

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5161H.011
 Bill No.: HB 2556
 Subject: Health Care Professionals; Hospitals; Mental Health; Prisons and Jails
 Type: Original
 Date: February 23, 2024

Bill Summary: This proposal creates provisions relating to the management of violent patients in health care facilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue*	(\$753,885 to Unknown)	(\$894,931 to Unknown)	(\$910,727 to Unknown)
Total Estimated Net Effect on General Revenue	(\$753,885 to Unknown)	(\$894,931 to Unknown)	(\$910,727 to Unknown)

* Oversight assumes the Unknown costs for extended boarding of DMH patients will exceed \$250,000 annually.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>Other State Funds</u>	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

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

* Range is based on the potential loss of Federal funds due to loss of accreditation by DMH facilities.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	7 FTE	7 FTE	7 FTE
Total Estimated Net Effect on FTE	7 FTE	7 FTE	7 FTE

- 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
Law enforcement agencies	(Unknown)	(Unknown)	(Unknown)
Local Government*	(Unknown)	(Unknown)	(Unknown)

* Oversight assumes Unknown increased funding and Unknown increased costs to **hospitals** will net to zero.

FISCAL ANALYSIS

ASSUMPTION

§191.1350 - The management of violent patients in health care facilities

Officials from the **Department of Mental Health (DMH)** state the proposed legislation creates provisions relating to management of violent patients in health care facilities under Chapter 191. This language is not defined to exclude the Department of Mental Health (DMH), so it is assumed that DMH facilities are included.

DMH currently services multiple individuals, both in long term and crisis stabilization beds that require use of manual holds at a frequency that varies by individual. DMH has others who, based on their history, have crisis safety plans that outline the need for these interventions, though rarely require restraint. As DMH continues to expand its crisis stabilization capacity, the number of individuals requiring restraint will increase. If DMH is unable to train staff on approved crisis management systems, DMH will likely see an increase in staff injuries, resulting in an increase in Worker's Compensation claims and injuries to individuals served, increasing the department's risk of litigation and resultant orders to pay for damages incurred during service delivery. Due to this increased risk, DMH would likely be unable to accept individuals known to have high risk of physical aggression into their crisis stabilization program, which would likely result in an increase in the number and length of stay individuals boarding in hospitals. This would increase the demand for DMH to reimburse hospitals for costs incurred by hospitals. It would be difficult to determine an estimate of the aforementioned costs.

DMH is required by Center for Medicaid and Medicare Services (CMS) and accredited by the Joint Commission to use least intrusive intervention to manage someone who is violent. Utilization and training of critical care techniques are important for facility staff and client safety when caring for individuals in DMH's facilities. DMH is required to comply with CMS and Joint Commission client rights standards, not adhering to these guidelines can jeopardize accreditation and federal funding. Subsection 4, as written, seems to apply to any nurse licensed under Chapter 355. Nurses leaving assigned areas could lead to staffing issues, failure to meet standards of care, medical negligence, failure to meet certification requirements, licensing issues for nurses and facilities, and a potential loss of federal funding. Subsection 5 raises significant concerns as to the proper care and treatment of individuals with mental illness. It calls for evaluation in jails or prisons that may not be properly equipped for such evaluations. The entry point for many psychiatric hospitals is through the emergency room, and if not transported to the emergency room, proper treatment may not be obtained. Section 6 raises concern relative to Emergency Medical Treatment and Labor Act (EMTALA), CMS and The Joint Commission, which could result in the loss of significant federal funds.

DMH inpatient facilities are accredited by The Joint Commission (TJC) and Center for Medicare/Medicaid Services (CMS). TJC and CMS set several standards that facilities are required to meet for accreditation. Loss of accreditation by DMH facilities would result in the loss of federal funding.

The anticipated fiscal impact to GR for FY25 would be Unknown; for FY26, Unknown and FY27, Unknown. The anticipated fiscal impact for federal funds in FY25 is \$0 to (\$225,727,921); for FY26, \$0 to (\$225,727,921) and for FY27, is \$0 to (\$225,727,921).

Oversight does not have information to the contrary. Oversight assumes the additional unknown boarding costs of DMH patients will exceed \$250,000 annually for fiscal note purposes. Oversight notes the proposal does not include provisions to replace lost federal funds due to DMH's non-compliance with accreditation guidelines.

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation creates provisions relating to the management of violent patients in licensed or registered health care facilities. The provisions include the following:

- 191.1350.1 – no employee or contractor shall be required to physically engage with a person exhibiting violent tendencies if there is a reasonable fear of bodily harm.
- 191.1350.2 – no employee or contractor shall be required to become certified or participate in physical control/restraint training.
- 191.1350.3 – no licensed or registered health care facility, or their employee or contractor, shall, if acting in good faith, be held liable for damages arising out of an incident with a violent patient.
- 191.1350.4 – any nurse licensed by the state board under Chapter 335, has the right to refuse to see/treat a patient if the patient is violent or threatens them and the facility is required to assign a different nurse to said patient.
- 191.1350.6 – a health care facility that violates the provisions of this section shall be subject revocation or suspension of their license or registration.

The proposed legislation creates a prohibition to require healthcare employees in long-term care facilities from being trained to intervene in an emergency situation to assist residents with known violent or difficult behaviors and may result in harm and even death of other long-term care facility residents and staff. The **Section for Long Term Care Regulation (SLCR)** anticipates this prohibition will increase the number of immediate jeopardy complaints received by the Section.

