

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4852H.011
 Bill No.: HB 2567
 Subject: Education, Higher; Health Care; Boards, Commissions, Committees, and
 Councils; Professional Registration and Licensing
 Type: Original
 Date: February 12, 2024

Bill Summary: This proposal creates provisions relating to health care.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)*	\$0 to (Unknown)*	\$0 to (Unknown)*

*Oversight assumes the combined losses relating to DMH training sites and additional LEF transfers could exceed the \$250,000 threshold.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Other State	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
LEF*	\$0	\$0	\$0
Colleges and Universities	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other State Funds</u>	(Unknown)	(Unknown)	(Unknown)

*Indicates numbers net to \$0.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Federal - CMS	\$0 to (\$188,106,601)	\$0 to (\$225,727,921)	\$0 to (\$225,727,921)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (\$188,106,601)	\$0 to (\$225,727,921)	\$0 to (\$225,727,921)

*Oversight notes DMH’s assumption of loss of federal funding for non-compliance with DEI provisions and the resulting loss of facilities’ accreditations could be significant.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§191.1770 through 191.1807 – Do No Harm Act

Officials from the **Department of Mental Health (DMH)** state the proposed legislation establishes the “Do No Harm Act” under sections 191.1770 to 191.1810.

Section 191.1790: Health care-related professional licensing boards shall not have as a condition of obtaining or renewing any license DEI training or education. Organizations that issue state-required health care-related professional certifications shall not use DEI material or require DEI training as part of the certification process.

Section 191.1795: Institutions shall not receive any state contract or grant unless the institution has certified that it does not and will not require its employees, contractors, volunteers, vendors, or agents to subscribe to, study, or receive instruction on DEI in connection with the use of state funds. It shall submit annual certification that it does not require instruction on DEI in connection with the use of state funds.

191.1800: Any state entity applying for a federal health care-related grant related to DEI shall publish on its website all materials, requirements, and instructions related to the federal grant application that are in the entity's possession, submit a copy of the grant proposal to the state board of registration for the healing arts for public posting, and submit a copy of the grant proposal to all members of the house and senate committees on health policy.

The Value Based Payment learning path follows the National Direct Support Professional (DSP) best practices which includes multiple diversity-equity-inclusion trainings and would be in conflict with the proposed language. Additionally, communication from Centers for Medicare & Medicaid Services (CMS) concerning their priority of health equity and future potential programmatic requirements would create a situation where this statute change would jeopardize federal program match funding, if put into place. The Department of Mental Health (DMH) inpatient facilities are accredited by the Joint Commission (TJC) and Center for Medicare/Medicaid Services (CMS). Loss of accreditation by DMH facilities would result in the loss of federal funding of approximately \$225,727,921.

DMH additionally offers training for various clinical disciplines. Loss of training sites would lead to further shortages in clinical disciplines, and it may cause a safety issue to individuals in DMH care if at the last minute there are providers they can no longer contract with. This may cause an unknown GR impact to DMH and a potentially significant loss of federal funds.

For GR the anticipated fiscal impact for FY25 would be an (Unknown) cost, for FY26 (Unknown) cost and FY27 (Unknown) cost. For federal, FY25 the anticipated fiscal impact is \$0 to (\$225,727,921), for FY26 \$0 to (\$225,727,921) and FY27 is \$0 to (\$225,727,921).

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the unknown fiscal impact to GR presented by the DMH as well as the potential loss of federal funds.

Officials from the **Office of Administration (OA)** state the provisions of §§191.1770 – 191.1807 have the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging violation of this section against a medical institution of higher education or against a state employee in connection with their official duties on behalf of the state or against another person covered by the LEF, due to the addition of an enforceable right under this section. This provision also waives sovereign immunity. This change will be subject to judicial construction; therefore, the cost impact to the state is unknown.

Officials from the **University of Central Missouri (UCM)** anticipate there will be a fiscal impact as a result of this proposal. **Oversight** notes UCM did not provide any additional information and therefore assumes, any fiscal impact will be minimal and absorbable within current funding levels.

Because this bill creates a possible new cause of action, **Oversight** will show a net \$0 direct fiscal impact for the LEF, and a possible \$0 to (unknown) fiscal impact to General Revenue and other state funds. Oversight notes this possible litigation exposure as described by OA could also apply to colleges and universities, federal funds, as well as local political subdivisions.

Officials from the **Office of Attorney General (AGO)** did not respond to **Oversight's** request for a statement of fiscal impact. However, in response to similar legislation from 2023 (HCS HB 489), the AGO assumed any potential litigation costs arising from the proposal could be absorbed with existing resources. However, the AGO stated they may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Oversight notes provisions in §191.1805.3 provide that the AGO may seek civil penalties up to \$1 million against a medical institution for violations. In addition, it is thought since these penalties would be for a violation of civil law rather than criminal law, the penalties would not be distributed to school districts. Oversight assumes any civil penalties collected by the AGO would be deposited in the General Revenue Fund. Since it is unknown whether any penalties will be collected, Oversight will range the penalties from \$0 to Unknown.

