$35,600 X 0.14).

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 has sufficient staff and resources necessary to absorb the additional duties required by the provisions of the proposal as it relates to DSDS and assumes no additional impact for fiscal note purposes.

Oversight notes the provisions of the proposal in §198.630 allows the department to impose sanctions and assess administrative penalties against an administrator or a facility who knowingly refuses to permit a resident or the resident's guardian to conduct authorized electronic monitoring, refuses to admit an individual to residency because of a request to conduct authorized electronic monitoring or violates another provision of §§198.610 to 198.632. Oversight assumes the number of sanctions and potential amounts of penalties that may be imposed are unknown. Penalties imposed would be distributed to school districts and will be presented as \$0 to Unknown.

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.

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.

ASSUMPTION (continued)

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.

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would have no 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.

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.

ASSUMPTION (continued)

Oversight notes that the **Department of Corrections** has stated the proposal would not have a direct fiscal impact on their organization since the DOC does not supervise Class B misdemeanor offenses. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

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, 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 - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§198.610 to 198.630)</u>	.	\$0 to...	\$0 to...
Personal service	(\$10,690) to (\$93,833)	(\$100,679)	(\$101,766)
Fringe benefits	(\$818 to \$47,172)	(\$55,928)	(\$56,235)
Equipment and expense	(\$5,922 to \$38,981)	(\$27,216)	(\$27,896)
Total <u>Costs - DHSS</u>	<u>(\$17,430 to \$179,986)</u>	<u>\$0 to (\$183,823)</u>	<u>\$0 to (\$185,897)</u>
FTE Change - DHSS	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 FTE
<u>Costs - SPD (§198.620)</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 (\$117,430 to \$279,986)</u>	<u>Less than (\$100,000 to \$283,823)</u>	<u>Less than (\$100,000 to \$285,897)</u>
Estimated Net FTE Change on the General Revenue Fund	0.2 to 2.2 FTE	0 to 2 FTE	0 to 2 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
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LOCAL GOVERNMENTS - SCHOOL DISTRICTS

Income - School Districts

Penalty income	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOL DISTRICTS

	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This proposal provides that residents of long-term care facilities have certain rights including the right to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative. The resident or resident's guardian shall pay for all costs associated with conducting electronic monitoring, other than the costs of electricity, including installation and maintenance of the equipment.

The department of health and senior services shall promulgate rules to implement the provisions of sections 198.610 to 198.632.

A person who sends tapes or recordings to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found.

Facilities shall post a notice at the entrance to the facility stating that the rooms of some residents may be being monitored electronically by, or on behalf of, the residents and that the monitoring is not necessarily open and obvious.

FISCAL DESCRIPTION (continued)

The department may impose appropriate sanctions on an administrator of a facility under specified conditions and may assess an administrative penalty in specified circumstances.

A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room or a tape or recording made by the device commits an offense. The offense is a class B misdemeanor.

This legislation is not federally mandated and would not duplicate any other program. However, the legislation may 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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