

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5080-01
Bill No.: HB 2267
Subject: Workers Compensation; Labor and Management; Employees - Employees;
 Administrative Law
Type: Original
Date: February 18, 2020

Bill Summary: This proposal creates new provisions providing for the independent medical review of certain workers' compensation claims.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	Could exceed (\$316,714 to \$1,782,346)	Could exceed (\$322,699 to \$1,931,871)	Could exceed (\$329,205 to \$2,017,881)
Total Estimated Net Effect on General Revenue	Could exceed (\$316,714 to \$1,782,346)	Could Exceed (\$322,699 to \$1,931,871)	Could Exceed (\$329,205 to \$2,017,881)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Various Funds & Various Agencies	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Workers's Compensation Fund (0652)	(Unknown)	(Unknown)	(Unknown)
Unemployment Compensation Administration Fund (0948)	Could exceed (\$30,370)	Could exceed (\$6,226)	Could exceed (\$6,382)
Various State Agencies - payments for IRO	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on All Federal Funds	Could exceed (\$30,370)	Could exceed (\$6,226)	Could exceed (\$6,382)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	3-14 FTE	3-14 FTE	3-14 FTE
Total Estimated Net Effect on FTE	3-14 FTE	3-14 FTE	3-14 FTE

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Official from the **Department of Labor and Industrial Relations (DOLIR)** notes under this proposal it is unclear about what fund(s) (i.e., WC Admin Fund, General Revenue or costs to be paid pursuant to a contract by the employer) is to be used in the procurement of services for Independent Review Organizations (IRO). See § 287.201.1. As discussed in greater detail below, it is estimated that sections 287.201.4 and 287.201.5 may require the appointment of additional attorneys. The number of new FTE would depend on the level of review required for the Division Director to "certify" the decision of the IRO. If the "certification" is limited to *a factual review* of the record and the decision of the IRO, it is estimated that it could be completed by one (1) additional attorney. If, on the other hand, *a more extensive review* is required by the terms of the proposed legislation, the hiring of up to five (5) additional attorneys and one (1) additional support staff is estimated.

I. Purpose of HB 2267

This proposal modifies existing statutory sections 287.140 (medical treatment), 287.141 (physical rehabilitation), 287.800 (strict construction), and 287.801 (jurisdiction) and creates a new statutory section 287.201, which sets forth the power and procedures of independent review organizations.

The bill removes the jurisdiction of the Division of Workers' Compensation (Division) and Administrative Law Judges (ALJs) to resolve most issues related to medical treatment and physical rehabilitation and gives that jurisdiction to one or more IROs. Section 287.201.1 provides: *Any dispute regarding the modification, delay, or denial of health care received by an employee pursuant to this chapter shall be resolved through a system of binding independent medical review as described in this section.*

II. Section 287.201.1 requires the Director to “procure the services of one or more [IROs].”

HB 2267 requires the Division to contract with one or more IROs to administer the independent medical review (IMR) scheme. Section 287.201.1 provides: *The director shall procure the services of one or more independent review organizations for the purpose of resolving any dispute regarding the modification, delay, or denial of health care services received by an employee. Such services shall be procured by competitive bid consistent with chapter 34.*

Little information on the cost of procurement exists. The one source that the Division was able to identify suggests that the annual value of such services could be around \$2 million. This is based

ASSUMPTION (continued)

on limited information regarding a contract for such services in California where the cost appears to be around \$10 million per year. Adjusted by population (Missouri has approximately 16% of the population of California) the cost to Missouri is estimated at between \$1 million and \$2 million per year. *MAXIMUS Launches Independent Medical and Bill Review Services for California Workers' Compensation Programs*, BUSINESS WIRE, May 16, 2013, available at <https://www.businesswire.com/news/home/20130516005065/en/MAXIMUS-Launches-Independent-Medical-Bill-Review-Services>.

It is also unclear which entity would bear the cost of paying for the contract negotiated under Chapter 34 by the Office of Administration (OA). It is therefore assumed that these details would be spelled out in the contract itself. DOLIR is unable to estimate a cost as this would be subject to a confidential procurement process conducted by OA.

