

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1911-04
Bill No.: HCS for HB 732
Subject: Administrative Law; Boards, Commissions, Committees, Councils; Health Care Professionals; Physicians
Type: Original
Date: April 7, 2011

Bill Summary: Modifies disciplinary and administrative procedures for professions and businesses licensed under the division of Professional Registration, including those licensed by the Board of Registration for the Healing Arts.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Unknown greater than \$1,540,233)	(Unknown greater than \$832,848)	(Unknown greater than \$841,113)
Total Estimated Net Effect on General Revenue Fund	(Unknown greater than \$1,540,233)	(Unknown greater than \$832,848)	(Unknown greater than \$841,113)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Board of Healing Arts	(\$105,173)	(\$124,961)	(\$127,639)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$105,173)	(\$124,961)	(\$127,639)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	9	9	9
Board of Healing Arts Fund	2	2	2
Total Estimated Net Effect on FTE	11	11	11

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).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Social Services and Department of Public Safety (DPS) - Missouri State Highway Patrol** assume the proposal would have no fiscal impact on their agencies.

Officials from the **DPS - Director's Office** assume any costs associated with this proposal can be absorbed with existing resources.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources. If there is a significant increase in the number of referrals, the AGO may seek additional appropriation.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY 10 average of \$16.397 per offender, per day, or an annual cost of \$5,985 per inmate) or through supervision provided by the Board of Probation and Parole (FY 10 average of \$3.92 per offender, per day, or an annual cost of \$1,431 per offender). The DOC assumes the narrow scope of the crime will not encompass a large number of offenders and the low felony status enhances the possibility of plea-bargaining or imposition of a probation sentence. The probability also exists that offenders would be charged with a similar, but more serious offense, or that sentences may run concurrent to one another. Therefore, supervision by the DOC through probation would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Department of Mental Health (DMH)** assume state operated hospitals' initial set-up of records and monthly maintenance and logging of activity would be required; however, this cost should be minimal. The DMH assumes the proposal would have no fiscal impact on their department.

Officials from the **Office of Secretary of State (SOS)** state authority is given to the Department of Health and Senior Services and the Division of Professional Registration (licensing boards) to promulgate rules. These rules will be printed by the Administrative Rules Division in the Missouri Register and the Code of State Regulations. Based on experience with other

ASSUMPTION (continued)

departments, the rules, regulations, and forms issued by the Department of Health and Senior Services and the Division of Professional Registration (licensing boards) could require as many as 60 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes, and the like are not repeated in the Code. These costs are estimated. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27. The actual cost could be more or less than the numbers given but is expected to be approximately \$3,690 [(60 pages X \$27) + (90 pages X \$23)]. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Office of State Public Defender (SDP)** state the SPD cannot assume existing staff will be able to provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of monitoring and dispensing drugs.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. **Oversight** assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** state the proposal will increase enforcement authority for the Board of Registration for the Healing Arts and allow the board to resolve cases in a more timely manner. The board believes it will need an additional legal counsel (\$54,080 annually) and an office support assistant (\$21,984 annually) to accomplish the duties of the proposal.

Officials from the **Department of Health and Senior Services (DHSS)** state for section 195.450 through Section 195.465: One Health and Senior Services Manager (Band 1) will be needed to perform the following duties:

- Draft a Request for Proposal to solicit bids for the required database. Once the contract is awarded, this individual will be needed on an ongoing basis to monitor the database contract and program, maintain ongoing communication with professional organizations regarding compliance with reporting requirements, and other state and local agencies and the public regarding the program;

ASSUMPTION (continued)

- Coordinate with investigative management of the BNDD for enforcement activities and with law enforcement and regulatory agencies of Missouri and other states for sharing data and tracking outcomes;
- Develop rules, policies, and procedures pertaining to reporting requirements by dispensers and how data is accessed by authorized parties; provide technical assistance to program participants on matters relating to the program;
- Supervise other program staff;
- Design and prepare program data reports and review data collected to determine trends;
- Provide educational programs regarding the Prescription Drug Monitoring Program required in Section 195.468; and
- Draft the reports to the General Assembly regarding the pilot project on prescription fraud (Section 195.471).

