

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5103H.011
 Bill No.: HJR 117
 Subject: Medicaid/MO HealthNet; Appropriations
 Type: Original
 Date: January 18, 2022

Bill Summary: This legislation proposes a constitutional amendment relating to MO HealthNet.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue*	Unknown to (Unknown) and could exceed (\$7,000,000)*	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on General Revenue	Unknown to (Unknown) and could exceed (\$7,000,000)*	Unknown to (Unknown)	Unknown to (Unknown)

* “Could exceed” end of range is based on a special election being held.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Federal Reimbursement Allowance (FRA) (0142)*	\$0 or \$0 to \$215,203,299	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or \$0 to \$215,203,299	\$0 or Unknown	\$0 or Unknown

* High end of range is full potential savings of the proposed legislation to the FRA Fund.

Numbers within parentheses: () indicate costs or losses.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue			
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 2023	FY 2024	FY 2025
Local Government - Hospitals	\$0 or \$0 to (\$215,203,299)	\$0 or (Unknown)	\$0 or (Unknown)

* High end of range is full potential losses of the proposed legislation to health care providers.

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 available 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.

Missouri Constitution Article IV, Section 36(c), 36(d), 36(e), and 36(f) - Referendum

Oversight notes the provisions of this proposal are subject to a vote of the people. In the event the proposal does not pass, the provisions would not be implemented and the fiscal impact would be \$0. Therefore, for fiscal note purposes, all costs will be ranged as "\$0 or..." for the appropriate agency and fund.

Officials from the **Department of Social Services (DSS)** state the proposed bill will likely require MO HealthNet to submit amendments to its Medicaid State Plan to the federal Department of Health and Human Services (DHHS), Centers for Medicare & Medicaid Services (CMS) each year concerning Medicaid eligibility. This will likely result in an increase in need for staff resources and will likely result in higher administrative costs to potentially change or modify Medicaid eligibility each year. CMS may not approve changes proposed by MO HealthNet to the State Plan from year to year. Whether Missouri can receive federal reimbursement for Medicaid services is contingent upon CMS approving Missouri's Medicaid State Plan amendments.

To create the MO HealthNet work and community engagement requirements, the Department of Social Services (DSS) would need to seek a waiver under Section 1115 of the Social Security Act from the federal Department of Health and Human Services. However, this joint resolution does not grant DSS the authority to seek such a waiver.

During the federal public health emergency as set forth by the Department of Health and Human Services, Missouri has been eligible for enhanced federal Medicaid funds (federal medical assistance percentage, or FMAP) on certain Medicaid services so long as Missouri does not reduce coverage for individuals receiving Medicaid during the federal public health emergency (PHE). Missouri receives an additional enhanced FMAP for expanding Medicaid coverage for up to eight (8) consecutive quarters so long as Missouri continues to provide Medicaid coverage to the Adult Expansion Group. Should Missouri reduce or eliminate eligibility for coverage groups currently covered by MO HealthNet during the PHE or no longer provides expanded Medicaid coverage, Missouri could be at risk of losing one or both of the enhanced FMAP rates. While

DSS does not know how long DHHS will continue to declare that a federal PHE exists, the PHE currently extends through April 16, 2022.

Because this proposal makes Medicaid eligibility subject to yearly appropriations and to potential yearly amendments to Missouri's Medicaid State Plan, including CMS approval of any changes to the state plan, the fiscal impact is unable to be determined and is therefore estimated as \$0 to unknown.

Oversite notes this proposal does not grant DSS the authority to seek a waiver for MO HealthNet work and community engagement requirements from DHHS. Oversight also notes the Kaiser Family Foundation, Kaiser Health News (KHN) reported that an [executive order](#) was issued on January 28, 2021, which mandates that DHHS "consider whether to suspend, revise, or rescind" the guidance, which has since been removed from the CMS website. KHN further reports that, as of June 29, 2021, DHHS had notified four (4) states that it is withdrawing their work requirement waivers.

Due to the variables regarding potential FMAP changes, uncertainty of State Plan Amendment approvals and the length of the current PHE, **Oversight** will reflect the estimates provided by DSS as a savings of "\$0 to Unknown" for the reduction of MO HealthNet coverage and a cost of "\$0 to (Unknown)" for potential decreased FMAP rates and possible penalties imposed by DHSS, CMS.

DSS states that, for the requirement of section 36(e), that there will be no reimbursements to providers for services for people who are not residents, there is also a fiscal impact.

