

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0869-01
Bill No.: HJR 19
Subject: Constitutional Amendments; Health Care
Type: Original
Date: March 11, 2013

Bill Summary: This legislation proposes a constitutional amendment specifying that each citizen has an inherent liberty that includes being able to make decisions regarding lawful health care related services or products.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	\$0 or (Unknown, could exceed \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on General Revenue Fund	\$0 or (Unknown, could exceed \$7,100,000)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Insurance Dedicated	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Federal*	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

* Income, savings, expenditures and losses net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
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 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health (DMH)** state the proposed amendment would declare that no government official shall have authority to compel any person, employer or health care provider to participate in any health care system, or impose any penalty, tax, fee or levy for not participating. This proposed language would substantially conflict with current legal requirements. Under the Missouri Constitution, Article IV, Section 37, and several Missouri statutory authorities, the DMH is obligated to provide treatment and care for persons suffering from mental illness, among other things. Certain criminal offenders and sexually violent predators are required by statute or court order to be held in the custody of the department and to receive treatment. The DMH is also required to provide care to individuals who are involuntarily civilly committed. Moreover, the proposal would conflict with treatment mandates from mental health courts, drug courts, and Not Guilty by Reason of Insanity (NGRI) conditional release.

The proposed language establishes additional authority for litigation related to the federal Patient Protection and Affordable Care Act. Potential legal challenges under the federal and Missouri state constitutions would result in increased public expenditures to litigate cases filed in federal and state courts. Challenges may include constitutional claims.

The proposal also includes language providing that no governmental official or agency may make a citizen's right to offer or accept direct payment for health care services subject to any penalty, tax, fee or levy. This provision may limit the ability of the state to collect any income or other taxes from entities or individuals providing health care services.

In addition, the DMH sliding fee scale charges and Medicaid co-pays could be construed as a mandatory fee for direct payment for health care services.

Furthermore, the proposal may prohibit the DMH from seeking grants or other funds (including funds from the federal government), or from participating in activities available under the federal Patient Protection and Affordable Care Act. Certain provisions of the Act are already in effect.

There appears to be unknown, but potentially significant, legal and fiscal impacts arising from this proposal. DMH assumes the fiscal impact is an unknown cost, greater than \$100,000 annually.

Officials at the **Department of Health and Senior Services (DHSS)** assume this proposal removes the ability for DHSS to require applicants requesting DHSS health services to complete applications for and be enrolled in the State Medicaid plan in order to receive services. DHSS

ASSUMPTION (continued)

programs are the payer of last resort, meaning the programs require those eligible to enroll in the State Medicaid program, if eligible, Federal health benefit programs (Tri-Care), and other health care systems (St. Jude's, Shriner's, etc) prior to accessing benefits provided through the department's programs. As drafted, denying applicants access to DHSS services for failure to apply for services from the State Medicaid program, federal benefit programs, and various charitable community organizations would be considered a direct or indirect penalty. DHSS is unable to accurately estimate the number of program applicants that will request health care services that will no longer seek the assistance from the State Medicaid program, federal benefit programs or various charitable community organizations but anticipates the impact is unknown, contingent on potential future actions of the federal government.

Officials at the **Department of Social Services (DSS) - MO HealthNet Division (MHD)** assume an unknown impact on the DSS that is contingent on potential future actions of the federal government.

Officials from the **Department of Insurance, Financial Institutions, and Professional Registration (DIFP)** state this resolution proposes a constitutional amendment specifying that each citizen has an inherent liberty that includes being able to make decisions regarding lawful health-care related services or products and the manner in which contracting parties may agree for payment to be made for those services or products.

It is unknown how the changes resulting from passage of this proposal would affect the DIFP. Therefore, there is an unknown fiscal impact to DIFP.

Officials from the **Office of Secretary of State (SOS)** state each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Joint Resolutions proposing a constitutional amendment are submitted to a vote of the people at the next general election. Article XII section 2(b) of the Missouri Constitution authorizes the governor to order a special election for

constitutional amendments referred to the people. If a special election is called to submit a Joint Resolution to a vote of the people, section 115.063.2, RSMo, requires the state to pay the costs. The cost of the special election has been estimated to be \$7.1 million based on the cost of the 2012 Presidential Preference Primary. This figure was determined through analyzing and totaling expense reports from the 2012 Presidential Preference Primary received from local election authorities.

