

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2837H.01I
Bill No.: HB 1
Subject: Abortion; Health Care; Taxation And Revenue - General; Medicaid/MO
HealthNet
Type: Original
Date: June 29, 2021

Bill Summary: This proposal modifies provisions relating to health care.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Ambulance Services Reimbursement Allowance* (0958)	\$6,550,000	\$2,175,000	\$0
Nursing Facility Federal Reimbursement Allowance** (0196)	\$139,940,000	\$46,650,000	\$0
Federal Reimbursement Allowance*** (0142)	\$991,000,000	\$330,250,000	\$0
Pharmacy Reimbursement Allowance**** (0144)	\$53,220,000	\$17,750,000	\$0
ICR/MR Reimbursement Allowance***** (0901)	\$4,800,000	\$1,600,000	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$1,195,510,000	\$398,425,000	\$0

* Oversight assumes expenditure of approximately \$8.7 million annually for a net of \$0.

** Oversight assumes expenditure of approximately \$186.6 million annually for a net of \$0.

*** Oversight assumes expenditure of approximately \$1.321 billion annually for a net of \$0.

**** Oversight assumes expenditure of approximately \$71 million annually for a net of \$0.

***** Oversight assumes expenditure of approximately \$6.4 million annually for a net of \$0.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Federal*	\$0 to (\$167,000,000)	\$0 to (\$167,000,000)	\$0 to (\$167,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (\$167,000,000)	\$0 to (\$167,000,000)	\$0 to (\$167,000,000)

* FRA Income and expenditures of approximately \$3.067 billion annually and net to \$0.

The range reflects potential loss due to federal sanctions against the Title XIX federal claim (see page 6).

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

- ☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- ☒ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

§§190.839, 198.439, 208.437, 208.480, 338.550, and 633.401 - Provider reimbursement allowance taxes

Officials from the **Department of Social Services (DSS)** state passage of the proposed legislation would not fiscally impact DSS for §§190.839, 198.439, 208.437, 208.480, 338.550 and 633.401. However, if the proposed legislation does not pass, additional funding will be needed to maintain the current level of services. The numbers provided are based on an annual total for each program.

§190.839 - Ambulance Provider Tax: The proposed legislation allows the MO HealthNet Division (MHD) to collect approximately \$8.7 million in Ambulance Tax annually in FY 2022 and FY 2023 which will allow MHD to draw in federal funds of approximately \$16.3 million each year. The FY 2022 budget submitted by the DSS assumes the ambulance tax would continue through fiscal year 2022. If this proposed legislation does not pass, additional General Revenue (GR) funds of \$8.7 million annually in FY 2022 and FY 2023 would be needed to continue the current level of services.

§198.439 - Nursing Facility Reimbursement Allowance Tax: **DSS** states the proposed legislation allows the MHD to collect \$186.6 million annually in FY 2022 and FY 2023 in Nursing Facility Tax which will allow MHD to draw in federal funds of \$348.5 million each year. The FY 2022 budget submitted by the DSS assumes the nursing facility tax would continue through fiscal year 2022. If this proposed legislation does not pass, additional GR funds of \$186.6 million annually in FY 2022 and FY 2023 would be needed to continue the current level of services.

§208.437 - Medicaid Managed Care Provider Tax: The MHD is not currently collecting the Managed Care Provider Tax. The federal sunset for the managed care organization reimbursement allowance was September 30, 2009. This section of the proposed legislation will not have an impact on MO HealthNet.

As the MHD is not currently collecting the Managed Care Provider Tax, **Oversight** is not including this tax in the fiscal note tables.

§208.480 - Hospital Federal Reimbursement Allowance: **DSS** states the proposed legislation allows the MHD to collect approximately \$1.32 billion in Hospital Tax annually in FY 2022 and FY 2023 which will allow MHD to draw in federal funds of approximately \$2.565 billion each year. The FY 2022 budget submitted by the DSS and the FY23 budget that will be submitted assumes the hospital tax would continue through fiscal years 2022 and FY 2023. If this proposed legislation does not pass, additional GR funds of \$1.32 billion would be needed annually FY 2022 and FY 2023 to continue the current level of services.

