

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1178-04  
Bill No.: HB 458  
Subject: Drugs and Controlled Substances; Health Care; Pharmacy  
Type: Original  
Date: March 4, 2009

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Bill Summary: Establishes various requirements for the management of pharmacy benefits.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
General Revenue	(Could exceed \$3,556,238)	(Could exceed \$4,267,485)	(Could exceed \$4,267,485)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Could exceed \$3,556,238)</b>	<b>(Could exceed \$4,267,485)</b>	<b>(Could exceed \$4,267,485)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>
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FUND AFFECTED	FY 2010	FY 2011	FY 2012
Insurance Dedicated	(\$53,194)	(\$62,459)	(\$64,049)
Conservation Commission	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Road	(\$120,1526 to \$240,350)	(\$144,183 to \$288,419)	(\$144,183 to \$288,419)
Patrol Highway	(\$35,890 to \$71,793)	(\$43,068 to \$86,151)	(\$43,068 to \$86,151)
Other	(Could exceed \$636,938)	(Could exceed \$764,326)	(Could exceed \$764,326)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Could exceed \$1,002,275)</b>	<b>(Could exceed \$1,201,355)</b>	<b>(Could exceed \$1,202,945)</b>

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Federal	(Could exceed \$1,114,642)	(Could exceed \$1,337,570)	(Could exceed \$1,337,570)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Could exceed \$1,114,642)</b>	<b>(Could exceed \$1,337,570)</b>	<b>(Could exceed \$1,337,570)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
 This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012

Insurance Dedicated	1	1	1
<b>Total Estimated Net Effect on FTE</b>	<b>1</b>	<b>1</b>	<b>1</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Local Government</b>	<b>(Unknown exceeding \$1,200,000)</b>	<b>(Unknown exceeding \$1,200,000)</b>	<b>(Unknown exceeding \$1,200,000)</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

HW-C:LR:OD

Officials from the **Office of State Courts Administrator** and **Department of Health and Senior Services** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Mental Health (DMH)** state this proposal establishes requirements for communication by entities other than a primary health care provider to encourage patients/consumers to switch from their current medication to a different medication. It does not appear that the proposal would place any direct requirements or obligations on the DMH that would result in a direct fiscal impact.

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal is less than \$2,500. The SOS realizes this is a small amount and does not expect that additional funding would be required to meet these costs. The SOS 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 that the office can sustain within its 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.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Public Safety (DPS) - Directors' Office** state they are unable to determine the fiscal impact of the proposal and defer to the Missouri Consolidated Health Care Plan for response regarding the potential fiscal impact.

Officials from the **DPS - Missouri State Highway Patrol (MHP)** defer to the Missouri Department of Transportation for response regarding the potential fiscal impact of this proposal on their organization.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state they are requesting one (1) Investigator II FTE (\$35,962 annually) to handle consumer complaints and investigations on switch communication grievances. The drafting of rules and creation of the switch communication form can be handled with current staffing levels.

#### ASSUMPTION (continued)

There will be an unknown increase in the cost of the DIFP's Independent Review Organization (IRO) contract to make determinations on formulary changes and impact on an individual's health. Should the cost increase beyond what the DIFP's current expense and equipment (E&E)

appropriation can cover, the department would request additional E&E appropriation through the budget process.

Officials from the **Department of Social Services - MO HealthNet Division (MHD)** state the proposal adds five (5) new sections to Chapter 376 which deals with life, health and accident insurance. Therefore, the MHD assumes that the provisions of this proposal do not apply to MHD. However, if these sections did apply to MHD there would be a significant, unknown cost greater than \$50,000,000.

Officials from the **Missouri Department of Conservation (MDC)** state the proposed legislation would have a fiscal impact on MDC funds. Section 376.389.2 of the proposal would negatively impact the fund. The exact amount of impact is unknown but is expected to be less than \$100,000 annually.

Officials from the **Missouri Department of Transportation (DOT)** state the department anticipates an unknown negative fiscal impact from the legislation.