ASSUMPTION (continued)

The SOS is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. The SOS's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. The appropriation has historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were five (5) statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to public (average of \$434,000 per issue). Therefore, the SOS assumes, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. However, because these requirements are mandatory, the SOS reserves the right to request funding to meet the cost of its publishing requirements if the Governor and the General Assembly change the amount or eliminate the estimated nature of the SOS' appropriation.

Oversight has reflected in this fiscal note the state potentially reimbursing local political subdivisions the cost of having this joint resolution voted on during a special election in fiscal year 2014. This reflects the decision made by the Joint Committee on Legislative Research that the cost of the elections should be shown in the fiscal note. The next scheduled general election is in November 2014 (FY 2015). It is assumed the subject within this proposal could be on that ballot; however, it could also be on a special election called for by the Governor. Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2014.

Officials from the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Consolidated Health Care Plan**, the **Missouri Department of Conservation** and the **Missouri Department of Transportation** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Public Safety - Missouri State Highway Patrol** defer to the Missouri Department of Transportation Employee Benefits Section for response regarding the potential fiscal impact of this proposal on their organization.

ASSUMPTION (continued)

Oversight assumes the DMH, DHSS, and DSS will each have an unknown increase in program expenditures as potential recipients of health services provided by the state will no longer be required to enroll in programs or pay fees, taxes or penalties for not participating in a program. Oversight assumes potential litigation costs to be speculative and is not including those potential costs in the fiscal note.

Oversight will, for fiscal note purposes, show the potential impact as “\$0 or” based on the assumption that if this proposal passes it will be put to a vote of the people.

Officials from the **Office of Attorney General** did not respond to **Oversight’s** request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE FUND			
<u>Costs - DMH</u>			
Increase in program costs	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - DHSS</u>			
Increase in program costs	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - DSS</u>			
Increase in program costs	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Transfer Out - SOS</u>			
Reimbursement of local election authority election costs	\$0 or (More than <u>\$7,100,000</u>)	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND			
	<u>\$0 or (Unknown, could exceed \$7,100,000)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
INSURANCE DEDICATED FUND			
<u>Costs - DIFP</u>			
Change in insurance services and products	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>

ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND

	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>
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<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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FEDERAL FUNDS

<u>Income and Savings - DMH, DHSS, and DOS</u>			
Change in income or program savings resulting from enactment of this proposal	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

<u>Expenditures and Losses - DMH, DHSS, and DOS</u>			
Change in program expenditure reimbursement	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>

ESTIMATED NET EFFECT ON FEDERAL FUNDS

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL ELECTION AUTHORITIES FUNDS			
<u>Transfer In - Local Election Authorities</u>			
Reimbursement of election costs by the State	\$0 or More than \$7,100,000	\$0	\$0
<u>Cost - Local Election Authorities</u>			
Election costs	<u>\$0 or (More than \$7,100,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON LOCAL ELECTION AUTHORITIES FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may directly impact small business health care providers. The impact is unknown.

FISCAL DESCRIPTION

Upon voter approval, this proposed constitutional amendment specifies that each citizen has an inherent liberty that includes the autonomy to make decisions regarding lawful health care-related services or products and payment for those services or products. No government official or agency will have authority to compel any person, employer, or health care provider to participate in a health care system or to be penalized for not participating in a health care system nor to make a citizen's right to offer or accept direct payment for lawful health care services subject to any penalty, tax, fee, or levy. These provisions cannot prevent the state's courts from enforcing contracts or prevent the General Assembly from establishing laws that prohibit certain dangerous health care services, impose reasonably uniform regulation of the health insurance industry, or impose or collect uniformly imposed taxes for funding public health care programs if all the laws are consistent with all other constitutional 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

Office of Administration
Office of State Courts Administrator
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 -
Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Office of Secretary of State

Not Responding:

Office of Attorney General



Ross Strobe
Acting Director
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