III. Section 287.201.4 requires the Director to review every IRO decision and to certify or remand the same.

Following every IRO decision, section 287.201.4(1) requires that the Director “shall certify the decision as binding within ten calendar days unless the director finds cause to require a further review of the dispute by an [IRO].” Pursuant to section 287.201.4(2), the Director may require a further review of the dispute “upon his or her own initiative or at the request of the employer or employee party” if the Director finds an IRO’s decision was:

- a) The result of a plainly erroneous express or implied finding of fact and not a matter that is subject to expert opinion;
- b) Made without the ability to consider any document, test, or image that was available at the time of the review but not provided as part of the review file to the independent review organization;
- c) The result of fraud; or
- d) The result of a violation of subdivisions (2) or (3) of subsection 2 of this section.

HB 2267 therefore requires the Director to undertake some level of review of every IRO decision within ten calendar days. (Section 287.201.3 also requires the Director to review IRO’s written requests for extension of time.) See below for a discussion of the estimated cost.

The Division does not track the number of “dispute[s] regarding the modification, delay, or denial of health care received by an employee,” that is, the number of disputes that could result in an IRO decision. § 287.201.1. In 2018, the Division received 101,880 First Reports of Injury and ALJs resolved 14,019 Claims for Compensation. 2018 ANNUAL REPORT, available at: https://labor.mo.gov/sites/labor/files/pubs_forms/2018DWCAnnualReport.pdf.

ASSUMPTION (continued)

On December 31, 2018, an additional 25,746 Claims for Compensation were pending before the Division. *Id.* If even a fraction of these First Reports and Claims include “dispute[s] regarding the modification, delay, or denial of health care received by an employee,” it would result in a significant number of IMRs, and the Director would be required to review each one to certify or remand the same. *See* §§ 287.201.4(1)-(2).

Data published by California bears out the significant number of IMRs that could result under this legislation. In 2018, California received 252,565 IMR Applications and issued 184,733 IMR Case Decisions involving 360,124 treatment decisions. 2019 INDEPENDENT MEDICAL REVIEW (IMR) REPORT: ANALYSIS OF 2018 DATA, *available at*:
https://www.dir.ca.gov/dwc/imr/reports/2019_IMR_Annual_Report.pdf.

Even reducing these numbers by 84% to account for the differences in California and Missouri’s population yields approximately 40,000 IMR Applications and 30,000 IMR Case Decisions involving 60,000 treatment decisions. (It is also worth noting that every decision the Director remands for “further review” would then need to come back to the Director for certification, that is, additional review.)

HB 2267 requires some level of review by the Division Director in order to “certify” the decision of the IRO. Assuming that this review is one where the executive agency does a due diligence overview of the findings of the IRO in order to check for instances of clear error, it is estimated that these duties would require the hiring of one (1) new attorney since the Director’s review must occur within ten calendar days. (Section 287.201.3 also requires the Director to review IRO’s written requests for extension of time which would be an additional administrative duty on the Office of the Director.)

Assuming in the alternative that the certification contemplated by the legislation requires a full review of the IRO decision, the Division estimates that it would need to hire five (5) full-time attorneys dedicated exclusively to the review of IRO decisions to assist the Director in fulfilling his or her statutory duties under sections 287.201, at an annual cost of approximately \$275,000. Staff support would also be required for the additional attorneys. It is estimated that this would entail one (1) additional FTE.

IV. Section 287.201.5 allows for ALJ review of every certified IRO decision.

Within ten calendar days of the Director’s certification of an IRO decision, section 287.201.5(1) permits a party to the decision to “request review by an administrative law judge if either party has evidence” the decision was:

ASSUMPTION (continued)

- a) The result of a plainly erroneous express or implied finding of fact and not a matter that is subject to expert opinion;
- b) Made without the ability to consider any document, test, or image that was available at the time of review but not provided as part of the review file to the independent review organization;
- c) The result of fraud; or
- d) The result of a violation of subdivisions (2) or (3) of subsection 2 of this section.

Section 287.201.5(2) grants an ALJ twenty-one calendar days to remit the decision back to the Director or to approve the decision, in which case the IRO's "decision shall be binding."

Using the numbers discussed above in Section III, assuming there are approximately 30,000 IRO decisions involving 60,000 treatment decisions, appeal of half of these decisions would result in ALJS having to review 1,250 decisions a month (although it is unlikely that the reviews would be divided equally among dockets, Sec. 287.610.6 allows the Division to assign ALJs to geographical areas of need). Although this would represent a considerable increase in ALJ workload, it should be mitigated by the volume of IMRs conducted by the IRO. Therefore, it is presumed that such review can be managed with current staff levels or alternately by the hiring anywhere from one to eight additional ALJs.

