

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5232H.011
 Bill No.: HB 2606
 Subject: Health Care; Health Care Professionals
 Type: Original
 Date: April 8, 2026

Bill Summary: This proposal creates provisions relating to the privacy rights of patients.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND

FUND AFFECTED	FY 2027	FY 2028	FY 2029
General Revenue*	(Could exceed \$213,901)	(Could exceed \$250,138)	(Could exceed \$254,488)
Total Estimated Net Effect on General Revenue	(Could exceed \$213,901)	(Could exceed \$250,138)	(Could exceed \$254,488)

* Oversight notes litigation exposure as described by OA could apply to the General Revenue Fund. It is assumed costs could exceed \$250,000 annually.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS

FUND AFFECTED	FY 2027	FY 2028	FY 2029
State Legal Expense*/**	\$0	\$0	\$0
College and University**	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Other/Variou State**	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

* Transfer-In and expenses net to zero.

** Oversight notes litigation exposure as described by OA could apply to the State Legal Expense fund, various other state funds and Colleges and Universities. It is assumed costs could exceed \$250,000 annually.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS

FUND AFFECTED	FY 2027	FY 2028	FY 2029
Federal Funds*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*Oversight notes litigation exposure as described by OA could apply to federal funds. It is assumed costs could exceed \$250,000 annually.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)

FUND AFFECTED	FY 2027	FY 2028	FY 2029
General Revenue	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 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 2027	FY 2028	FY 2029
Local Government*	(Unknown)	(Unknown)	(Unknown)

*Oversight notes litigation exposure as described by OA could apply to local governments.

FISCAL ANALYSIS

ASSUMPTION

§191.220 - Privacy Rights of Patients

Officials from the **Department of Mental Health (DMH)** state this proposal adds new section 191.220 related to the privacy rights of patients. This proposal specifies that “a patient retains ownership rights over the patient's health records. A health care provider is the custodian of the records but shall not disclose, transmit, or use a patient's health records without the patient's informed consent unless specifically authorized by state law”. Informed consent is defined as “a signed and dated written authorization by the patient, or the patient's legally authorized representative, specifying the purpose, scope, and recipients of the information being disclosed”.

The only exception to the informed consent is when a medical emergency exists and the neither the patient nor legal representative is able to provide to consent. A provider cannot condition treatment on the patient’s decision to grant or withhold consent. Subsection 191.220.4 specifically states that no patient health records, including any de-identified data or limited data set, can be used for research purposes unless the patient has given informed consent specifically authorizing such use; and also states that “blanket consents and opt-out mechanisms shall not satisfy this requirement”.

The DMH largely relies on HIPAA to frame how and when patient information can be shared. DMH uses a Notice of Privacy Practices (NPP) to outline how DMH uses and shares patient information. DMH consumers are given this document to read and sign. The NPP outlines generally how DMH uses and shares patient information for treatment, billing, and healthcare operations.

Based on the requirements established in this proposal, DMH would need to review and revise the departments’ rules, regulations, policies, and procedures related to patient records and sharing such information. DMH would need to develop new authorization forms and likely create multiple different forms to better ensure specific information is captured to meet the informed consent requirements. Staff training throughout DMH on the new requirements and procedures would be necessary.

DMH would require at least one new attorney to review and update the rules and regulations, and update DMH facilities and offices. Additionally, one new paralegal is needed to ensure compliance with this proposal.

The potential impact for this legislation for General Revenue is \$213,901 in FY27, \$250,138 in FY28, and \$254,487 in FY29.

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

Officials from the **Department of Health and Senior Services (DHSS)** state section 191.220.1(2) of the proposed legislation defines “health care provider” as it is defined in Section 376.1350, RSMo, which defines health care provider as “a health care professional or facility.”

Section 191.220.2 of the proposed legislation states that “a patient retains ownership rights over the patient’s health records. A health care provider is the custodian of the records but shall not disclose, transmit, or use a patient’s health records without the patient’s informed consent unless specifically authorized by state law.”

Section 191.220.3 of the proposed legislation prohibits a health care provider, or any person or entity receiving health records from a health care provider from releasing, disclosing, or sharing a patient’s health records without: (a) the informed consent of the patient or the patient’s legally authorized representative; (b) specific authorization in state law; or (c) a documented representation from another health care provider holding a valid informed consent under state law. The proposed section also allows a health care provider to disclose a patient’s health records during a medical emergency to the extent necessary for the immediate care and treatment of the patient; and prohibits a health care provider from conditioning treatment of a patient on the patient’s decision to grant or withhold consent for the release of health records.

Section 191.220.4 of the proposed legislation prohibits the release of patient health records, including any de-identified data or limited data sets, from being used for research purposes unless the patient has provided informed consent specifically authorizing such use. The Section further states that “blanket consents and opt-out mechanisms will not satisfy this requirement.”

Section 191.220.5 of the proposed legislation allows a patient whose rights have been violated under this Section to bring civil action for actual damages, injunctive relief, and reasonable attorney’s fees and court costs. A prevailing patient may also recover liquidated damages of no less than one thousand dollars (\$1,000) and up to ten thousand dollars (\$10,000) for each occurrence of violation.

The DHSS’ Division of Regulation and Licensure (DRL) is responsible for licensing and inspecting/surveying various health care facilities. Facility inspections/surveys can include review of current and/or closed patient/resident records. The Division may receive complaints for activities at licensed facilities. Any complaints received by DRL would be conducted within the normal ebb and flow of work scope.