This section may reduce the amount of Direct Medicaid payments to certain health care providers. Appropriations authority for the state share of Direct Medicaid payments have historically come from the Federal Reimbursement Assessment fund (FRA). Reductions in FRA derived payments may result in an increased FRA fund balance initially. The initial increase in FRA fund balance could be available in part or in whole to allow for payments for other existing services and/or other payment methodologies (for example, value based payment arrangements based on participant health outcomes). Alternatively, the hospital provider tax assessment could be reduced to lower the FRA fund balance. Reductions to hospital revenue may result in overall lower tax assessment which may reduce overall FRA funding in later years.

The potential impact to the FRA fund for this bill depends on a variety of scenarios which could range between no impact and an estimated savings up to \$215,203,299 in the first year.

Oversight notes DSS assumes a savings of \$0 to \$215,203,299 as a result of the provisions of this proposal. Based on discussions with DSS officials, Oversight learned the basis of this estimate is the projected out-of-state hospital payments for FY 2022. Oversight does not have

any information to the contrary. Therefore, Oversight will reflect the savings provided by DSS as \$0 or \$0 to \$215,203,299 in FY 2023 and \$0 or Unknown in subsequent fiscal years for fiscal note purposes.

Oversight assumes a reduction in reimbursement from the FRA would result in a loss of income to healthcare providers. While DSS states the hospital provider tax could be reduced to lower the FRA balance, thereby offsetting some of the reimbursement losses, there is no provision for that in the proposed legislation. Therefore, Oversight assumes the collective fiscal impact on healthcare providers would be \$0 or \$0 to (\$215,203,299) in FY 2023 and \$0 or (Unknown) in subsequent fiscal years.

Oversight also notes the FRA program funds reimbursement of hospital services and the hospital portion of the managed care premiums provided to MO HealthNet participants and the uninsured.

The FRA program serves as a General Revenue equivalent by supplementing payments for the cost of providing care to Medicaid participants under Title XIX of the Social Security Act, and to the uninsured. Under the provisions of §208.465, the unexpended balance shall not revert to the General Revenue Fund, but shall accumulate from year to year.

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 **Office of the Secretary of State** assume, 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 million based on the cost of the 2020 Presidential Preference Primary.

The Secretary of State's office 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. Funding for this item is adjusted each year

depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

For the FY 2022 petitions cycle, the SOS estimates publication costs at \$70,000 per page. This amount is subject to change based on number of petitions received, length of those petitions and rates charged by newspaper publishers.

The Secretary of State's office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, the SOS reserves the right to request funding to meet the cost of the publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated 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 2023. 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 statewide primary election is in August 2022 and the next scheduled general election is in November 2022 (both in FY 2023). It is assumed the subject within this proposal could be on one of these ballots; however, it could also be on a special election called for by the Governor (a different date). Therefore, Oversight will reflect a potential election cost reimbursement to local political subdivisions in FY 2023.

Officials from the **Department of Mental Health (DMH)** state the exemptions to the work and community engagement requirements appear to carve out the DMH populations for those that are determined to be permanently or totally disabled including those within the Division of Behavioral Health and the Division of Developmental Disability. It no longer appears to carve out the DMH population of those in substance abuse treatment programs. DMH assumes participants in the substance abuse treatment programs will meet the work requirement criteria and still qualify for Medicaid. If this is the case, DMH assumes no impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

Officials from the **Department of Economic Development (DED)**, the **Department of Health and Senior Services (DHSS)** and the **Office of Administration - Budget and Planning (B&P)** defer to the Department of Social Services (DSS) for the potential fiscal impact of this proposal.

Oversight notes DED's, DHSS's and B&P's deferral to DSS for a statement of fiscal impact; for fiscal note purposes, Oversight assumes no fiscal impact for DED, DHSS or B&P.

Officials from the **Department of Commerce and Insurance**, the **Department of Higher Education and Workforce Development**, the **Missouri House of Representatives**, the **Missouri Senate**, the **Jackson County Election Board**, the **Newton County Health Department**, the **Platte County Board of Elections** and the **St. Louis County Board of Elections** 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.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other local elections authorities, local public health agencies, nursing homes 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)** 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.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Savings</u> – DSS (Article IV, Section 36) Reduction in state share of MO HealthNet expenditures pp. 3-4	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Transfer Out</u> - Local Election Authorities the cost of the special election if called for by the Governor pp. 5-6	\$0 or (\$7,000,000)	\$0	\$0
<u>Loss</u> – DSS (Article IV, Section 36) Reduction in state share of MO HealthNet expenditures pp. 3-4	(\$0 to Unknown)	(\$0 to Unknown)	(\$0 to Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND*	<u>Unknown to (Unknown) and could exceed (\$7,000,000)</u>	<u>Unknown to (Unknown)</u>	<u>Unknown to (Unknown)</u>
FEDERAL REIMBURSEMENT ALLOWANCE FUND (0142)			
<u>Savings</u> - DSS (Section 36(e)) - Reduction in Direct Medicaid payments p. 5	\$0 or \$0 to \$215,203,299	\$0 or Unknown	\$0 or Unknown
ESTIMATED NET EFFECT ON THE FEDERAL REIMBURSEMENT ALLOWANCE FUND	<u>\$0 or \$0 to \$215,203,299</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Transfer In</u> - to Local Election Authorities the cost of a special election pp. 5-6	\$0 or \$7,000,000	\$0	\$0
<u>Cost</u> - Local Election Authorities the cost of the special election if called for by the Governor pp. 5-6	\$0 or (\$7,000,000)	\$0	\$0
<u>Losses</u> - Hospitals (Section 36(e)) - Reduction in Direct Medicaid reimbursements p. 5	\$0 or \$0 to (\$215,203,299)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON THE LOCAL POLITICAL SUBDIVISIONS	\$0 or \$0 to (\$215,203,299)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL IMPACT – Small Business

