

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3240-03  
Bill No.: Truly Agreed To and Finally Passed HCS for HB Nos. 1387 & 1482  
Subject: Health Care; Elderly; Nursing Homes and Long-term Care Facilities  
Type: Original  
Date: June 2, 2020

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Bill Summary: This proposal establishes the “Authorized Electronic Monitoring in Long-term Care Facilities Act”.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$252,865)	(Less than \$269,828)	(Less than \$271,520)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$252,865)</b>	<b>(Less than \$269,828)</b>	<b>(Less than \$271,520)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
General Revenue	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>1 to 2 FTE</b>	<b>1 to 2 FTE</b>	<b>1 to 2 FTE</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>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§198.610 - 198.632 - Electronic monitoring in long-term care facilities

Officials from the **Department of Health and Senior Services (DHSS)** state this legislation requires the Division of Regulation and Licensure (DRL), Section for Long-Term Care Regulation (SLCR) to create a notification and consent form for authorization of electronic monitoring to be conducted in a Skilled Nursing Facility/Intermediate Care Facility (SNF/ICF) and Residential Care Facility/Assisted Living Facility (RCF/ALF) resident's room, and to promulgate rules to adopt the form.

It is assumed it will take a Health and Senior Services Manager (\$65,694 based on equivalent level managers in the division) approximately 200 hours to promulgate state rules, policies and procedures, and forms. Based on 2,080 working hours per year, this would require 0.1 FTE to assume these duties (200 hours / 2,080 hours per year = 0.1) for a total personal service cost of \$6,569 ( $\$65,694 \times 0.1$ ) in FY21. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

There are 520 SNF/ICF and 653 RCF/ALF in Missouri. It is assumed it will take a Facility Advisory Nurse II (\$49,329 based on the average starting salary of a Facility Advisory Nurse II) approximately one-half hour per facility to include the additional survey process changes of ensuring facilities comply with the provisions of this legislation for a total of 587 hours ( $520 + 653 \times 0.5 = 587$ ). Based on 2,080 working hours per year, this would require 0.28 FTE ( $587 \text{ hours} / 2,080 \text{ hours per year} = 0.28$ ) to assume these duties for a total personal service annual cost of \$13,812 ( $\$49,329 \times 0.28$ ). DRL, SLCR employs approximately 200 survey staff. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It is estimated the number could range from zero to more than 2,000. At the higher range, one Health and Senior Services Manager and one Health Program Representative II would be needed to handle the requirements of this legislation.

One Health and Senior Services Manager (\$65,694 annually) will be needed to coordinate receipt of tapes or recordings and provide technical assistance to facilities concerning forms and electronic monitoring.

ASSUMPTION (continued)

One Health Program Representative II (\$37,070 annually) will be responsible for the collection of notification and consent data.

DHSS estimates a fiscal impact to the General Revenue Fund of (\$196,748) for FY 21; (\$199,586) for FY22; and (\$201,675) for FY23.

**Oversight** notes the DHSS, SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It has been assumed that at the higher range estimated (up to 2,000), DHSS will need 2 additional FTE. Oversight assumes the DHSS could meet the requirements of this proposal with 1 FTE Health and Senior Services Manager until better information is obtained. Therefore, for fiscal note purposes, Oversight will range DHSS personal service costs from 1 FTE Senior Services Manager to the personal service costs estimated for 2 FTE.

**Oversight** notes DHSS assumes it will need a total of 2 new FTE as a result of the provisions of this proposal. Based on DHSS' response that new FTE would be located in Jefferson City, it is assumed the additional FTE can be housed within current DHSS locations. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DSS needing additional rental space.

In addition, **Oversight** notes the additional partial FTE expenses calculated by DHSS are assumed to be absorbable by the department.

Officials from the **Department of Public Safety (DPS), Missouri Veterans Commission (VET)** assume the provisions of this proposal will have no fiscal impact to the VET as Missouri Veterans homes do not fall under the Department of Health and Senior Services.

**Oversight** notes the DHSS provided information indicating the Section for Long-Term Care Regulation does not have any inspection authority in Veteran's Homes and, therefore, also assumes the proposed legislation, since it appears in Chapter 198, would have no impact on Veteran's homes. Oversight will reflect the no fiscal impact provided by the VET for fiscal note purposes.

