

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3676H.011
 Bill No.: HB 1665
 Subject: Health, Public; Employees - Employers; Licenses - Driver's; Hospitals; Health Care; Health Care Professionals; Health and Senior Services, Department of; Insurance - Health; Education, Elementary and Secondary
 Type: Original
 Date: January 24, 2022

Bill Summary: This proposal modifies provisions relating to immunizations.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	(Unknown, greater than \$497,109)	(Could exceed \$108,937)	(Could exceed \$110,434)
Total Estimated Net Effect on General Revenue	(Unknown, greater than \$497,109)	(Could exceed \$108,937)	(Could exceed \$110,434)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
College & University	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Federal Funds *	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

*The potential “(Unknown)” fiscal impact to various state agencies could be quite substantial, depending upon decisions by the courts and actions taken by the federal government.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue – Department of Labor and Industrial Relations	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

- 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 2023	FY 2024	FY 2025
Local Government	(\$0 to Unknown)	(\$0 to Unknown)	(\$0 to Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§191.716, 192.073, 213.069, 292.644, 302.181, 324.1700, 338.010, and 376.456 – Immunizations

Officials from the **Department of Health and Senior Services (DHSS)** state the DHSS, Division of Regulation and Licensure (DRL), Sections for Long Term Care Regulation and Health Standards and Licensure are responsible to regulate and conduct inspections in federally certified Long-Term Care Facilities, Hospitals and other healthcare facilities. DRL is required to enforce federal regulations in these healthcare facilities through a formal, written agreement with the Centers for Medicare and Medicaid Services (CMS). CMS recently published an Interim Final Rule requiring all staff in certified health care settings receive the COVID vaccine. This legislation will restrict the ability of healthcare facilities to require staff to be vaccinated, which may result in them being terminated from the Medicare and Medicaid programs. DRL staff will no longer received Medicare or Medicaid funding to regulate or conduct inspections in these facilities.

Sections 191.716 and 292.644 - Prohibits employer to discriminate against, refuse to hire or terminate the employment of a health care professional, staff member, employee, or applicant for one of these positions based on the person's refusal to receive an immunization.

In Missouri, 510 out of 534 skilled nursing facilities and intermediate care facilities are certified to participate in Medicare and/or Medicaid. As a provider of Medicare/Medicaid, they are required to follow federal regulations and requirements, as directed by CMS. Additionally, there are 8 hospitals in the state of Missouri with a certified Medicare and/or Medicaid skilled nursing facility unit within them.

On November 4, 2021, CMS posted in the Federal Register a requirement for Medicare- and Medicaid-certified providers- requiring staff working in those settings to be fully vaccinated against COVID-19 by January 4, 2022- unless they have a medical or religious exemption. On November 29 and November 30, 2021, the United States District Court for the Eastern District of Missouri and United States District Court for the Western District of Louisiana issued preliminary injunctions against the implementation and enforcement of the Interim Final Rule against Medicare-and Medicaid-certified providers. CMS has appealed both of these decisions, and has filed motions for stays of these orders. CMS has suspended activities related to the implementation and enforcement of this rule pending future developments in the litigation. If the United States District Court finds CMS has the authority to require vaccination of employees in certified nursing facilities and hospitals, providers will be placed in a position of either complying with the federal requirements for vaccination of their employees or terminating from Medicare and/or Medicaid or complying with 191.716 or 292.644. Failure to comply with CMS' requirement could potentially effect 35,738 Missourians living in certified beds under Chapter

198 and up to 507 Missourians living in SNF certified beds in hospitals- requiring them to fund their stay privately or be discharged.

191.716.7- states “a hospital, health care facility, health care professional, educational institution, or assisted living facility that violates this section is not eligible to receive state funding for reimbursement of services provided to patients, residents, or tenants”.