Oversight has no way to test the estimates provided by DOLIR. Oversight, for fiscal note purposes, will show a range from the best scenario to the DOLIR (factual review is needed) to most adverse scenario to the DOLIR (more extensive review is needed). The actual costs to GR are as follows: (\$316,714 to \$1,782,436) for FY 2021, (\$322,699 to \$1,931,871) for FY 2022 (\$329,205 to \$2,017,881) for FY 2023.

Oversight also notes it is unclear which entity would bear the cost of paying for the contract negotiated under Chapter 34 by the Office of Administration (OA). It is therefore assumed that these details would be spelled out in the contract itself. DOLIR is unable to estimate a cost as this would be subject to a confidential procurement process conducted by OA. Therefore, Oversight will include this cost under General Revenue, Other State Funds, and Federal Funds.

DOLIR/ITSD Changes

- a) Add indicators to screens to show that the case on a docket has an IMR.
- b) Create new screens to track the movement of the IMR between the Division and the IRO.
- c) Add new tables to hold the IRO contact information and the dates related to the processing of IMR's.
- d) IRO Status will display in the Case Status History

ASSUMPTION (continued)

e) Create a report to display outstanding IMR's

Oversight notes ITSD assumes that every new IT project/system will be bid out because all their resources are at full capacity. For this bill, **ITSD** assumes they will contract out the programming changes needed to the AICS system. ITSD estimates the project would take 319.7 hours at a contract rate of \$95 per hour for a total cost of \$30,370 for FY 2021 and continuing maintenance cost of \$6,226 in FY 2022 and \$6,382 in FY 2023.

Officials from **Office of Administration - General Services (OA)** assume the proposal adds a system of binding independent medical review. This is a significant change to the workers' compensation system and has the potential to cost the state and all employers in the state a significant amount of money. The exact costs are unknown. The bill states that the Division of Workers' Compensation shall procure the independent medical review. However, the bill does not state who would pay for these costs. If the Division is procuring the independent medical reviews, it is likely that these costs would be passed on to employers through workers' compensation taxes and administrative surcharges.

The costs of independent medical reviews can be very costly and average from \$1,500 to \$15,000 per review. The State of Missouri had 2,884 injuries reported in FY19. If only 25% of these cases were submitted for independent medical review at the lowest cost range, this would be at total cost of \$1,081,500. This amount includes only 25% of the cases for State of Missouri employees and does not include cases for other employers of the state. It is likely the pass through costs to the State would be even greater.

In addition to monetary costs, this would seem to add another layer to the workers' compensation process and would add significant delay to the process.

It is also a concern that the independent medical reviews would not need to be conducted by medical professions that are licensed to practice in the State of Missouri.

Oversight has no way to test the estimates provided by OA. It is unclear which entity would bear the cost of paying for the contract negotiated under Chapter 34 by the Office of Administration. It is therefore assumed that these details would be spelled out in the contract itself. Oversight is unable to estimate a cost as this would be subject to a confidential procurement process conducted by OA. Therefore, Oversight will reflect an unknown cost for workers' compensation IRO payments and an unknown cost for IRO contracts to General Revenue, Federal Funds, and Other State Funds.

ASSUMPTION (continued)

Officials from the **Office of Secretary of State** note 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 Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office 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, we reserve 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 advertising the statewide ballot measure related to this proposal within their current appropriation level. If multiple bills pass or if multiple ballot initiatives are validated which require similar advertising at substantial costs, the SOS could request funding through the appropriation process.

Officials from **Missouri Department of Transportation (MODOT)** state they would change the adjudication process for disputed workers' compensation claims as it relates to medical treatment. This would establish a process for an independent medical review (IMR) as set up by the Director of the Division of Workers' Compensation. Each decision will be binding, and an unknown negative fiscal impact to MoDOT is likely, as it would take the ability to direct medical treatment away from employers (currently statutory) and place the decision in the hands of the IMR.

Oversight notes that the MODOT has stated the proposal would have an unknown direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a negative unknown impact on the fiscal note.

Officials from the **Department of Commerce and Insurance, Joint Committee on Administrative Rules, Office of Administration - Budget & Planning, Joint Committee on Administrative Rules, and Missouri Consolidated Health Care Plan** each assume the proposal will have no fiscal impact on their respective agencies.

Officials from **University of Central Missouri** and **State Technical College of Missouri** both assume the proposal will have no fiscal impact on their respective agencies.

