

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4754-03
Bill No.: HB 1534
Subject: Federal - State Relations; Crimes and Punishment; Health Care; Insurance - Medical
Type: Original
Date: March 5, 2012

Bill Summary: This proposal declares the federal Patient Protection and Affordable Care Act as unauthorized by the United States Constitution and creates criminal penalties for persons enforcing or attempting to enforce the act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on General Revenue Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Federal Funds	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on FTE	0	0	0

- 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 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration, Department of Corrections**, and the **Department of Insurance, Financial Institutions and Professional Registration** each state the fiscal impact of this proposal is unknown, contingent on potential future actions of the federal government.

Officials from the **Attorney General's Office** assumes that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Mental Health (DMH)** state they are affected to a great degree by federal health care programs and requirements, as a significant portion of DMH's budget is derived from federal sources. It is unknown how much refusal to follow federal guidelines would cost the department; however, it is assumed that a significant cost would be incurred. The DMH assumes an unknown cost, contingent on potential future actions of the federal government.

Officials from the **Department of Health and Senior Services (DOH)** state the proposed bill may prohibit Missouri from participating in the federal law known as the Patient Protection and Affordable Care Act which would result in an unknown loss of federal funding. At this point, the department is not able to speculate what impact this may have to General Revenue and Federal Funds. The impact is unknown, contingent on potential future actions of the federal government.

Officials from the **Missouri Department of Conservation** assume an unknown fiscal impact to their agency.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state the proposal would have the following impact:

- MCHCP was approved to receive funds from the Early Retiree Reinsurance Program (ERRP) which provides reimbursement to participating employment-based plans for a portion of the costs of health benefits. To date, MCHCP has received \$11.6 million. MCHCP has submitted requests for additional funds, but the reimbursement amounts are unknown based on the availability of funds. This legislation would require MCHCP to return funds received through this program. The fiscal impact is unknown but greater than \$11.6 million and contingent on future actions of the federal government.

ASSUMPTION (continued)

- Prior to the passage of the Patient Protection and Affordable Care Act, MCHCP only covered children up to age 25 unless they were disabled. In CY 2011, MCHCP covered an average number of 615 children age 25. In 2011, MCHCP's portion of medical and pharmacy claims for this age group was \$2,640 per member per year. MCHCP would not be required to cover 25-year-olds under this legislation. The fiscal savings would be less than \$1,623,600 annually because some disabled children would still be eligible for coverage.

Officials from the **Department of Transportation (MoDOT)** state the MoDOT/MSHP Medical Plan enacted measures in January 1, 2011 to comply with PPACA including changing the age limitation for dependent children to age 26. In addition, in January 1, 2012, the Plan also elected to comply with the preventive care provisions which require services to be covered 100%. If this legislation was enacted, the Plan would no longer have to comply with PPACA; therefore, the Plan would most likely see cost savings. The fiscal impact is unknown, but could be greater than \$100,000.

The legislation could also impact the MoDOT staff working for the Plan who have implemented the rules in the PPACA, but the language is unclear. It is unclear whether staff's actions would be considered "enforcing" or "attempting to enforce" the PPACA, as staff was only carrying out PPACA provisions. Assuming the bill would penalize state employees for implementing the PPACA, Medical Plan staff could face criminal penalties for any work related to the PPACA.

Officials from the **Department of Social Services (DOS)** state this proposal would have a fiscal impact on MO HealthNet (MHD). If the proposed legislation would pass MHD could not proceed with the implementation of the provisions in the ACA which relate to Medicaid. Many of the ACA provisions result in a savings or an avoided cost for MHD.

Following are a list of the provisions and the associated savings or avoided cost:

Extension of dependent coverage up to age 26: MHD estimates 1,161 births would have been paid for by Medicaid which will now be paid for by dependent coverage. The average cost of a managed care birth is \$4,549. Total annual savings to Medicaid because of implementation of this provision is \$5,281,389 (GR \$2,012,737). If HB 1534 is enacted MHD would have additional cost of \$5,281,389.

Removal of annual or lifetime commercial health insurance limits: Individuals which hit an annual limit or lifetime limit on their commercial coverage become uninsured and eligible for MHD coverage. The removal of health insurance limits has a potential savings of \$21,141,278

ASSUMPTION (continued)

(GR \$8,056,941) to MHD. If HB 1534 is enacted MHD will not have the opportunity to save \$21,141,278.

Passage of the legislation would allow insurers to deny coverage to children for pre-existing conditions. This would cost MO HealthNet an estimated \$259,284 (GR \$98,813) annually.

Savings is anticipated as a result of implementing the ACA provision regarding Health Homes. If the proposed legislation is enacted \$44.6 million (\$4.46 million GR) of savings would be lost.

Doughnut hole savings: Phase down the beneficiary coinsurance rate in the Medicare Part D coverage gap. MO HealthNet savings from this provision is \$500,000 (GR \$500,000) annually. If the proposed legislation is enacted MO HealthNet would lose this savings.