If the United States District Court finds CMS has the authority to require vaccination of employees in certified nursing facilities and hospitals, providers will be placed in a position of either complying with the federal requirements for vaccination of their employees or terminating from Medicare and/or Medicaid, or complying with 191.716. Section 191.716, could place Medicaid reimbursement at risk for complying with federal law. Failure to comply with CMS’ requirement could potentially effect 35,738 Missourians currently living in certified beds under Chapter 198 and up to 507 Missourians, living in SNF certified beds in hospitals- requiring them to fund their stay privately or be discharged. Failure to comply with 191.716 impacts up to 51,078 Medicaid certified beds. Failure to comply with CMS requirements, impacts up to 53,611 Medicaid and/or Medicare certified beds.

This creates an unknown fiscal impact of up to \$15 million for DHSS federal funding.

Section 192.073.1 of the proposed legislation would require enhancements to the current Immunization Information System (IIS) to allow for the storage of written consents. The Bureau of Immunizations would incur the cost of any enhancements, ongoing support, and maintenance fees for this consent functionality. Current IIS support and maintenance costs are \$381,250 per year and is funded by general revenue. It is estimated that the additional functionality would increase the annual cost by ten percent (**\$38,125**). Requested enhancements to the IIS on average can cost **\$200,000 general revenue per project**; though the bureau has submitted an estimate for this specific enhancement, it is still awaiting an exact figure.

Section 192.073.3 of the proposed legislation stipulates that “No information, report, or record relating to a person from whom written informed consent has not been obtained shall be maintained by the department of health and senior services or included in the ShowMeVax system.” As current data in ShowMeVax does not include written consent, the subsection would require the vendor of Missouri’s IIS to delete all current patient information, which includes all vaccination data. It is estimated that there are approximately 69,199,587 immunizations administered to over 8,065,403 individuals recorded in ShowMeVax. The **general revenue cost** to remove all current data is **unknown** at this time.

Section 192.073.3 of the proposed legislation would also require enhancements to the current IIS to have the functionality to support the written consent of the vital record feed for the birth dose of Hepatitis B. Without this automatic feed of the birth dose of Hepatitis B into the IIS, an infant born in Missouri could receive an unnecessary additional dose. The Bureau of Immunizations will incur the general revenue cost of any enhancements and ongoing support and maintenance

fees for this consent functionality. Requested enhancements to the IIS on an **average can cost \$200,000** per project.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a cost to the General Revenue fund of Unknown, greater than \$438,125 for FY 2023; and approximately \$39,000 for each FY 2024 and 2025. In addition, Oversight will present a loss of federal Medicaid funding of up to \$15,000,000 for each year of the fiscal note.

Officials from the **Department of Mental Health (DMH)** state the requirement of this proposal may put some DMH facilities and agencies at odds with federal requirements for licensure and/or CMS funding. In addition, this provision does not define how causation from immunization to injury will be traced. Further, the provision does not identify which entity is responsible for determining whether an injury was caused by an immunization, which could implicate workers compensation. Further clarification is needed in the proposed language to address these issues.

Due to the uncertainty surrounding a federal vaccination mandate, the DMH cannot calculate a fiscal impact on the Department at this stage; therefore, the fiscal impact to the DMH is unknown at this time.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a (\$0 to Unknown, greater than \$250,000 annually) fiscal impact to the General Revenue Fund and Federal Funds for this agency.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** state §213.069 of this legislation creates an additional legal standard for what constitutes discrimination. It is assumed that implementation of the lower burden of proof standard set forth in this section (acts "based on" rather than "because of" discriminatory intent) would result in additional Missouri Human Rights Act claims being made against state agencies and that such litigation would have a significant likelihood of resulting in additional judgments or settlements.

The Missouri Commission on Human Rights (MCHR) has no prior statistics, however DOLIR's Religious and other claims are usually around 5% or less of the annual case load. Based on the prior calls DOLIR has gotten during the pandemic, it is estimated an increase of no more than 10% would occur.

Using this assumption, the projected number of additional complaints for FY 2022 is estimated at 50. The minimum number of investigations completed per Human Relations Officer per year is 96. Using this estimate, the MCHR has determined it would require one additional Human Relations Officer (\$40,850 annually).

Officials from the **University of Missouri (UM)** state if this bill were construed to apply to University hospitals or health care facilities and the federal mandate is upheld as a condition of participation in Medicare and Medicaid, it could result in a loss of \$547.4 million annually. The

proposed statute would create a new potential source of liability for the University; however, it is not possible to identify a significant fiscal impact at this time.