§338.550 - Pharmacy Provider Tax: The proposed legislation allows the MHD to collect \$71 million annually in FY 2022 and FY 2023 in pharmacy tax which will allow MHD to draw in federal funds of \$132.5 million each year. The FY 2022 budget submitted by the DSS assumes the pharmacy tax would continue through fiscal year 2022. If this proposed legislation does not pass, additional GR funds of \$71 million annually in FY 2022 and FY 2023 would be needed to continue the current level of services.

Oversight notes the Pharmacy Provider Tax (PFRA) estimates for the current fiscal note are much higher than the previous year's estimates of collection of \$18 million with a federal draw down of \$34.3 million. The FY 2020 tax rate was 0.43%. The FY 2021 tax rate is 1.40% resulting in an increase in the PFRA collected and a corresponding increase in the federal draw down. In discussions with DSS officials, Oversight discovered the change was related to the supplemental new decision item for PFRA this past fall. DSS is engaged in ongoing discussions with the Centers for Medicare and Medicaid (CMS) around the level of the Pharmacy Dispensing Fee, which is partially funded by PFRA, and which initially resulted in adjustments lowering the rate in anticipation of a lower CMS-approved Dispensing Fee. As part of the CMS discussion, MHD initiated a Provider survey and provided this to CMS. More recent guidance from CMS indicates a higher level of Dispensing Fee will be approved than anticipated. The tax rate was restored in July 2020 to reflect levels consistent with previous years.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the fiscal impact provided by DSS for fiscal note purposes.

§633.401 - Intermediate Care Facility for the Intellectually Disabled Provider Tax (ICF/ID): **DSS** states the proposed legislation allows the MHD to collect approximately \$6.4 million in FY 2022 in intermediate care facilities for the intellectually disabled tax which will allow MHD to draw in federal funds of \$4.7 million. The FY 2022 budget submitted by the Department of Mental Health assumes the ICF/ID tax would continue through fiscal year 2022. If this proposed legislation does not pass, additional General Revenue funds of \$6.4 million annually in FY 2022 and FY 2023 would be needed to continue the current level of services.

Oversight notes the ICF/ID provider tax name has been changed from the ICF/Mentally Retarded (MR) provider tax. As of FY 2020, the fund name appears on the State Treasurer's Fund Balance Report as the ICF/ID Reimbursement Allowance Fund.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the provider taxes needed to draw down federal matching funds as provided by DSS for fiscal note purposes.

Officials from the **Department of Mental Health (DMH)** assume no fiscal impact should the sunset be extended to September 30, 2022. The provider assessment for ICF/IDs generates approximately \$6 million in revenue for DMH. The provider assessment for hospitals generates approximately \$14.1 million in additional revenues for DMH.

Oversight notes the DSS is the designated state agency that works with the federal government on Medicaid programs. Therefore, Oversight will use the DSS provider tax numbers for the ICF/ID and hospital provider tax programs.

Oversight notes, with the exception of certain state-owned facilities, all ambulance districts, nursing facilities, hospitals, pharmacies and ICF/IDs are required to pay provider taxes for the privilege of operating/providing services in the state of Missouri.

For fiscal note purposes, **Oversight** is presenting the provider taxes collected under each of the reimbursement allowance tax categories. However, Oversight assumes expenses equal to the amount of provider taxes collected would be spent on services and the net effect would be \$0.

§§188.207; 208.152; 208.153 and 208.164 – Prohibits public funds to any abortion facility, or to any affiliate or associate.

Officials from the **Department of Social Services**, state proposed §§188.207; 208.152.1(6) and (12), 208.153.1, and 208.164.10 could result in federal sanctions in that these amendments prohibit abortion providers and their affiliates from providing healthcare assistance to MO HealthNet participants. Section 1902(a)(23)(A) of the Social Security Act requires a state Medicaid agency to allow Medicaid participants to obtain medical assistance from any institution, agency, community pharmacy or person qualified to perform such assistance who undertakes to perform such assistance (“freedom of choice of provider” provision). This requirement is further set forth in Missouri’s State Medicaid Plan, as required by federal law. Excluding a group of providers could subject the Department of Social Services to federal sanctions.

However, the Department is not certain how CMS would respond to the language. Therefore, the cost is presented as a range, from \$0 to approximately 2% of the total Title XIX federal claim for the last four quarters.

Oversight does not have any information contrary to that provided by DSS. Therefore, Oversight will reflect DSS’s impact of “\$0 to (\$167,000,000)” for fiscal note purposes.