If this legislation is enacted a portion of those that have recently entered the new high risk pool would pursue and be awarded disability and MO HealthNet would have additional cost. 166 individuals were enrolled in the high risk pool as of February 1, 2011. This number increased to 884 as of November 30, 2011. If it is assumed 10% of the increase would be Medicaid eligible the annual cost would be \$1,364,256 (GR \$519,918) 72 individuals $((884-166) \times 10\%) \times \$1,579$ (pmpm cost for PTD) x 12 months. If HB 1534 were enacted MO HealthNet would see additional cost of \$1,364,256. In addition, Missouri will receive \$81 million in federal funds for the high risk pool.

If the proposed bill is passed Medicaid RAC (Recovery Audit Contract) audit recoveries would not be allowed. The anticipated FY 13 recoveries are \$1,267,438 (GR \$422,643).

Passage of HB 1534 would require MO HealthNet to pay for crossover preventive services which are now covered in full by Medicare. This would cost MHD \$929,000 (GR \$354,042) annually.

Passage of the proposed legislation would end the extension of Money Follows the Person. The anticipated annual savings from this extension is \$815,000 (GR \$310,597).

Implementation of the following provision resulted in a loss of revenue for MHD.

State Medicaid Supplemental Rebate Collections: As a result of the implementation of this provision MO HealthNet had a loss of \$4,056,238 (GR \$4,056,238) in rebates. If HB 1534 is enacted, MHD would see an increase in rebate revenue.

ASSUMPTION (continued)

to these individuals unless they are disabled or are included in a family group eligible for MO HealthNet for Families coverage. Therefore, computer system design changes, policy changes as well as regulatory changes will likely be needed to prepare to provide the coverage envisioned by the PPACA in 2014.

However, this bill would prevent the Division of Legal Services from assisting the Department of Social Services to complete this work. This would result in the department from being out of compliance with the federal Medicaid provisions in 2014.

At this time, it is unknown what fiscal impact this would have on the department. However, the federal government could withhold all federal Medicaid reimbursement funds. These funds currently account for more than 50% of the funding required to maintain current coverage for the following MO HealthNet programs in Missouri:

- MO HealthNet for the Aged, Blind, and Disabled;
- MO HealthNet for Kids (CHIP and non-CHIP);
- MO HealthNet for Families; and
- MO HealthNet for Pregnant Women.

In summary, the bill has an unknown fiscal impact on the Division of Legal Services.

Officials from the **Office of the State Courts Administrator** and the **Office of the State Public Defender** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Office of Prosecution Services** assume no measurable fiscal impact to their agency. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs which are difficult to determine.

Oversight assumes this proposal would have an unknown fiscal impact to several state agencies. Some have assumed an unknown positive impact while others have assumed a negative unknown impact. For simplicity, Oversight will assume an Unknown to (Unknown) fiscal impact to both the state General Revenue Fund as well as Federal Funds to various state agencies.

Oversight assumes the state will not incur costs from arresting/prosecuting/punishing Missourians who enforce or attempt to enforce the federal Patient Protection and Affordable Care Act (a new Class A misdemeanor).

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Savings</u> - to various state agencies from not enforcing the federal Patient Protection and Affordable Care Act	Unknown	Unknown	Unknown
<u>Loss/Cost</u> - to various state agencies from not enforcing the federal Patient Protection and Affordable Care Act	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
 FEDERAL FUNDS			
<u>Savings</u> - to various state agencies from not enforcing the federal Patient Protection and Affordable Care Act	Unknown	Unknown	Unknown
<u>Loss/Cost</u> - to various state agencies from not enforcing the federal Patient Protection and Affordable Care Act	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This proposal declares that the General Assembly finds the federal Patient Protection and Affordable Care Act signed by President Obama to exceed the powers granted to Congress under the United States Constitution. Therefore, it is not law and is altogether void and of no force. It is the General Assembly's duty to enact any measure necessary to prevent its enforcement within this state.

No public officer or employee of this state has any authority to enforce or attempt to enforce any aspect of the act. Any United States official, agent, or employee who undertakes any action within this state that enforces or attempts to enforce the act in violation of these provisions will be guilty of a class A misdemeanor. Any person who has been subject to any action attempting to enforce the act within this state will have a private cause of action for declaratory judgment and damages against any person violating these provisions.

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

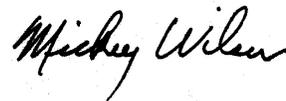
SOURCES OF INFORMATION

Department of Insurance, Financial Institutions and Professional Registration
Department of Health and Senior Services
Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections
Department of Public Safety
Office of Administration
Missouri Consolidated Health Care Plan

RS:LR:OD

SOURCES OF INFORMATION (continued)

Department of Mental Health
Missouri Department of Conservation
Attorney General's Office
Department of Social Services
Department of Transportation



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