In addition, the proposed legislation may prevent the Department from using Bureau of Emergency Medical Services (BEMS) patient care report data or Time Critical Diagnosis Program (TCD) data for research purposes, as patients are not asked for informed consent through the EMS patient care report data and TCD data.

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

Oversight assumes DHSS is provided with core funding to handle a certain amount of activity each year. Oversight assumes DHSS could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DHSS could request funding through the appropriation process.

Officials from the **Office of Administration (OA)** state section 191.220 has the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging violation of this provision 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 change will be subject to judicial construction; therefore, the cost impact to the state is unknown.

Oversight notes that a patient whose rights under the provisions of this bill are violated may bring a civil action for damages, injunctive relief, and reasonable attorney's fees and court costs. Additionally, a prevailing patient may also recover liquidated damages of no less than \$1,000 and up to \$10,000 for each occurrence of unauthorized disclosure or failure to obtain proper informed consent.

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. Oversight assumes the unknown litigation fiscal impact could exceed \$250,000 annually.

Oversight further assumes that local public health agencies, nursing homes and hospitals and other health care providers may also have to review and revise the rules, regulations, policies, and procedures related to patient records and sharing such information. They may also need to develop new forms to capture all necessary information to meet the informed consent requirements.

Additionally, health care facilities may incur costs related to civil actions should the provisions of this bill be violated. Therefore, Oversight assumes the unknown negative fiscal impact to health care agencies could exceed \$250,000.

Officials from the **Department of Commerce and Insurance, Department of Public Safety - Missouri Veterans Commission, Department of Social Services, Missouri Consolidated Health Care Plan, Missouri Department of Conservation, Missouri Department of Transportation (MoDOT)** and **Newton County Health 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.

Officials from the **Department of Public Safety - Missouri Highway Patrol** defer to the MoDOT for the potential fiscal impact of this proposal.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other local public health agencies, nursing homes and hospitals were requested to respond to this proposed legislation but did not. Upon the receipt of additional responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
GENERAL REVENUE			
<u>Cost – DMH (§191.220) p.3</u>			
Personal service	(\$120,000)	(\$146,880)	(\$149,818)
Fringe benefits	(\$75,491)	(\$91,747)	(\$92,929)
Equipment and expense	(\$18,410)	(\$11,511)	(\$11,741)
Total Costs - DMH	(\$213,901)	(\$250,138)	(\$254,488)
FTE Change - DMH	2 FTE	2 FTE	2 FTE
<u>Cost – (§191.220) Potential increase in Legal Expense Fund payments for increase in claims p.5</u>	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE	(Could exceed \$213,901)	(Could exceed \$250,138)	(Could exceed \$254,488)
Estimated Net FTE Change on General Revenue	2 FTE	2 FTE	2 FTE
STATE LEGAL EXPENSE FUND (1692)			
<u>Transfer In - (§191.220) From GR, Federal, and Other State Funds - potential increase in claims p.5</u>	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

<u>FISCAL IMPACT – State Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
<u>Transfer Out - (§191.220) Payment of discrimination claims p.5</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
COLLEGE AND UNIVERSITY FUNDS			
<u>Cost – Colleges & Universities (§191.220) Potential increase in claims p.5</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON COLLEGE AND UNIVERSITY FUNDS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
OTHER/VARIOUS STATE FUNDS			
<u>Cost – (§191.220) Potential increase in payments of claims to the Legal Expense Fund p.5</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON OTHER/VARIOUS STATE FUNDS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
FEDERAL FUNDS			
<u>Cost – (§191.220) Potential increase in payments of claims to the Legal Expense Fund p.5</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2027 (10 Mo.)	FY 2028	FY 2029
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost - Local Public Health Agencies, Nursing Homes and Hospitals (§191.220) Implementation of new provisions and potential increase in claims p.5</u>	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Unknown)	(Unknown)	(Unknown)

FISCAL IMPACT – Small Business

Due to the expenditures related to implementation and potential civil actions, a negative fiscal impact to small business health care clinics could be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill provides that a patient retains ownership rights over the patient's health records, and that while health care providers are custodians of the records, providers shall not disclose, transmit, or use a patient's records without the patient's informed consent, unless specifically authorized by state law, or without a documented representation from another health care provider holding a valid informed consent under state law.

A health care provider may disclose a patient's health records during a medical emergency to the extent necessary for the immediate care and treatment of the patient. A health care provider is prohibited from conditioning treatment of a patient on the patient's decision to grant or withhold consent for the release of his or her health records. The bill prohibits patient health records, including any deidentified data or limited data sets, from being used for research purposes unless the patient has provided informed consent specifically authorizing such use.

A patient whose rights under the provisions of this bill are violated may bring a civil action for damages, injunctive relief, and reasonable attorney's fees and court costs. Additionally, a prevailing patient may also recover liquidated damages of no less than \$1,000 and up to \$10,000 for each occurrence of unauthorized disclosure or failure to obtain proper informed consent.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements. It will require additional rental space.

SOURCES OF INFORMATION

Department of Commerce and Insurance
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety –
 Missouri Highway Patrol
 Missouri Veterans Commission
Department of Social Services
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Missouri Department of Transportation
Newton County Health Department



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