One Senior Office Support Assistant (Keyboarding) will:

- Provide clerical support to the program;
- Respond to inquiries and requests for database reports received;
- Work with other agencies and the public to coordinate data sharing;
- Assist practitioners in obtaining access to the reporting subsystem of the program
- Generate and provide reports as requested by authorized individuals and agencies that cannot access this information via the Internet, and
- Respond to telephone inquiries regarding the program as well as answering the toll-free number established for reporting prescription fraud.

One Investigative Manager (Band 1) will:

- Review database information;
- Assign and supervise investigations;
- Assist the manager in operating the database;
- Supervise investigative staff; and
- Assist the manager in providing the required educational courses (Section 195.468).

Three Investigator II positions will be needed to respond to complaints and conduct investigations.

An unknown, greater than \$1,000,000 amount of support from ITSD will be needed to assist DHSS to develop or purchase, and maintain a Prescription Drug Monitoring Program for the monitoring of prescribing and dispensing of all schedule II, III, IV, and V controlled substances, except schedule V controlled substances containing any detectable amount of pseudoephedrine, by all professionals licensed to prescribe or dispense such substances in this state. ITSD assumes a one-time unknown cost, greater than \$1,000,000 to establish the system and on-going costs for updating and maintaining the online system after the first year of unknown, greater than \$200,000.

ASSUMPTION (continued)

Section 195.453.5: The DHSS has no means of determining the costs associated with the requirement that the department reimburse each dispenser for the fees and other direct costs of transmitting the information required by the section and assumes an unknown fiscal impact.

Section 195.471: Since a database system has already been developed and implemented for the reporting of pseudoephedrine purchases, DHSS has assumed no cost in the fiscal note computations related to the requirement for an electronic logbook.

Section 195.474: The toll-free hotline will have a one-time setup fee of \$100 with a \$.07 charge per minute. There will be an estimated 1,000 calls per year at an average of 5 minutes each. (1,000 x 5 = 5,000 x .07 = \$350 per year).

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** state AHC hears complex cases, including tax and professional licensing cases. A recent case involving the discipline of a neurosurgeon involved 12 days of hearing, 2,223 pages of transcript, and 18 depositions comprised of 1,326 pages of additional testimony with attending exhibits. The AHC is requesting two attorneys and a paralegal to meet the 120 day deadline for delivery of decisions. Expenditures include equipment/furniture for offices, computers and Westlaw expenses.

Officials from the **Office of Prosecution Services (OPS)** did not respond to **Oversight's** request for a statement of fiscal impact. However, in a previous version of this legislation, officials from the OPS assumed the proposal would have no fiscal impact on their organization.

Officials from the **Bates County Memorial Hospital, Cedar County Memorial Hospital, Cooper County Memorial Hospital, Putnam County Memorial Hospital, Washington County Memorial Hospital** and the **Excelsior Springs Medical Center** did not respond to **Oversight's** request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
GENERAL REVENUE FUND			
<u>Costs - AHC</u>			
Personal service costs (3 FTE)	(\$127,420)	(\$155,141)	(\$157,424)
Fringe benefits	(\$66,692)	(\$81,201)	(\$82,396)
Equipment and expense	<u>(\$11,310)</u>	<u>(\$7,992)</u>	<u>(\$7,992)</u>
Total <u>Costs</u> - AHC	<u>(\$205,422)</u>	<u>(\$244,334)</u>	<u>(\$247,812)</u>
FTE Change - AHC	3.0 FTE	3.0 FTE	3.0 FTE
<u>Costs - DHSS</u>			
Personal Services (6 FTE)	(\$177,380)	(\$214,985)	(\$217,134)
Fringe Benefits	(\$93,018)	(\$112,738)	(\$113,865)
Equipment and Expense	(\$64,413)	(\$60,791)	(\$62,302)
Program Costs	<u>(Unknown greater than \$1,000,000)</u>	<u>(Unknown greater than \$200,000)</u>	<u>(Unknown greater than \$200,000)</u>
Total <u>Costs</u> - DHSS	<u>(Unknown greater than \$1,334,811)</u>	<u>(Unknown greater than \$588,514)</u>	<u>(Unknown greater than \$593,301)</u>
FTE Change - DHSS	6.0 FTE	6.0 FTE	6.0 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown greater than \$1,540,233)</u>	<u>(Unknown greater than \$832,848)</u>	<u>(Unknown greater than \$841,113)</u>
Estimated Net FTE Change on General Revenue Fund	9.0 FTE	9.0 FTE	9.0 FTE
BOARD OF HEALING ARTS FUND			
<u>Costs - DIFP</u>			
Personal service costs (2 FTE)	(\$63,387)	(\$76,825)	(\$77,593)
Fringe benefits	(\$33,177)	(\$40,210)	(\$40,612)
Equipment and expense	<u>(\$8,609)</u>	<u>(\$7,926)</u>	<u>(\$9,434)</u>
Total <u>Costs</u> - DIFP	<u>(\$105,173)</u>	<u>(\$124,961)</u>	<u>(\$127,639)</u>
FTE Change - DIFP	2.0 FTE	2.0 FTE	2.0 FTE
ESTIMATED NET EFFECT ON BOARD OF HEALING ARTS FUND	<u>(\$105,173)</u>	<u>(\$124,961)</u>	<u>(\$127,639)</u>
Estimated Net FTE Change on Board of Healing Arts Fund	2.0 FTE	2.0 FTE	2.0 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposal may have an administrative and/or fiscal impact on small businesses licensed by the Division of Professional Registration.