Responses regarding the proposed legislation as a whole

Officials from the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Health and Senior Services**, the **Office of Administration, Division of Budget & Planning (B&P)** and the **Office of the State Courts Administrator** each assumed the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other hospitals 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 2022 (9 Mo.)	FY 2023 (3 Mo.)	FY 2024
AMBULANCE SERVICE REIMBURSEMENT ALLOWANCE FUND (Provider tax) (0958)			
<u>Income</u> - DSS (§190.839) Assessment on ambulance organizations	\$6,550,000	\$2,175,000	\$0
ESTIMATED NET EFFECT ON THE AMBULANCE SERVICE REIMBURSEMENT ALLOWANCE FUND*	<u>\$6,550,000</u>	<u>\$2,175,000</u>	<u>\$0</u>
NURSING FACILITY FEDERAL REIMBURSEMENT ALLOWANCE FUND (Provider tax) (0196)			
<u>Income</u> - DSS (§198.439) Assessment on nursing facility organizations	\$139,940,000	\$46,650,000	\$0
ESTIMATED NET EFFECT ON THE NURSING FACILITY FEDERAL REIMBURSEMENT ALLOWANCE FUND*	<u>\$139,940,000</u>	<u>\$46,650,000</u>	<u>\$0</u>
FEDERAL REIMBURSEMENT ALLOWANCE FUND (Hospital provider tax) (0142)			
<u>Income</u> - DSS (§208.480) Assessment on hospital organizations	\$991,000,000	\$330,250,000	\$0
ESTIMATED NET EFFECT ON THE FEDERAL REIMBURSEMENT ALLOWANCE FUND*	<u>\$991,000,000</u>	<u>\$330,250,000</u>	<u>\$0</u>

KP:LR:OD

FEDERAL FUNDS			
<u>Income - DSS</u>			
Assessment on ambulance organizations (§190.839)	\$12,228,000	\$4,075,000	\$0
Assessment on nursing facility organizations (§198.439)	\$261,400,000	\$87,125,000	\$0
Assessment on hospital organizations (§208.480)	\$1,924,000,000	\$641,250,000	\$0
Assessment on pharmacy organizations (§338.550)	\$99,400,000	\$33,142,500	\$0
Assessment on ICF/ID organizations (§633.401)	\$3,500,000	\$1,175,000	\$0
Total <u>Income</u> - DSS	<u>\$2,300,250,000</u>	<u>\$766,767,500</u>	<u>\$0</u>
<u>Costs - DSS</u>			
Medicaid program expenditures	<u>(\$2,300,250,000)</u>	<u>(\$766,767,500)</u>	<u>\$0</u>
<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<u>Losses – DSS/MHD §§188.207; 208.152; 208.153 and 208.164)</u> Potential loss of federal portion of the pharmacy appropriation. p. 6	<u>\$0 to</u> <u>(\$167,000,000)</u>	<u>\$0 to</u> <u>(\$167,000,000)</u>	<u>\$0 to</u> <u>(\$167,000,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to</u> <u>(\$167,000,000)</u>	<u>\$0 to</u> <u>(\$167,000,000)</u>	<u>\$0 to</u> <u>(\$167,000,000)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

A direct fiscal impact to small business health clinics would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill makes it unlawful for any public funds to be expended to any abortion facility, or to any affiliate or associate of an abortion facility and extends the sunsets from September 30, 2021, to September 30, 2022, for the Federal Reimbursement Allowances (§§188.207; 190.839; 198.439; 208.152; 208.437; 208.480; 208.659; 338.550 and 633.401).

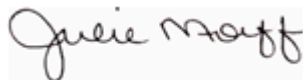
The bill removes a provision in current statute that allows any person entitled to MO HealthNet benefits to obtain benefits from any provider of services with which an agreement is in effect and which undertakes to provide the services, as authorized by the MO HealthNet division (§208.153).

This bill creates provisions requiring the Department of Social Services or its divisions to suspend, revoke, or cancel any contract or provider agreement or refuse to enter into a new contract or provider agreement with any provider where it is determined that such provider is not qualified to perform the service or services required because such provider, or such provider's agent, servant, or employee acting under such provider's authority, has failed to meet certain specified provisions (§208.164).

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

Attorney General's Office
Department of Commerce and Insurance
Department of Health and Senior Services
Department of Mental Health
Department of Social Services
Office of Administration - Division of Budget & Planning
Office of the State Courts Administrator



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June 29, 2021



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