Officials from the **University of Central Missouri** state this proposal would have an indeterminate fiscal cost due to the uncertainty of application and indeterminate negative fiscal implications due to the potential for increased personnel expenses due to CDC guidelines regarding protections for unvaccinated health care staff and close contact definitions.

Officials from **Missouri State University** state this legislation would have a negative fiscal impact of an undetermined amount. If Executive Order 14042 remains in effect, the legislation could result in the termination of approximately \$5 million in contracts between Missouri State University and the federal government.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect costs of (\$0 to Unknown) annually to College & University Funds for these universities.

Officials from the **City of Kansas City** state this legislation could have a negative fiscal impact on the City of Kansas City, Missouri, of an indeterminate amount if it increases Kansas City's exposure to liability as an employer.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a (\$0 to Unknown) fiscal impact for local governments.

Officials from the **Boone County Commissioner's Office** responded to **Oversight's** fiscal note request but did not provide any information regarding the impact of this proposal on their organization.

Officials from the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Revenue**, the **Department of Public Safety**, **Missouri Highway Patrol** and **Missouri Veterans Commission**, the **Missouri Department of Transportation**, the **Cities of: Claycomo, Hughesville, and Springfield**, the **Newton County Health Department**, the **Greene County Clerk's Office**, **St. Charles Community College** and the **Missouri Consolidated Health Care Plan** each assume 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.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and

regulations to implement the act. The SOS 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 the 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, the SOS also recognizes 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 the office can sustain with its 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.

Officials from the **Department of Social Services**, the **Missouri Office of Prosecution Services** and the **Office of the State Courts Administrator** did not respond to **Oversight's** request for a statement of fiscal impact.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities, various county officials, local public health agencies, nursing homes, hospitals, and colleges and universities were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in Oversight's database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Costs – DHSS (§§192.073) p. 4-5</u>			
System enhancements and on-going support & maintenance	(\$438,125)	(\$38,506)	(\$38,891)
Deletion of immunization records p. 4	<u>(Unknown)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - DHSS</u>	<u>(Unknown, greater than \$438,125)</u>	<u>(\$38,506)</u>	<u>(\$38,891)</u>
<u>Costs – DMH (§§191.716 and 292.644) p. 5</u>			
Increase in costs due to conflicts with vaccination mandate	(\$0 to Unknown)	(\$0 to Unknown)	(\$0 to Unknown)
<u>Costs – DOLIR (§213.069) p. 5</u>			
Personal service	(\$34,042)	(\$41,667)	(\$42,500)
Fringe benefits	(\$23,742)	(\$28,764)	(\$29,043)
Equipment and expense	(\$1,200)	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - DOLIR</u>	<u>(\$58,984)</u>	<u>(\$70,431)</u>	<u>(\$71,543)</u>
FTE Change - DOLIR	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Unknown, greater than \$497,109)</u>	<u>(Could exceed \$108,937)</u>	<u>(Could exceed \$110,434)</u>
Estimated Net FTE Change on the General Revenue Fund	1 FTE	1 FTE	1 FTE

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
COLLEGE & UNIVERSITY FUNDS			
<u>Loss – Colleges and Universities (§§191.716 and 292.644) p. 5 & 6</u>			
Reduction in federal funds received	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON COLLEGES & UNIVERSITY FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
FEDERAL FUNDS			
<u>Loss – DHSS (§§191.716 and 292.644) p. 4</u>			
Reduction in Medicaid for non-compliance with federal COVID vaccination law	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<u>Loss – DMH (§§191.716 and 292.644) p. 5</u>			
Reduction in Medicaid for non-compliance with federal COVID vaccination law	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL GOVERNMENTS - CITIES			
<u>Costs</u> – Cities (§§191.716 and 292.644) p. 6			
Increase in liability exposure	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>
ESTIMATED NET EFFECT ON CITIES	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>

FISCAL IMPACT – Small Business

This proposal may have a negative administrative impact on small business physician offices. In addition, it may require additional enhancements to a provider’s Electronic Health System (EHS) or Electronic Medical Record (EMR). (§192.073)

FISCAL DESCRIPTION

The bill prohibits hospitals or health care facilities from requiring a health care professional, staff member, employee, or applicant for a position to be immunized, or discriminating against or terminating such person, for their refusal to receive an immunization.