§198.630 - Sanctions/penalties

**Oversight** notes the provisions of §198.630.1 allow the department to impose sanctions against an administrator of a facility who knowingly violates provisions of the proposal. In addition, provisions of §198.630.2 provide that the department may (permissive) impose administrative

ASSUMPTION (continued)

penalties against a facility that violates provisions of the proposal. The amount of the sanctions/administrative penalties is not provided. Oversight further notes that penalties are distributed to school districts. Since it is unknown whether the department will impose sanctions/administrative penalties or the amount that may be collected, Oversight will not present penalties for fiscal note purposes.

§198.632 - Class B misdemeanor

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crimes where indigent persons are charged with the proposed new crime of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility would be a new class B Misdemeanor. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

**Oversight** assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

ASSUMPTION (continued)

**Oversight** notes the **Missouri Office of Prosecution Services** have stated the proposal would not have a measurable fiscal impact on their organization. The creation of a new crime (§198.632) creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine at the present time. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Bill as a whole

**Oversight** notes the **Missouri Attorney General's Office**, the **Department of Corrections**, the **DPS**, **Missouri State Highway Patrol** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

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.

**Oversight** assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office 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 SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs.** However, we also recognize 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 our office can sustain with our 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** only reflects the responses that we have received from state agencies and political subdivisions; however, nursing homes were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE FUND</b>			
<u>Costs - DHSS (§§198.610 - 198.632)</u>			
Personal service	(\$54,745 to \$85,637)	(\$66,351 to \$103,792)	(\$67,014 to \$104,830)
Fringe benefits	(\$27,781 to \$47,640)	(\$31,635 to \$53,669)	(\$31,855 to \$54,014)
Equipment and expense	(\$7,287 to \$19,588)	(\$6,183 to \$12,367)	(\$6,339 to \$12,676)
Total <u>Costs</u> - DHSS	<u>(\$89,813 to \$152,865)</u>	<u>(\$104,169 to \$169,828)</u>	<u>(\$105,208 to \$171,520)</u>
FTE Change - DHSS	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
 <u>Costs - SPD (§198.632) - Personnel services, fringe benefits and equipment and expense</u>			
	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than \$252,865)</u></b>	<b><u>(Less than \$269,828)</u></b>	<b><u>(Less than \$271,520)</u></b>
Estimated Net FTE Change on the General Revenue Fund	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

This proposal may impact small business long-term care facilities as they may incur additional work related to gathering/maintaining the additional forms/authorizations required, making facility modifications to accommodate equipment and incur increased electricity costs resulting from the additional equipment. (§§198.610 - 198.632)

## FISCAL DESCRIPTION

This bill establishes the "Authorized Electronic Monitoring in Long-Term Care Facilities Act", which specifies the parameters of electronic monitoring by residents of long-term care facilities (§198.610, RSMo).

The bill requires the department to promulgate rules that prescribe a form to be completed and signed by every resident that explains the liabilities and rights for residents who place covert or authorized electronic monitoring devices, and the procedures to request authorized monitoring (§198.616).

The bill also describes who may consent to electronic monitoring (Section 198.618) and how that monitoring shall be requested, including the form, with the consent of any other residents in the room and the conditions of their consent (§198.620).

The bill requires the facility and any resident conducting electronic monitoring to post a conspicuous sign indicating that rooms, or the room of the resident is being monitored. It also states that facilities must accommodate requests for monitoring and shall not refuse to admit an individual that requests electronic monitoring. For purposes of abuse and neglect, the bill outlines time lines and reporting requirements for people who might view footage on behalf of a resident and specifies when a video recording may be used as evidence. Finally, the bill specifies when the department may sanction facilities or their administrators who violate these provisions (§§198.622 to 198.628).

The bill also makes it a class B misdemeanor to intentionally hamper, obstruct, tamper with, or destroy devices installed or data collected under these provisions, or to conduct unauthorized monitoring after a written warning to cease and desist from that conduct (§198.632).

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  
Department of Health and Senior Services  
Department of Corrections  
Department of Public Safety -  
    Missouri State Highway Patrol  
    Missouri Veterans Commission  
Joint Committee on Administrative Rules  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
Office of Secretary of State  
Office of State Public Defender



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