

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5988-04  
Bill No.: SCS for HCS for HB 2402  
Subject: Health and Senior Services Department; Hospitals  
Type: Original  
Date: May 5, 2016

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Bill Summary: This proposal modifies provisions relating to hospital regulations and certificates of need.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(Up to \$343,332)	(Up to \$385,927)	(Up to \$355,815)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Up to \$343,332)</b>	<b>(Up to \$385,927)</b>	<b>(Up to \$355,815)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
University	\$0 or (Less than \$100,000)	\$0 or (Less than \$100,000)	\$0 or (Less than \$100,000)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 or (Less than \$100,000)</b>	<b>\$0 or (Less than \$100,000)</b>	<b>\$0 or (Less than \$100,000)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Federal *	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Income and expenses net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	0.5	0.5	0.5
Federal	0.5	0.5	0.5
<b>Total Estimated Net Effect on FTE</b>	<b>1</b>	<b>1</b>	<b>1</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Department of Health and Senior Services (DHSS)** state section 197.321 of the proposed legislation imposes a moratorium for issuance of CON's for any additional beds between August 28, 2016 and December 31, 2019 with the exceptions specified in the act. This requirement could reduce or eliminate the applications for a Certificate of Need (CON) from new facilities. The DHSS estimates, based on a random sampling of past proposals, that 10 percent of the facilities would meet the occupancy requirement and would be exempt from the proposed legislation. The total amount of CON application fees received for new facilities for the past three years is \$199,840 in FY 2013; \$301,776 in FY 2014; and \$506,190 in FY 2015 for an average of \$335,935 per year. DHSS estimates 90 percent of these fees would be part of the moratorium and there would be an average of \$302,342 annual reduction to General Revenue.

Section 197.322 of the proposed legislation creates the Missouri Task Force on Certificate of Need within the Department of Social Services. DHSS assumes no fiscal impact for this section.

**Oversight** will provide the loss of CON fees as up to the amount provided by DHSS.

Officials from the **Department of Social Services (DSS), MO HealthNet Division (MHD)** state this legislation requires the Department of Health and Senior Services (DHSS) to promulgate rules for the construction and renovation of hospitals that comply with federal Medicare regulations.

It requires the regulations to include life safety code standards that exclusively reflect the standards imposed by the federal Medicare program under Title XVIII of the Social Security Act and conditions for participation. The bill further states that the regulations shall not require hospitals to meet the standards contained in the Facility Guidelines Institute, but the bill allows hospitals which comply with the 2010 or later versions of the FGI not to comply with inconsistent regulations. The bill authorizes DHSS to waive the requirements in certain conditions.

§197.315 requires all state-operated facilities to obtain a certificate of need unless the facility is a DMH state-operated psychiatric facility. In addition, it also specifies what equipment can be purchased without a Certificate of Need (CON). MHD assumes no change to hospital reimbursements or Federal Reimbursement Allowance (FRA) collections.

§197.321 places a moratorium on increasing the number of nursing facility beds until December 31, 2019. Also, for the duration of the moratorium, the committee shall not approve any change in owner or operator for a CON issued prior to enactment of this legislation. While this bill could reduce the number of empty beds in the market, there is no language requiring MHD to rebase rates. Therefore, there is no fiscal impact to the nursing facility rates in MHD.

ASSUMPTION (continued)

It further establishes an eleven member task force within the DSS, entitled the "Missouri Task Force on Certificate of Need". The committee is tasked with the following:

- 1) Review other state CON practices for long-term care facilities and consider how CON supports or detracts from quality care, cost containment, access, choice, occupancy, and accountability;
- 2) Review current occupancy and utilization of long-term care beds compared to other states;
- 3) Evaluate the relationship between CON laws and the MO HealthNet reimbursement rate in the long-term care marketplace;
- 4) Develop appropriate factors to determine the need for new or additional beds; and
- 5) Propose goals, objectives, strategies, and tactics to end or improve the CON process.

Subject to appropriations, members may be reimbursed for actual and necessary expenses incurred and the task force may engage the services of a consulting firm with experience in long-term care.