ASSUMPTION (continued)

Oversight assumes the proposal will require additional expenditure to the political subdivisions due to the payments for additional review from IRO's and potential rise in workers' compensation premiums. Therefore, Oversight will reflect a negative unknown fiscal impact.

Oversight only reflects the responses that we have received from state agencies, college and university; however, other school districts, colleges, universities, counties, and cities were requested to respond to this proposed legislation but did not.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE			
<u>Cost - DOLIR</u>			
Salaries	(\$176,848 to \$1,075,929)	(\$213,899 to \$1,254,370)	(\$216,038 to \$1,317,067)
Fringe Benefits	(\$68,210 to \$491,716)	(\$82,556 to \$577,856)	(\$83,266 to \$598,678)
Equipment & Expense	(\$71,656 to <u>\$214,701</u>)	(\$26,244 to <u>\$99,645</u>)	(\$29,901 to <u>\$102,136</u>)
<u>Total Cost</u>	<u>(\$316,714 to \$1,782,346)</u>	<u>(\$322,699 to \$1,931,871)</u>	<u>(\$329,205 to \$2,017,881)</u>
FTE Change	3-14 FTE	3-14 FTE	3-14 FTE
<u>Cost - Payments to IRO's for reviews</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<u>Cost - Various State Agencies - Potential increase in payments of IRO's contracts</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	Could Exceed (\$316,714 to <u>\$1,782,346</u>)	Could Exceed (\$322,699 to <u>\$1,931,871</u>)	Could Exceed (\$329,205 to <u>\$2,017,881</u>)
Estimated Net FTE Change on the General Revenue Fund	3-14 FTE	3-14 FTE	3-14 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2021 (10 Mo.)	FY 2022	FY 2023
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OTHER STATE FUNDS

<u>Cost</u> - Various State Agencies - Potential increase in payments of IRO's contracts	(Unknown)	(Unknown)	(Unknown)
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<u>Cost</u> - Payments to IRO's for reviews	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO OTHER STATE FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FEDERAL FUNDS

<u>Cost</u> - Payments out of Workers Compensation Administration Fund (0948) for ITSD	Could Exceed (\$30,370)	Could exceed (\$6,226)	Could exceed (\$6,382)
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<u>Cost</u> - Payments to IRO's for reviews	(Unknown)	(Unknown)	(Unknown)
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<u>Cost</u> - Various State Agencies - Potential increase in payments of IRO's contracts	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO FEDERAL FUNDS	Could exceed <u>(\$30,370)</u>	Could exceed <u>(\$6,226)</u>	Could exceed <u>(\$6,382)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
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LOCAL POLITICAL SUBDIVISIONS

<u>Cost</u> - Potential increase in payments of workers' compensation premium	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

The proposal will have negative fiscal impact on small businesses due to the potential costs of third party reviews of workers compensation claims and workers' compensation premiums.

FISCAL DESCRIPTION

This bill modifies the adjudicative process for disputes in workers' compensation claims relating to the modification, delay, or denial of health care service or aid received by an employee under a medical review decision. Specifically, the Director of the Division of Workers' Compensation is required to contract with up to three independent review organizations (IROs) to resolve such disputes through the process of an independent medical review (IMR).

Within 20 days of the receipt of a request for an IMR and all medical records related to the dispute that are in possession of the director, the IRO must submit to the director its opinion of the issues reviewed.

A dispute resolved by an IRO must be certified by the director within 10 calendar days of the decision and must be considered binding on the parties, provided that the director can order further review by the IRO under certain circumstances. A dispute resolved by an IRO and certified by the director may be appealed to an administrative law judge (ALJ) by the employer or employee no later than 10 calendar days after the certification of the decision. An ALJ has 21 calendar days to review such decision. The ALJ is required to remit the case back to the director for a new IMR under specific circumstances outlined in the bill. Otherwise, the decision of the IRO shall remain binding. The bill includes certain conflicts of interest restrictions governing IROs retained by the director. Specifically, a retained IRO cannot have any material, professional, familial, or financial interest in the case.

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 Labor and Industrial Relations
Office of Administration - General Services
Office of Administration - Budget & Planning
Office of Secretary of State
Joint Committee on Administrative Rules
Department of Commerce and Insurance
Missouri Consolidated Health Care Plan
University of Central Missouri
State Technical College of Missouri



Julie Morff
Director
February 18, 2020



Ross Strobe
Assistant Director
February 18, 2020