Bill as a whole

Officials from the **Department of Commerce and Insurance**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the

Department of Social Services, the Missouri House of Representatives, the Missouri Senate and the Office of the State Courts Administrator each assume the proposal will have no fiscal impact on their respective organizations.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE FUND			
<u>Income</u> – AGO (§191.1805) – civil penalties collected p.7	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – DMH – loss of training sites (§191.1795) p.3-4	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
OTHER STATE FUNDS			
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2025 (10 Mo.)	FY 2026	FY 2027
LEGAL EXPENSE FUND (0692)			
<u>Transfer-in</u> – Increase in appropriation from General Revenue (§191.1802) p.6	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Cost Increase</u> – OA (§191.1802) – Potential increase in transfer to LEF p.6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGES AND UNIVERSITIES			
<u>Costs</u> – to administratively adhere to the proposal	(Unknown)	(Unknown)	(Unknown)
<u>Cost Increase</u> – Increase in LEF payouts (§191.1802) p.6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost Increase</u> – Restrictions on DEI education in health care related programs and compliance (§191.1795) p.5-6	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
FEDERAL FUNDS			
<u>Loss – DMH</u> (§191.1800) – Reduction in federal funds for loss of accreditation p.3-4	\$0 to (\$188,106,601)	\$0 to (\$225,727,921)	\$0 to (\$225,727,921)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to (\$188,106,601)</u>	<u>\$0 to (\$225,727,921)</u>	<u>\$0 to (\$225,727,921)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL GOVERNMENTS			
<u>Cost Increase – Increase in legal payouts (§191.1802) p.6-8</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATE NET EFFECT ON LOCAL GOVERNMENTS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT – Small Business

This proposal could directly impact small business health care providers. (§§191.1770 to 191.1810)

FISCAL DESCRIPTION

This bill establishes the "Do No Harm Act" and provides terms and definitions relating to "academic standards", "health care related academic programs", "medical institutions of higher education" and "Diversity-Equity-Inclusion" or "DEI" among others.

The bill prohibits medical institutions of higher education from expending any funds to establish, sustain, support, or staff a DEI office, as well as contracting, employing, or hiring anyone to serve as a DEI officer. This is not to be construed to affect funding by such an institution of course instruction, research and creative works by those involved with the institution, activities of registered student organizations, arrangements for guest speakers or other short-term engagements, or mental and physical health services offered by licensed professionals.

This bill additionally requires any funds that would have been expended for DEI offices or officers in fiscal year 2025 to be reallocated to merit scholarships for lower-and-middle-income students, and to reduce tuition for in-state students.

The bill requires medical institutions of higher education to file a report with the Department of Higher Education, before the expenditure of any funds appropriated for fiscal year 2025, that discloses the steps taken to comply with the requirements set forth in this bill as well as the number and job titles of those deemed to be required by the obligations of the institution to comply with several applicable federal laws and regulations. The institution is required to make this report available for the public.

This bill requires medical institutions of higher education to publish titles and syllabi for all mandatory courses, seminars, classes and trainings on a public online database, and prohibits institutions from conducting DEI audits or hiring DEI consultants.

The bill requires medical institutions of higher education to submit an annual certification by December 31st to the State Board of Registration for Healing Arts, within the Department of Commerce and Insurance, and the coordinating Board of Higher Education, within the Department of Higher Education, that the institution does not require applicants or students to subscribe to DEI ideologies, does not discriminate against those who do not subscribe to such ideologies, and does not require the study of such ideologies for admitted students.

This bill requires medical institutions of higher education, except for open-enrollment institutions, to require applicants to complete a standardized admissions test and outlines academic standards for health care related courses of study, as specified in the bill. If a medical institution of higher education wants to alter the standards for admissions, the new standards must be submitted to the General Assembly and the Coordinating Board for Higher Education. The proposed standards shall not be effective until at least 60 days have passed during which a joint resolution of disapproval may be passed by both chambers and approved by the Governor to invalidate any such submitted standards.

The bill prohibits medical institutions of higher education and medical institutional review boards that may be associated with such institutions from: (1) Requiring any applicant, employee, student, or contractor to endorse any discriminatory ideology; (2) Requiring any applicant, employee, student, or contract to provide a statement of diversity, equity, and inclusion; (3) Giving preferential consideration to any applicant, employee, student, or contractor on the basis of his or her provision of an unsolicited statement related to a discriminatory ideology; or (3) Preventing an applicant or candidate from providing any information described in this provision of the bill on his or her own accord.

The bill restricts health care-related professional licensing boards from having any requirements for obtaining or renewing licenses associated with DEI related materials or programs. State required health care-related professional certifications shall not use DEI material or require DEI training as part of the certification process. Such boards and organizations are prohibited from conducting DEI audits or hiring DEI consultants.

Health care providers and medical institutions of higher education are prohibited from receiving state contracts or grants without certifying that the provider or institution will not require specified individuals from subscribing to, studying, or receiving instruction on DEI material. Such providers and institutions must submit annual certification attesting to their compliance. All state entities applying for any Federal health care related grant relating to DEI shall publish on a public website all materials, requirements, and instructions relating to the grant application along with a copy of the grant proposal to the State Board of Registration for the Healing Arts and to the members of the House and Senate Committees on Health Policy.

The bill provides any aggrieved person a cause of action for any violations of these sections to include declaratory and injunctive relief, damages of at least \$100,000 against the health care provider or medical institution of higher education for any violations, compensatory damages, and costs and attorney fees. Furthermore, the bill waives sovereign immunity for such providers and institutions for up to a year after any violation.

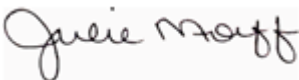
This bill requires any medical institution of higher education to annually submit certification of compliance to the State Board of Registration for the Healing Arts with Sections 191.1770 to 191.1810, RSMo, and authorizes the Attorney General to investigate allegations of violations.

The State Board of Registration for the Healing Arts shall publish on its website annually a list of all the health care providers and medical institutions that have provided annual certification.

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

Attorney General's Office
Office of Administration
Department of Commerce and Insurance
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Mental Health
Department of Social Services
University of Central Missouri
Missouri House of Representatives
Missouri Senate
Office of the State Courts Administrator



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