Hospitals, health care facilities, and their employees shall not discriminate against or terminate treatment of a patient based upon the patient's refusal to receive an immunization. Health care facilities or assisted living facilities shall not discriminate against or terminate treatment of a resident or tenant solely on the basis of the resident or tenant not having received, or refusing to receive, an immunization for a specific communicable disease.

A hospital, health care facility, or educational institution providing clinical experience to satisfy professional degree requirements of a student, intern, or resident shall not discriminate against such persons based on their immunization status.

This bill specifies that any person aggrieved under these provisions may petition the circuit court in the county where the facility is located to seek relief as outlined in the bill. A hospital, health care facility, health care professional, educational institution, or assisted living facility that violates these provisions shall not be eligible to receive state funding for reimbursement of patient, resident, or tenant services.

The bill states that the Department of Health and Senior Services shall require written, informed consent be obtained by a health care professional for any patient before information regarding

the vaccination or immunization of that patient may be entered into the ShowMeVax system. Any patient who has given consent may withdraw or amend the written consent at any time.

It is unlawful for any owner, lessee, sub lessee, proprietor, manager, superintendent, or employee of any place of public accommodation to provide any service, aid, or benefit, or segregate or treat differently, any person on the basis of their immunization status.

This bill specifies that no employer may refuse to hire, discharge, penalize, or discriminate against an employee on the basis of the employee's vaccination history, refusal by the employee to receive a vaccine, or refusal to provide proof of immunity. An employee whose rights have been violated under this provision may bring civil action against the employer in the circuit court of relevant jurisdiction for relief as specified in the bill.

This bill provides that state driver's and commercial driver's licenses may not include vaccination, immunization, or immunity status, or test results relating to communicable diseases, of the holder of the license. No applicant for a nondriver license card shall be required to prove receipt of vaccination against COVID-19 for issuance of the card, and no nondriver license shall include vaccination, immunization, or immunity status, or test results relating to communicable diseases, of the holder of the nondriver license.

A licensing authority, as defined in the bill, may not deny an applicant for a health care professional license; suspend, revoke, or refuse to renew a license; or take disciplinary action against a licensed health care professional based on the applicant's or licensed professional's immunization history or refusal to submit to an immunization.

The bill specifies that no insurer offering group health insurance coverage, as defined in the bill, may reject, deny, limit, cancel, or otherwise adversely affect eligibility or coverage based on the immunization status of the enrollee. No insurer may use the immunization status of a person as a basis for terminating a contract with that person's health care professional.

No insurer offering group health insurance coverage may provide financial or other incentives, or impose penalties, on a participating health care professional who does not attain a certain immunization administration rate. The immunization status of a person covered by a group health plan shall not be used as a factor in the rating of a group health plan in the state.

This bill contains penalty provisions.

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

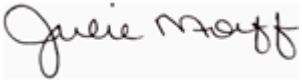
SOURCES OF INFORMATION

Attorney General's Office
Department of Commerce and Insurance
Department of Elementary and Secondary Education
Department of Higher Education and Workforce Development
Department of Health and Senior Services
Department of Mental Health
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety –
 Missouri Highway Patrol
 Missouri Veterans Commission
Missouri Department of Conservation
Missouri Department of Transportation
Office of the Secretary of State
University of Missouri
City of Claycomo
City of Hughesville
City of Kansas City
City of Springfield
Boone County Commissioner's Office
Newton County Health Department
Greene County Clerk's Office
Missouri State University
University of Central Missouri
St. Charles Community College
Missouri Consolidated Health Care Plan

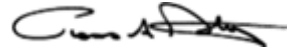
NOT RESPONDING

Department of Social Services
Missouri Office of Prosecution Services
Office of the State Courts Administrator

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January 24, 2022



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January 24, 2022