

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1966-01
Bill No.: HB 843
Subject: Nursing and Boarding Homes; Telecommunications
Type: Original
Date: April 8, 2015

Bill Summary: This proposal establishes the Patient Monitoring Act which allows patients in long-term care facilities or their surrogates to install a monitoring device in the resident's room which broadcasts or records activity.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(\$475,061)	(\$538,350)	(\$549,880)
Total Estimated Net Effect on General Revenue	(\$475,061)	(\$538,350)	(\$549,880)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	7	7	7
Total Estimated Net Effect on FTE	7	7	7

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services (DHSS)** state the Division of Regulation and Licensure (DRL) will be required to evaluate compliance with the provisions of this legislation through onsite inspections and complaint investigations. DRL estimates an increase in the number of complaints received regarding the use or misuse of monitoring devices.

Seven additional FTE will be required. DRL will need one new Facility Surveyor II assigned to each of the seven Section for Long Term Care Regulation regional offices. There are currently 1,150 facilities that would fall under the requirements of this legislation. The additional positions will handle complaint volume regarding use of monitoring devices. Each complaint regarding volume, focus, direction, etc. has the likelihood of being reported to the Elderly Abuse and Neglect Hotline, and will necessitate an investigation by DRL. In addition, DRL will be required to evaluate compliance with the provisions of this legislation, such as ensuring all residents/surrogates are informed upon admission of the option to use a monitoring device, during each annual inspection of the facility.

Oversight assumes there will be an increase in complaints and that the DHSS will need to hire additional surveyors to investigate the complaints. However, since these investigators will be located around the state, Oversight assumes the DHSS will not need additional rental space to add one FTE to each regional office.

Oversight notes that section 198.602 provides that no person can be denied admission to or discharged from a facility because of a choice to authorize installation and use of a monitoring device. Any person violating this section is subject to a civil penalty of up to \$10,000 per occurrence. Oversight is not presenting these potential penalties for fiscal note purposes since it is unknown how many, if any, penalties might be incurred.

Officials from the **Department of Corrections (DOC)** state this proposal establishes the Patient Monitoring Act which allows patients in long-term care facilities or their surrogates to install a monitoring device in the resident's room which broadcasts or records activity. The penalty is a class D felony (class E felony beginning in 2017 due to changes in the criminal code) for any person other than a patient or surrogate found guilty of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility under sections 198.575 to 198.605.

The nature of the Monitoring Act itself and associated penalty is limited in prior data for comparison. Similar laws have been enacted in only six other states since 2001 and no violation information was found. Missouri currently has two laws related both in penalty and nature of

ASSUMPTION (continued)

offense. These are tampering of physical evidence (RSMo 575.100, charge code 29110) and tampering with computer data (RSMo 569.095, charge code 23043), both carrying possible class D felony penalties. Of these, offenses in the past five years have only occurred for tampering of physical evidence.

Data from the previous five fiscal years indicate an average of 5.5 incarcerated offenders/year under the associated charge code. FY2014 records indicate the average prison term was 20 months of a 6 year sentence. In addition, there were 8 new probations for a term of 4.5 years. Because this proposal represents a specific case of interfering with a monitoring device under particular circumstances, it is likely that a smaller number of offenses would occur, but with similar sentences. Passage of this proposal would likely lead to one additional incarceration for two years with four years on parole and one additional probation for four years. The total impact is estimated to be 2 additional offenders in prison and 8 on field supervision.

The FY 2014 average cost of supervision is \$6.72 per offender per day or an annual cost of \$2,453 per offender. The DOC's cost of incarceration is \$16.725 per day or an annual cost of \$6,105 per offender.

The estimated fiscal impact for 10 years is as follows. Costs include a 2% inflation factor.

FY 2016 (10 months)	\$7,132
FY 2017	\$17,458
FY 2018	\$22,912
FY 2019	\$28,583
FY 2020	\$31,818
FY 2021	\$35,174
FY 2022	\$35,886
FY 2023	\$36,613
FY 2024	\$37,355
FY 2025	\$38,112

Oversight assumes the DOC could absorb the potential costs for FY 2016.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility which would be a new class D felony until December 31, 2016, and a class E felony beginning January 1, 2017.