Licensed pharmacies and dispensing individual practitioners may incur an indeterminate fiscal impact for obtaining the computer hardware and software and related work hours required in entering their dispensing and transmitting data to the data collection location. This dispensing information is already maintained and documented by law however the proposed legislation would require the dispensing log information to be submitted periodically in an approved format. Any costs incurred may be offset somewhat by the benefits provided by being able to immediately access controlled substance dispensing data from the database.

FISCAL DESCRIPTION

Sections 195.450 - 195.477 of this legislation establishes the Prescription Drug Monitoring Program Act to monitor the prescribing and dispensing of controlled substances.

The provisions of this legislation shall be effective on January 1, 2012 and sunset in six years.

This proposal modifies disciplinary and administrative procedure provisions that apply to professions and businesses licensed by the Division of Professional Registration or by any board committee, commission or office within the division of professional registration. The proposal also modifies the licensing requirements and disciplinary powers of the Board of Registration for the Healing Arts.

If a person who is licensed by any board, committee, commission, or office under the Division of Professional Registration does not defend against a disciplinary proceeding, the appropriate board is authorized to enter a default decision against the person.

The Administrative Hearing Commission is required to deliver the findings of fact and conclusions of law in disciplinary cases to the appropriate agency within one hundred and twenty days of the date the case became ready for decision.

FISCAL DESCRIPTION (continued)

BOARD OF REGISTRATION FOR THE HEALING ARTS

The board is required to make individuals applying for a license or holding a license submit to an evaluation of their skills, a multi-disciplinary evaluation, or a substance abuse evaluation, if there is cause to believe that the individual is incompetent, mentally or physically incapacitated, or habitually intoxicated or dependent on drugs.

When the board refuses an applicant for license or for renewal of a license and the Administrative Hearing Commission reviews that decision, the board is authorized to retain discretion to refuse the license, regardless of the decision of the Administrative Hearing Commission.

The disciplinary authority of the board is modified to allow the board to discipline licensees for certain municipal violations, for prescribing drugs through the internet without a valid physician-patient relationship, for being listed on a sex offender registry, for any unethical or unprofessional conduct, for a single act of negligence, for making a false statement to the board, for failing to comply with a treatment program, for participating in a drug court, and for violating any professional trust or confidence.

The board's authority to issue an emergency suspension or restriction of a licensee's license is modified to allow additional reasons for an emergency suspension or restriction. The procedure for issuing emergency restrictions or suspensions is also modified. Emergency suspensions will take effect when the documents are served, rather than after a preliminary hearing before the Administrative Hearing Commission. The emergency restriction or suspension may be appealed to the circuit court.

The board is also authorized to initiate hearings before itself when disciplining a licensee's license for certain actions. The board's disciplinary decision is appealable to the circuit court.

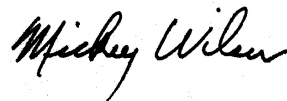
Regardless of whether another law prohibits the board to access records of a peer review committee, medical executive committee, hospital, pharmacy, or any other person, the board is authorized to subpoena those records.

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 Administration -
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety -
 Director's Office
 Missouri State Highway Patrol
Office of Secretary of State
Office of State Public Defender

NOT RESPONDING: Office of Prosecution Services,, Bates County Memorial Hospital, Cedar County Memorial Hospital, Cooper County Memorial Hospital, Putnam County Memorial Hospital, Washington County Memorial Hospital, and Excelsior Springs Medical Center



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