MHD assumes the task force will contract with a consulting firm to gather other state information and guide the members in a process to revise the current CON process. MHD assumes 25% of a consultant would be needed annually or 520 hours (40 hrs/wk \* 52 weeks \* 25%). Based on known hourly fees for existing MHD consultant work, MHD assumes an hourly rate of \$200 for a cost of \$104,000 per year in consulting fees. Because the committee will meet at least six times per year, MHD further assumes one additional staff at a Management Analyst Specialist II level will be needed to serve as the liaison between the consultant, department, and task force, provide data and policy analysis, and to provide general support to the membership. Because consulting fees are estimated to cost \$200/hour, MHD believes resources can be best utilized by adding an FTE to serve as a project manager and team leader of the CON task force while the consultant is used in a limited capacity for their expertise. MHD foresees this position as guiding the task force through their review of the CON process in Missouri and other states. Duties will also include planning, organizing, leading, and keeping the project on track for completion. MHD estimates additional funds will be needed to reimburse members for actual and necessary expenses incurred (i.e. travel, lodging, meals, etc.). It is assumed \$11,880 will be needed annually for this purpose (\$180/member per meeting \* 11 members \* 6 meetings per year). MHD assumes the first task force meeting would occur in January 2017 and the task force would cease its work before January 2019.

ASSUMPTION (continued)

FY17 (6 months): \$99,008 (\$41,840 GR; \$57,168 Federal Funds);  
FY18: \$186,195 (\$77,770 GR; \$108,425 Federal Funds); and,  
FY19: (6 months): \$93,446 (\$39,059 GR; \$54,387 Federal Funds).

**Oversight** assumes the DSS does not need additional rental space for 1 FTE.

In response to similar legislation (HCS HB 2441), officials from the **University of Missouri Health Care** stated they had reviewed the proposed legislation and determined that, as written, it will create additional expenses in excess of \$100,000 annually.

**Oversight** notes the provisions at section 197.315.10 provides that the Certificate-of-Need (CON) “application fee is one thousand dollars, or one-tenth of one percent of the total cost of the proposed project...”. In addition, based on available information, it appears the provisions of this proposal would only apply to the University of Missouri Health Care and the Women’s and Children’s Hospital. For fiscal note purposes only, Oversight is presenting the University of Missouri Health Care and Women’s and Children’s Hospital costs under “University Funds”. This is not intended to indicate that the Health Care System’s costs are actual costs to the University.

**Oversight** assumes the University Health Care System would not plan to purchase additional equipment or build new hospitals on an annual basis in an amount exceeding \$100,000,000 to incur costs greater than \$100,000 annually in Certificate of Need fees (\$100,000,000 project costs X 0.001 = \$100,000). Therefore, Oversight will present the University Health Care System’s proposed costs as \$0 or less than \$100,000 annually.

Officials from the **Office of the Governor (GOV)** state section 197.322 creates the Missouri Task Force on Certificate of Need that is comprised of 11 members of which five members shall be appointed by the GOV. There should be no added cost to the GOV as a result of this proposal. However, if additional duties are placed on the office related to appointments in other TAFP legislation, there may be the need for additional staff resources in future years.

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.

Officials from the **Department of Mental Health** and the **Missouri Senate** each assume the proposal would not fiscally impact their respective agencies.

**Oversight** assumes the proposal would have no fiscal impact on the Missouri House of Representatives.

ASSUMPTION (continued)

In response to similar provisions containing rules language, officials from the **Office of the Secretary of State (SOS)** have stated 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 \$2,500. 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 request funding through the appropriation process.

<u>FISCAL IMPACT - State</u>	FY 2017	FY 2018	FY 2019
<u>Government</u>			

**GENERAL REVENUE FUND**

Income - DHSS (§197.315)

Certificate-of-Need application fees	\$0 or Less than \$100,000	\$0 or Less than \$100,000	\$0 or Less than \$100,000
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Costs - DSS (§197.322)

Personal service	(\$10,485)	(\$21,180)	(\$10,696)
Fringe benefits	(\$5,388)	(\$10,832)	(\$5,445)
Equipment and expense	(\$3,812)	(\$1,403)	(\$721)
Meeting and consulting expenses	<u>(\$21,305)</u>	<u>(\$42,612)</u>	<u>(\$21,305)</u>
Total <u>Costs</u> - DSS	<u>(\$40,990)</u>	<u>(\$76,027)</u>	<u>(\$38,167)</u>
FTE Change - DSS	0.5 FTE	0.5 FTE	0.5 FTE

Loss - DHSS (§197.321)

Reduction in CON fees	<u>(Up to \$302,342)</u>	<u>(Up to \$309,900)</u>	<u>(Up to \$317,648)</u>
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**ESTIMATED NET EFFECT ON  
THE GENERAL REVENUE  
FUND**

<b><u>(Up to \$343,332)</u></b>	<b><u>(Up to \$385,927)</u></b>	<b><u>(Up to \$355,815)</u></b>
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Estimated Net FTE Change on the  
General Revenue Fund

0.5 FTE	0.5 FTE	0.5 FTE
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**UNIVERSITY FUNDS**

Costs - State-Operated Hospitals  
(§197.315)