Independent Pharmaceutical Consultants, Inc. (IPC) reviewed the legislation on behalf of the DOT/Missouri State Highway Patrol (MHP) Medical Plan. According to IPC's review, several sections of the proposal would impact the Plan; the biggest impact to the DOT/MSHP Medical Plan lies in section 376.389. This section states that the Plan could not establish different coverage levels for one drug or group of drugs from other drugs or group of drugs. The Plan designed several coverage rules or benefit designs that allows the Plan to cover certain drugs for their intended use and according to established clinical guidelines so the Plan can afford to cover these drugs under the benefit. In addition, this is a practice that is allowed in the federal Medicare program. If the DOT were not allowed to take advantage of these industry practices, the Plan and member cost would generally increase, and specifically it would also affect DOT's ability to continue to manage the cost of the Medicare retiree plan.

It is difficult to estimate the actual cost to the DOT benefit since DOT is not sure of the cost of the benefit if it were NOT allowed to do things like this, but it might be as much as 1% to 2% of the DOT's total drug spend which is approximately \$267,500 to \$535,100 each year on an ongoing basis. However, this is a very rough estimate. The Plan is comprised of 23% Patrol participation and 77% DOT participation; therefore, the impact to MSHP would range from \$61,525 to \$123,073 per calendar year and the impact for DOT would be \$205,975 to \$412,027 ASSUMPTION (continued)

per calendar year. Of this cost, the participants of the Plan would pay 30% coinsurance, which could greatly increase their financial liability. The financial impact does not take into account any additional medical costs associated with adverse reactions, etc. if the controls currently in

place are dismantled as stated by IPC. Also, with the additional costs to the prescription drug plan, DOT/MHP member rates would need to be increased to ensure that the plan would have the required funds to support the additional costs.

Section 376.1460 proposes that a patient, plan sponsor, provider, employer, will be notified if there is a proposed change in a prescription. The patient will be notified of why the switch is proposed and his/her rights for refusing the change, identifying both the original and the proposed medications, explain the cost sharing changes, given a copy of "switch communication," and an explanation of any financial incentives that maybe provided to the prescribing health care professional. The plan sponsor will be informed of the cost or the recommended medication and the originally prescribed medication. Any communications to providers will show the financial incentives to benefits, and direct the prescriber to tell the patient of the same. Prescribing practitioners will be sent all switch communication. Insurance payers (employers as well) will be notified of medication switches, including health incentives.

The section above would most likely impact the DOT/MSHP Medical Plan because there is a potential that a patient, if allowed to choose the prescription, would choose a more expensive one, which will increase the cost to the medical plan. It may also increase the amount of prescriptions for each patient, based on the fact that a patient does not have the expertise to prescribe a medication and would increase the prescriptions to obtain the desired results.

Officials from the **Missouri Consolidated Health Care Plan (HCP)** state the HCP has consistently worked to increase generic utilization and the use of lower-cost therapeutically equivalent prescription drugs by the members of the plan. HCP's 2008 generic fill rate was 74.7%, up from 70.7% in 2007. This 4% increase from 2007 to 2008 saved the state \$6,538,038. As well, actual member out-of-pocket savings due to increased generic fill was \$2,277,858 in 2008. For each 1% decrease in generic utilization, the state will incur an additional 1.9% increase in cost. For 2008, a 1% decrease in generic utilization would cost HCP \$1,472,297.

The HCP utilizes several different clinical programs in order to achieve these goals. These programs include Prior Authorization, Step Therapy and Quantity Level Limits. In 2008, HCP's Prior Authorization program saved the plan \$1,358,355; the Step Therapy program saved the plan \$4,195,458; and the Quantity Level Limit programs saved the plan \$807,568.