Based on current complaint numbers related to resident-to-resident abuse, SLCR will need seven (7) Registered Nurses (salary \$75,000) to investigate additional complaints related to abuse, neglect, inappropriate discharge, lack of behavioral health services, and restraints. These positions will be telecommuters.

Sections 191.1350.1 and 191.1350.2 would require the Supplemental Health Care Services Agency (SHCSA) regulation program, during inspection or complaint investigation, to verify that facility personnel are not required/mandated by the health care facility or SHCSA to physically engage with a person exhibiting violent tendencies or to become certified or participate in physical control/restraint training.

In addition, Section 191.1350.4 of the proposed legislation may result in a situation where treatment could be delayed should a nurse refuse to care for a violent patient. This could increase complaints or investigations received by the Section for Health Standards and Licensure (HSL) regarding violations of the Emergency Medical Treatment and Labor Act (EMTALA).

It is assumed that the Department can absorb the costs of the bill associated with SHCSA and HSL with current resources. However, if the workload significantly increased or other legislation was enacted, additional resources would be requested through the appropriation process.

Oversight does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by the DHSS.

Officials from the **Department of Commerce and Insurance**, the **Department of Corrections**, the **Department of Public Safety, Missouri Highway Patrol and Missouri Veterans Commission**, the **Department of Social Services**, the **Office of Administration**, the **Newton County Health Department**, the **Phelps County Sheriff's Department**, the **Kansas City Police Department** and the **St. Louis County Police Department** each assume the proposal will have no 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 agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other local public health agencies, nursing homes, law enforcement agencies and hospitals 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.

Officials from the **Branson Police Department (BPD)** state this will severely damage law enforcement's ability to get mental health help for people that need 96 hour holds. Most smaller jails do not have the resources to have a full mental health evaluation program, which section 5 of this bill would make a necessity.

Law enforcement leaders are already extremely frustrated with the amount of suicidal people that the hospitals are ignoring their 96 hour hold affidavits on because the patients do not have insurance. My agency alone has had several suicides because the local hospital refuses to hold them and kicks them back into their community. They also are forced to respond to the same suicidal person multiple times in a shift (3 or more times for persons that have been attempting

suicide when they arrived) because the hospitals will not consider the information they are providing in their affidavits.

Simply put, suicidal and extreme mental health patients do not belong in jails but should be in secure mental health units. If this bill proceeds, there has to be funding for the jails to hire the proper mental health staff, as well as facility changes that can handle the unique needs of those with severe mental health issues.

Oversight has no information to the contrary. Therefore, Oversight will present the fiscal impact of this proposal as provided by BPD as “Unknown” costs to local law enforcement agencies, estimated to exceed \$250,000 annually.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<u>Transfer out – DMH (\$191.1350)</u> Increased reimbursement to hospitals for patient boarding p. 3-4	(Unknown)	(Unknown)	(Unknown)
<u>Costs – DHSS, SLCR - (\$191.1350) p.</u> 4-5			
Personal Service	(\$437,500)	(\$535,500)	(\$546,210)
Fringe Benefits	(257,186)	(\$312,693)	(\$316,844)
Expense & Equipment	(\$59,199)	(\$46,738)	(\$47,673)
Total Costs – DHSS, SLCR	(\$753,885)	(\$894,931)	(\$910,727)
FTE Change	7 FTE	7 FTE	7 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE*	<u>(\$753,885 to Unknown)</u>	<u>(\$894,931 to Unknown)</u>	<u>(\$910,727 to Unknown)</u>
Estimated Net FTE Change on General Revenue	7 FTE	7 FTE	7 FTE
*Oversight assumes the Unknown costs for extended boarding of DMH patients will exceed \$250,000 annually.			

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
FEDERAL FUNDS			
<u>Losses - DMH (§191.1350) Withholding of funds due to loss of accreditation by DMH facilities p. 4</u>	<u>\$0 to</u> <u>(\$225,727,921)</u>	<u>\$0 to</u> <u>(\$225,727,921)</u>	<u>\$0 to</u> <u>(\$225,727,921)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS*	<u>\$0 to</u> <u>(\$225,727,921)</u>	<u>\$0 to</u> <u>(\$225,727,921)</u>	<u>\$0 to</u> <u>(\$225,727,921)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL GOVERNMENT			
<u>Transfer in – to Hospitals (§191.1350) Increased reimbursement to hospitals for boarding DMH patients p. 3-4</u>	Unknown	Unknown	Unknown
<u>Costs – Hospitals (§191.1350) Increased expenditures related to extended boarding of DMH patients p. 3-4</u>	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Law enforcement agencies (§191.1350) Increased expenditures for staff and facilities changes p. 5-6</u>	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT*	(Unknown)	(Unknown)	(Unknown)
*Oversight assumes increased funding and increased costs for hospitals will exceed \$250,000 annually and net to zero. Oversight assumes increased costs to local law enforcement could exceed \$250,000 annually.			

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

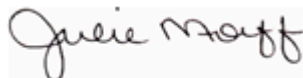
No employee or contractor of a licensed or registered health care facility shall be required to physically engage with a person exhibiting violent tendencies if there is a reasonable fear that such engagement may result in bodily harm to the employee or contractor.

A health care facility that violates the provisions of this section shall be subject to revocation or suspension of the facility's license or registration. Accrediting bodies that violate the provisions of this section shall not be recognized as valid accrediting bodies by any agency or department of this state. (§191.1350)


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

Department of Commerce and Insurance
Department of Corrections
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety
 Missouri Highway Patrol
 Missouri Veterans Commission
Department of Social Services
Office of Administration
Newton County Health Department
Phelps County Sheriff's Department
Kansas City Police Department
St. Louis County Police Department



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