

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4259H.03C  
Bill No.: HCS for HB 1854  
Subject: Abortion; Health Care; Taxation and Revenue - General; Medicaid/MO HealthNet  
Type: Original  
Date: February 9, 2022

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

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>  |                |                |                |
|--|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                 | <b>FY 2023</b> | <b>FY 2024</b> | <b>FY 2025</b> |
|  |                |                |                |
| <b>Total Estimated Net Effect on General Revenue</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>              |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2023</b> | <b>FY 2024</b> | <b>FY 2025</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>Other</u> State Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

Numbers within parentheses: () indicate costs or losses.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                  |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|
| FUND AFFECTED   | FY 2023                       | FY 2024                       | FY 2025                       |
| Federal*  | \$0 to (\$166,000,000)        | \$0 to (\$166,000,000)        | \$0 to (\$166,000,000)        |
|   |                               |                               |                               |
| <b>Total Estimated Net Effect on <u>All</u> Federal Funds</b> | <b>\$0 to (\$166,000,000)</b> | <b>\$0 to (\$166,000,000)</b> | <b>\$0 to (\$166,000,000)</b> |

\* The range reflects a potential loss of funding due to potential federal sanctions against the Title XIX federal claim.

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |          |          |          |
|---|----------|----------|----------|
| FUND AFFECTED   | FY 2023  | FY 2024  | FY 2025  |
|   |          |          |          |
|   |          |          |          |
| <b>Total Estimated Net Effect on FTE</b>                  | <b>0</b> | <b>0</b> | <b>0</b> |

- ☒ 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.

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |            |            |            |
|--|------------|------------|------------|
| FUND AFFECTED                              | FY 2023    | FY 2024    | FY 2025    |
|  |            |            |            |
| <b>Local Government</b>                    | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

## **FISCAL ANALYSIS**

### **ASSUMPTION**

§§188.202; 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 (DSS)** state the proposed language in §188.202 may be subject to legal challenge on the grounds that it may conflict with current federal law governing the Medicaid program to the extent that it would prohibit the Missouri Medicaid program from paying for abortions in cases of pregnancies arising from rape or incest. Under current federal law, state Medicaid programs are not required to pay for abortions except in cases of rape, incest, and when necessary to save the life of the mother. This is known as the Hyde Amendment. The current version of the Hyde amendment is included in the federal appropriation bill for the Medicaid program. See Public Law 116-260 (2020), which was extended by Public Law 117-43 (2021) and Public Law 117-70 (2021). In 1994, the United States District Court entered an injunction against Missouri directing Missouri to comply with the requirements of the Hyde Amendment. *Stangler v. Shalala*, 1994 WL 764104 (W.D.Mo 1994). Failure to comply with the requirements of current federal law could subject Missouri to the risk of litigation and sanction, including the possibility of deferral or disallowance of federal financial participation in Missouri's Medicaid program.

Proposed §§188.202, 188.207, 208.152.1(6) and (12), 208.153.1, and 208.164.10 could result in federal sanctions in that these amendments make it unlawful for any public funds to be expended to any abortion facility, or to any affiliate or associate of such abortion facility. These facilities would not receive Medicaid reimbursement for any health care services provided to Medicaid participants and would likely no longer provide services to MO HealthNet participants since they would receive no reimbursement. 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. While DSS is unaware of another state prohibiting a group of providers in the manner in which is proposed by this legislation, DSS does believe that this would likely violate the “freedom of choice of provider” provision of federal law and could subject the Department of Social Services to federal sanctions.

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% (\$166 million) 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 (\$166,000,000)” for fiscal note purposes, dependent upon action (if any) taken by the CMS.

Responses regarding the proposed legislation as a whole

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Office of Administration - Budget & Planning (B&P)** state this bill has no direct impact on B&P or on general and total state revenues. The B&P states it will not impact the calculation pursuant to Article X, Section 18(e).

Officials from the **Department of Commerce and Insurance**, the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **Office of the State Public Defender** and the **Newton County Health Department** 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.

In response to a previous version, officials from the **St. Louis County Health Department** assumed the proposal would have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for that agency.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, other local public health agencies, nursing homes, ambulance districts and hospitals 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.

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)** notes 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 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 the office can sustain with the 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.

| <u>FISCAL IMPACT – State Government</u>   | FY 2023<br>(10 Mo.)                                   | FY 2024   | FY 2025   |
|---|---|---|---|
|   |   |   |   |
| <b>FEDERAL FUNDS</b>  |   |   |   |
|   |   |   |   |
| Losses – DSS/MHD (§§188.202; 188.207; 208.152; 208.153 and 208.164) Potential loss of federal portion of the pharmacy appropriation pp. 3-4 | <u>\$0 to</u><br><u>(\$166,000,000)</u>               | <u>\$0 to</u><br><u>(\$166,000,000)</u>               | <u>\$0 to</u><br><u>(\$166,000,000)</u>               |
|   |   |   |   |
| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>  | <u><b>\$0 to</b></u><br><u><b>(\$166,000,000)</b></u> | <u><b>\$0 to</b></u><br><u><b>(\$166,000,000)</b></u> | <u><b>\$0 to</b></u><br><u><b>(\$166,000,000)</b></u> |
|   |   |   |   |

| <u>FISCAL IMPACT – Local Government</u> | FY 2023<br>(10 Mo.) | FY 2024           | FY 2025           |
|---|---------------------|-------------------|-------------------|
|   |                     |                   |                   |
|   | <u><b>\$0</b></u>   | <u><b>\$0</b></u> | <u><b>\$0</b></u> |

#### FISCAL IMPACT – Small Business

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

#### FISCAL DESCRIPTION

This bill provides no federal act, law, executive order, administrative order, rule, or regulation may infringe on the right of state citizens to restrict public funds, facilities, and employees from:

- 1) Being used to perform, induce, or assist in abortions;
- 2) Encouraging childbirth over abortions in the use of public funds, facilities, and employees;
- 3) Defending the religious beliefs and moral convictions of those who do not wish to be forced to participate directly or indirectly in abortions;
- 4) Preventing the state, its political subdivisions, and public officials from being coerced or compelled by the federal government from administering or enforcing a federal regulatory program that funds abortions (§188.202).

It shall be unlawful for public funds to be expended to any abortion facility and any affiliate or associate of such facility (§§188.207; 208.152; 208.164 and 208.659).

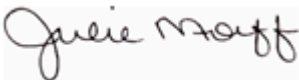
If a taxpayer takes action to enforce the above provisions of the bill, a court may order injunctive or other equitable relief, recovery of damages or other legal remedies, or both, as well as payment of reasonable attorney's fees, costs, and expenses of the taxpayer (§188.202).

Currently, any person entitled to MO HealthNet benefits is able 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, the bill repeals this option (§208.153).

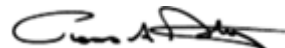
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### 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  
Joint Committee on Administrative Rules  
Missouri Office of Prosecution Services  
Office of Administration - Budget and Planning  
Office of the Secretary of State  
Office of the State Courts Administrator  
Office of the State Public Defender  
Newton County Health Department  
St. Louis County Health Department



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