#### ASSUMPTION (continued)

With thousands of HCP members participating in step therapy, prior authorization and generic substitution programs each year, costs associated with "switch communication" would be passed directly to HCP by the Pharmacy Benefit Manager (PBM). In 2008, physicians modified their

written prescriptions 1,582 times for Prior Authorization and 4,959 times for Step Therapy. Assuming three separate pieces of communication would be sent for each instance a prescription is modified by a physician, the HCP would incur over \$8,000 each year in postage costs.

Using the assumptions above, this legislation would require at a minimum, an additional appropriation to FY10 of \$6,369,381 and each subsequent year thereafter.

Officials from the **University of Missouri (UM)** state the proposal will have an unknown impact exceeding \$1.2 million annually.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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**GENERAL REVENUE FUND**

Costs - HCP

Increase in employee health insurance premiums	(Could exceed \$3,556,238)	(Could exceed \$4,267,485)	(Could exceed \$4,267,485)
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**ESTIMATED NET EFFECT ON  
GENERAL REVENUE FUND**

<u>(Could exceed \$3,556,238)</u>	<u>(Could exceed \$4,267,485)</u>	<u>(Could exceed \$4,267,485)</u>
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**INSURANCE DEDICATED FUND**

Costs - DIFP

Personal service (1.0 FTE)	(\$30,718)	(\$37,783)	(\$38,727)
Fringe benefits	(\$14,938)	(\$18,374)	(\$18,833)
Expense and equipment	<u>(\$7,538)</u>	<u>(\$6,302)</u>	<u>(\$6,489)</u>
Total <u>Costs</u> - DIFP	<u>(\$53,194)</u>	<u>(\$62,459)</u>	<u>(\$64,049)</u>
FTE Change - DIFP	1.0 FTE	1.0 FTE	1.0 FTE

**ESTIMATED NET EFFECT ON  
INSURANCE DEDICATED FUND**

<u>(\$53,194)</u>	<u>(\$62,459)</u>	<u>(\$64,049)</u>
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Estimated Net FTE Change for Insurance  
Dedicated Fund

1.0 FTE	1.0 FTE	1.0 FTE
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FISCAL IMPACT - State Government

FY 2010 (10 Mo.)	FY 2011	FY 2012
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**CONSERVATION COMMISSION  
FUND**

Costs - MDC

Increase in state share of employee insurance costs	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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**ESTIMATED NET EFFECT ON CONSERVATION COMMISSION FUND**

<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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**ROAD FUND**

Costs - DOT

Increase in state share of employee insurance costs	<u>(\$120,152 to \$240,350)</u>	<u>(\$144,183 to \$288,419)</u>	<u>(\$144,183 to \$288,419)</u>
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**ESTIMATED NET EFFECT ON ROAD FUND**

<u>(\$120,152 to \$240,350)</u>	<u>(\$144,183 to \$288,419)</u>	<u>(\$144,183 to \$288,419)</u>
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**PATROL HIGHWAY FUND**

Costs - DOT

Increase in state share of employee insurance costs	<u>(\$35,890 to \$71,793)</u>	<u>(\$43,068 to \$86,151)</u>	<u>(\$43,068 to \$86,151)</u>
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**ESTIMATED NET EFFECT ON PATROL HIGHWAY FUND**

<u>(\$35,890 to \$71,793)</u>	<u>(\$43,068 to \$86,151)</u>	<u>(\$43,068 to \$86,151)</u>
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**OTHER STATE FUNDS**

Costs - HCP

Increase in state share of employee insurance costs	<u>(Could exceed \$636,938)</u>	<u>(Could exceed \$764,326)</u>	<u>(Could exceed \$764,326)</u>
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**ESTIMATED NET EFFECT ON OTHER STATE FUNDS**

<u>(Could exceed \$636,938)</u>	<u>(Could exceed \$764,326)</u>	<u>(Could exceed \$764,326)</u>
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FISCAL IMPACT - State Government

FY 2010 (10 Mo.)	FY 2011	FY 2012
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**FEDERAL FUNDS**