Certificate-of-Need application fees	<u>\$0 or (Less than \$100,000)</u>	<u>\$0 or (Less than \$100,000)</u>	<u>\$0 or (Less than \$100,000)</u>
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**ESTIMATED NET EFFECT ON  
UNIVERSITY FUNDS**

<b><u>\$0 or (Less than \$100,000)</u></b>	<b><u>\$0 or (Less than \$100,000)</u></b>	<b><u>\$0 or (Less than \$100,000)</u></b>
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<u>FISCAL IMPACT - State</u>	FY 2017	FY 2018	FY 2019
<u>Government</u>			

**FEDERAL FUNDS**

<u>Income - DSS (\$197.322)</u>			
Increase in reimbursements	\$40,991	\$106,683	\$53,497
<u>Costs - DSS (\$197.322)</u>			
Personal service	(\$10,485)	(\$21,180)	(\$10,696)
Fringe benefits	(\$5,388)	(\$10,832)	(\$5,445)
Equipment and expense	(\$3,812)	(\$1,403)	(\$721)
Meeting and consulting expenses	(\$36,635)	(\$73,268)	(\$36,635)
Total Costs - DSS	(\$40,991)	(\$106,683)	(\$53,497)
FTE Change - DSS	0.5 FTE	0.5 FTE	0.5 FTE

**ESTIMATED NET EFFECT ON  
FEDERAL FUNDS**

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Estimated Net FTE Change on Federal Funds	0.5 FTE	0.5 FTE	0.5 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2017	FY 2018	FY 2019
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act requires the Department of Health and Senior Services to promulgate regulations for the construction and renovation of hospitals that will include standards that reflect the Life Safety Code standards imposed under Medicare. Hospitals shall not be required to meet the standards contained in the Facility Guidelines Institute for the Design and Construction of Health Care Facilities, but any hospital that complies with the 2010 or later version of such guidelines shall not be required to comply with any inconsistent or conflicting regulations.



FISCAL DESCRIPTION (continued)

The Department may waive enforcement of these standards for licensed hospitals if the department determines that: (1) compliance with them would result in unreasonable hardship for the facility and the health and safety of hospital patients would not be compromised by such a waiver; or (2) the hospital used other equivalent standards. Any conflicting regulations promulgated by the Department that are currently in existence and that conflict with the standards promulgated pursuant to this act shall lapse on and after January 1, 2018. Regulations developed pursuant to this act may incorporate by reference later additions or amendments to such rules, regulations, standards, or guidelines as needed to consistently apply current standards of safety and practice.

This act also requires hospitals operated and licensed by the state, with the exception of Department of Mental Health-operated psychiatric hospitals, to obtain a certificate of need and to comply with statutes relating to certificates of need. However, no certificate of need shall be required for the purchase and operation of medical equipment used by an academic health center operated by the state in furtherance of research or instruction.

Under this act, there shall be a moratorium on the issuance of certificates of need by the Missouri Health Facilities Review Committee for new or additional beds in any residential care, assisted living, intermediate care, or skilled nursing facility from August 28, 2016, to December 31, 2019. The moratorium shall not apply to the following: (1) bed additions, expansions, transfers, relocations, or replacements; (2) renovation, repair, or replacement of existing facilities and beds on a single campus; (3) reallocation of licensed beds among licensed facilities with common ownership or affiliated operators on a single campus; (4) construction of new or additional beds at any facility as proposed in a letter of intent before June 1, 2016; and (5) construction of new or additional beds at any facility when the average occupancy of all facilities in the same category within 15 miles of the project site has been equal to or greater than 85% during the most recent four quarters according to the Committee's occupancy data.

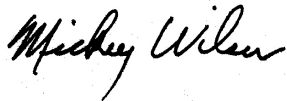
This act creates the Missouri Task Force on Certificate of Need. The act specifies the task force members, rules, and duties. The task force's goal is to develop a comprehensive proposal to reform Missouri's certificate of need law as applied to long-term care facilities. The task force shall review long-term care facility certificates of need in other states and current occupancy, utilization rates, and staffing, among other specified duties. On or before December 31, 2018, the task force shall submit a report on its findings to the Governor and General Assembly. The task force shall expire on January 1, 2019, or upon submission of the report, whichever is earlier.

This act contains an emergency clause for certain provisions.

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 Health and Senior Services  
Department of Mental Health  
Department of Social Services -  
    MO HealthNet Division  
Joint Committee on Administrative Rules  
Missouri Senate  
Office of Secretary of State  
University of Missouri



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