ASSUMPTION (continued)

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Oversight assumes the potential responsibilities imposed on county prosecutors as a result of this proposal, will be absorbable within current funding and staffing levels.

Officials from the **Office of the Secretary of State (SOS)** state 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 \$2,500. 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 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.

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 request funding through the appropriation process.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Joint Committee on Administrative Rules** and the **Office of State Courts Administrator** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§198.575 - 198.599)</u>			
Personal service costs	(\$244,650)	(\$296,516)	(\$299,481)
Fringe benefits	(\$127,230)	(\$154,203)	(\$155,745)
Equipment and expense	<u>(\$103,181)</u>	<u>(\$70,173)</u>	<u>(\$71,742)</u>
Total Costs - DHSS	<u>(\$475,061)</u>	<u>(\$520,892)</u>	<u>(\$526,968)</u>
FTE Change - DHSS	7 FTE	7 FTE	7 FTE
 <u>Costs - DOC (§198.605)</u>			
Incarceration an supervision costs	<u>\$0</u>	<u>(\$17,458)</u>	<u>(\$22,912)</u>
 ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND			
	<u>(\$475,061)</u>	<u>(\$538,350)</u>	<u>(\$549,880)</u>
 Estimated Net FTE Effect on the General Revenue Fund			
	7 FTE	7 FTE	7 FTE
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2016 (10 Mo.)	FY 2017	FY 2018
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could have a significant fiscal impact on small business nursing facilities if they are found to have violated the provisions of the proposal where a person was denied admission to or discharged from a facility because of a choice to authorize installation and use of a monitoring device. Each occurrence of a violation carries a \$10,000 civil penalty.

FISCAL DESCRIPTION

This proposal permits a patient or a surrogate to authorize installation and use of a monitoring device in a facility provided that certain requirements are met. The patient may establish and the facility must accommodate limits on the use, including the time of operation, direction, focus or volume, of a monitoring device. At the time of admission to a facility, a patient must be

FISCAL DESCRIPTION (continued)

offered the option to have a monitoring device, and a record of the patient's authorization or choice not to have a monitoring device must be kept by the facility and must be made accessible to the state ombudsman. After authorization, consent, and notice, a patient or surrogate may install, operate, and maintain a monitoring device in the patient's room at the patient's expense. The proposal requires the facility to cooperate to accommodate the installation of the monitoring device, provided the installation does not place undue burden on the facility. The patient or surrogate must be responsible for removal of the monitoring device, at the patient's or surrogate's expense, upon discharge of the patient from the facility or upon the death of the patient. Consent to the authorization for the installation and use of a monitoring device may be given only by the patient or the surrogate. Consent to the authorization for the installation and use of a monitoring device must include a release of liability for the facility for a violation of the patient's right to privacy insofar as the use of the monitoring device is concerned. A patient or the surrogate may reverse a choice to have or not have a monitoring device installed and used at any time, after notice to the facility and to the state ombudsman upon a form prescribed by the department. The form for the authorization of installation and use of a monitoring device must include certain elements as specified in the proposal.

In any civil action against the facility, material obtained through the use of a monitoring device must not be used if the monitoring device was installed or used without the knowledge of the facility or without the prescribed form. Compliance with these provisions must be a complete defense against any civil or criminal action brought against the patient, surrogate, or facility for the use or presence of a monitoring device. Within six months of the effective date of the proposal, all facilities must provide to each patient or surrogate a form prescribed by the department explaining the provisions of the proposal and giving each patient or surrogate a choice to have a monitoring device installed in the patient's room. Copies of the completed form must be kept by the facility and must be made accessible to the state ombudsman.

The facility must post a notice in a conspicuous place at the entrance to a room with a monitoring device that a monitoring device is in use in that room of the facility. The proposal prohibits a person or patient from being denied admission to or discharged from a facility or from otherwise being discriminated against or retaliated against because of a choice to authorize installation and use of a monitoring device. Any person who violates the prohibition must be subject to a civil penalty of up to \$10,000 per occurrence. Any person other than a patient or surrogate found guilty of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility, under the provisions of the proposal, is guilty of a class D felony until December 31, 2016, and a class E felony beginning January 1, 2017.

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

SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



Mickey Wilson, CPA
Director
April 8, 2015

Ross Strobe
Assistant Director
April 8, 2015