Costs - HCP



Increase in state share of employee insurance costs	<u>(Could exceed \$1,114,642)</u>	<u>(Could exceed \$1,337,570)</u>	<u>(Could exceed \$1,337,570)</u>
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<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>(Could exceed \$1,114,642)</u></b>	<b><u>(Could exceed \$1,337,570)</u></b>	<b><u>(Could exceed \$1,337,570)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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**ALL LOCAL GOVERNMENTS**

Costs - University of Missouri

Increase in operating costs related to employee insurance	(Unknown exceeding \$1,200,000)	(Unknown exceeding \$1,200,000)	(Unknown exceeding \$1,200,000)
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Costs - All Local Governments

Increase in share of employee insurance costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<b>ESTIMATED NET EFFECT ON ALL LOCAL GOVERNMENTS</b>	<b><u>(Unknown exceeding \$1,200,000)</u></b>	<b><u>(Unknown exceeding \$1,200,000)</u></b>	<b><u>(Unknown exceeding \$1,200,000)</u></b>
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FISCAL IMPACT - Small Business

This proposal could directly impact small businesses if insurers raised the insurance premiums paid by small businesses for employees.

FISCAL DESCRIPTION

This proposal establishes regulations regarding pharmacy benefit managers. In its main provisions, the proposal: (1) Requires pharmacy benefit managers to disclose to the covered person or entity all information pertaining to individual claims, along with an itemized invoice of

the actual amounts paid to each pharmacist and pharmacy; (2) Prohibits pharmacy benefit managers from enrolling pharmacies in contracts or modifying an existing contract without a signed affirmation from the pharmacy or pharmacist, from requiring pharmacies or pharmacists from participating in a contract in order to participate in another, and from discriminating between pharmacies or pharmacists on the basis of co-payments or days of supply; (3) Requires pharmacy benefit managers to use the same National Drug Code price when calculating the reimbursement to the dispensing pharmacy; (4) Requires prescriptions or modifications to a

prescription to remain with the original pharmacy within the pharmacy benefit manager's network and not be reassigned to a different pharmacy; (5) Prohibits health benefit plans which provide prescription coverage from reducing, limiting, or denying coverage for any drugs in certain situations; (6) Specifies that an insurer is allowed to make uniform changes in its benefit design that apply to all covered drugs, uniformly remove a drug from the formulary list for all insureds, or increase cost-sharing obligations only due to a percentage co-insurance payment that necessarily increases with an increase in the underlying drug prices; (7) Requires all switch communications to clearly identify the originally prescribed medication and disclose any financial interest that the health care insurer, pharmacy benefit manager, or prescribing physician has in the patient's decision to switch medications. The patient must also be advised of his or her rights regarding the proposed change and any cost-sharing changes for which he or she is responsible. A copy of any switch communication must also be sent to the prescribing practitioner. Any person who issues or delivers or causes to be issued or delivered a switch communication that has not been approved, provides a misrepresentation or false statement in a switch communication, or commits any other material violation of these provisions will be subject to a fine of up to \$25,000; and (8) Allows the prescribing physician to override any step therapy or fail first protocol when the treatment has been ineffective in treating the patient's disease or medical condition or based on sound clinical evidence and medical and scientific evidence is expected to be ineffective or is likely to cause an adverse reaction or other harm. The duration of any step therapy or fail first protocol cannot last longer than 14 days. For medications with no generic equivalent and for which the prescribing physician feels there is no appropriate therapeutic alternative, the health carrier or pharmacy benefit manager is required to provide access to medications labeled by the United States Food and Drug Administration without restriction.

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

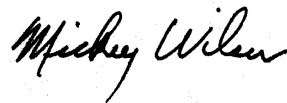
#### SOURCES OF INFORMATION

Office of Attorney General  
Office of State Courts Administrator

HW-C:LR:OD

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Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Health and Senior Services  
Department of Social Services  
Missouri Department of Transportation  
Department of Public Safety -  
    Director's Office  
    Missouri State Highway Patrol  
Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
Office of Secretary of State  
University of Missouri

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
March 4, 2009