Missouri Constitution Article IV, Section 36 provisions could have a direct, negative fiscal impact on small health care providers or clinics that accept MO HealthNet payments if recipients lose benefits because money is not appropriated to fund the program.

Missouri Constitution Article IV, Section 36 provisions could have a direct, negative fiscal impact on small health care providers or clinics that accept MO HealthNet payments if recipients lose benefits because of not meeting the work requirements of the proposal. Yet it also may help small businesses that are looking for qualified applicants to fill vacant employment positions.

FISCAL DESCRIPTION

ELIGIBILITY DETERMINATION

The General Assembly has the right to and shall determine eligibility for HealthNet services pursuant to Section 36(c) of the Missouri Constitution, eligibility for individuals 19 years old or older and under 65 who qualify for HealthNet services under federal law and who have income

at or below 138% of the federal poverty level, referred to as the "Medicaid expansion population", by appropriation. If an appropriation specifically naming this population is not made for a fiscal year, the population shall not be eligible for HealthNet services for that fiscal year. This amendment repeals the provision of the Constitution prohibiting any greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices be placed on the Medicaid expansion population (Missouri Constitution Article IV, Section 36(c)).

In any given fiscal year, any eligible population for HealthNet services shall be eligible only if an appropriation for that population is made in that fiscal year. Further, in any given fiscal year, any service or type of provider for which reimbursement is allowed shall be eligible for reimbursement only if an appropriation for that service or type of provider is made for that fiscal year (Missouri Constitution Article IV, Section 36(c) and (d)).

RESIDENCY REQUIREMENT

The state shall not provide payments, add-ons, or reimbursements to health care providers through MO HealthNet for medical assistance services provided to persons who are not state residents, as determined pursuant to 42 C.F.R. 435.403 (Missouri Constitution Article IV, Section 36(e)).

WORK AND COMMUNITY ENGAGEMENT REQUIREMENT

MO HealthNet participants 19 years old or older and under 65 must comply with work and community engagement requirements, unless otherwise exempt as provided for in the amendment. These requirements include any combination of at least 80 hours each month of:

- (1) Unsubsidized or subsidized private or public sector employment;
- (2) Education, including vocational educational training, job skills training directly related to employment, education directly related to employment for individuals who have not received a high school diploma or certificate of high school equivalency, or satisfactory attendance at a secondary school;
- (3) Community service;
- (4) Job search and job readiness assistance;
- (5) Provision of child care services to an individual who is participating in a community service program; or
- (6) Participation in a substance abuse treatment program.

A participant who is also a participant of the Temporary Assistance for Needy Families Program (TANF) or the Supplemental Nutrition Assistance Program (SNAP) that satisfies work requirements related to those programs shall be deemed to have satisfied the work and community engagement requirements of this amendment.

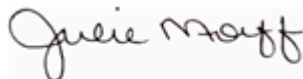
The Department of Social Services may permit further exemptions from these requirements in areas of high unemployment, areas with limited economic or educational opportunities, areas that

lack public transportation, or otherwise for good cause. The Department shall provide reasonable accommodations, as described in the amendment, for participants with disabilities as defined by the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or Section 1557 of the Patient Protection and Affordable Care Act (Missouri Constitution Article IV, Section 36(f)).

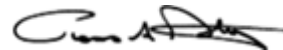
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements and would not require additional rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Commerce and Insurance
Department of Economic Development
Department of Health and Senior Services
Department of Higher Education and Workforce Development
Department of Mental Health
Department of Social Services
Joint Committee on Administrative Rules
Missouri House of Representatives
Missouri Senate
Office of Administration - Budget and Planning
Office of the Secretary of State
Jackson County Election Board
Newton County Health Department
Platte County Board Of Elections
St. Louis County Board of Elections



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