

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0461-02  
Bill No.: Perfected HCS for HB 95  
Subject: Drugs and Controlled Substances; Insurance - Medical; Fees  
Type: Original  
Date: April 2, 2009

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Bill Summary: Allows enrollees to pay the lower of the copayment assigned by the health maintenance organization or health insurer or the usual and customary retail price of the prescription drug.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Insurance Dedicated	(\$53,194)	(\$62,459)	(\$64,049)
Road	(Unknown, could exceed \$187,525)	(Unknown, could exceed \$374,570)	(Unknown, could exceed \$374,570)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(Unknown, could exceed \$240,719)</b>	<b>(Unknown, could exceed \$437,029)</b>	<b>(Unknown, could exceed \$438,619)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Insurance Dedicated	1	1	1
<b>Total Estimated Net Effect on FTE</b>	<b>1</b>	<b>1</b>	<b>1</b>

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Mental Health, Department of Health and Senior Services, Missouri Consolidated Health Care Plan, and University of Missouri** assumes the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Public Safety (DPS) - Directors' Office** state they are unable to determine the fiscal impact of the proposal and defer to the Missouri Consolidated Health Care Plan for response regarding the potential fiscal impact.

Officials from the **DPS - Missouri State Highway Patrol (MHP)** defer to the Missouri Department of Transportation for response regarding the potential fiscal impact of this proposal on their organization.

Officials from the **Missouri Department of Conservation (MDC)** state the proposed legislation would not appear to have a fiscal impact on MDC funds since the MDC insurance plan already requires members to be charged the lower of the typical prescription drug copayment or actual cost of the drug.

Officials from the **Department of Social Services (DOS) - MO HealthNet Division (MHD)** assume that the provisions of this proposal do not apply to MHD. However, if these sections relating to immunosuppressant drugs did apply to MHD there would be a significant, unknown cost greater than \$100,000. Provisions relating to co-payments and usual and customary retail price of prescription drugs have no fiscal impact on the DOS.

Officials from the **Missouri Department of Transportation (DOT)** state Independent Pharmaceutical Consultants, Inc. (IPC) reviewed the legislation on behalf of the DOT/MHP Medical Plan. According to IPC's review, several sections of the proposal would impact the Plan; the biggest impact to the DOT/MHP Medical Plan lies in section 376.389. This section states that the Plan could not establish different coverage levels for one drug or group of drugs from other drugs or group of drugs. The Plan designed several coverage rules or benefit designs that allows the Plan to cover certain drugs for their intended use and according to established clinical guidelines, so the Plan can afford to cover these drugs under the benefit. In addition, this is a practice that is allowed in the federal Medicare program. If the DOT/MHP Medical Plan is

ASSUMPTION (continued)

not allowed to take advantage of these industry practices, the Plan and member cost would generally increase, and specifically it would also affect the Plan's ability to continue to manage the cost of the Medicare retiree plan.

It is difficult to estimate the actual cost to the DOT benefit since the DOT is not sure of the cost of the benefit if it were NOT allowed to do things like this, but it might be as much as 1% to 2% of the total drug spend, or approximately \$267,500 to \$535,100 each year on a ongoing basis. This is a very rough estimate. The Plan is comprised of 23% Patrol participation and 77% DOT participation; therefore, the impact to MHP would range from \$61,525 to \$123,073 per calendar year and the impact for DOT would be \$205,975 to \$412,027 per calendar year. Of this cost, the participants of the Plan would pay 30% coinsurance, which could greatly increase their financial liability. The financial impact does not take into account any additional medical costs associated with adverse reactions, etc. if the controls currently in place are dismantled as stated by IPC. Also with the additional costs to the prescription drug plan, Plan member's rates would need to be increased to ensure that the plan would have the required funds to support the additional costs.

Section 376.1460 proposes that a patient, plan sponsor, provider, employer, will be notified if there is a proposed change in a prescription. The patient will be notified of why the switch is proposed and his/her rights for refusing the change, identify both the original and the proposed medications, explain the cost sharing changes, given a copy of "switch communication," and an explanation of any financial incentives that maybe provided to the prescribing health care professional. The plan sponsor will be informed of the cost or the recommended medication and the originally prescribed medication. Any communications to providers will show the financial incentives to benefits, and direct the prescriber to tell the patient of the same. Prescribing practitioners will be sent all switch communication. Insurance payers and employers will be notified of medication switches, including health incentives.

This section above would most likely impact the DOT/MHP Medical Plan because there is a potential that a patient if allowed to chose the prescription would choose a more expensive one, which will increase the cost to the medical plan. It may also increase the amount of prescriptions for each patient, based on the fact that a patient does not have the expertise to prescribe a medication and would increase the prescriptions to obtain the desired results. The potential impact is unknown.

**Oversight** is presenting DOT costs as unknown, could exceed \$374,570 annually [\$535,100 - \$160,530 (30% employee coinsurance)].

ASSUMPTION (continued)

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal is less than \$2,500. The SOS realizes this is a small amount and does not expect that additional funding would be required to meet these costs. The SOS 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 that the office can sustain within 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 Insurance, Financial Institutions and Professional Registration (DIFP)** state they are requesting one (1) Investigator II FTE (\$35,962 annually) to handle consumer complaints and investigations on switch communication grievances. The drafting of rules and creation of the switch communication form can be handled with current staffing levels.

There will be an unknown increase in the cost of the DIFP's Independent Review Organization (IRO) contract to make determinations on formulary changes and impact on an individual's health. Should the cost increase beyond what the DIFP's current expense and equipment (E&E) appropriation can cover, the department would request additional E&E appropriation through the budget process.

**Oversight** assumes the provisions of this proposal would be effective January 1, 2010.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (6 Mo.)	FY 2011	FY 2012
<b>INSURANCE DEDICATED FUND</b>			
<u>Costs - DIFP</u>			
Personal service (1.0 FTE)	(\$30,718)	(\$37,783)	(\$38,727)
Fringe benefits	(\$14,938)	(\$18,374)	(\$18,833)
Expense and equipment	<u>(\$7,538)</u>	<u>(\$6,302)</u>	<u>(\$6,489)</u>
Total <u>Costs</u> - DIFP	<u>(\$53,194)</u>	<u>(\$62,459)</u>	<u>(\$64,049)</u>
FTE Change - DIFP	1.0 FTE	1.0 FTE	1.0 FTE
<b>ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND</b>	<b><u>(\$53,194)</u></b>	<b><u>(\$62,459)</u></b>	<b><u>(\$64,049)</u></b>
Estimated Net FTE Change for Insurance Dedicated Fund	1.0 FTE	1.0 FTE	1.0 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2010 (6 Mo.)	FY 2011	FY 2012
<b>ROAD FUND</b>			
<u>Costs - DOT</u>			
Increase in employee health insurance/pharmacy plan costs	<u>(Unknown, could exceed \$187,285)</u>	<u>(Unknown, could exceed \$374,570)</u>	<u>(Unknown, could exceed \$374,570)</u>
<b>ESTIMATED NET EFFECT ON ROAD FUND</b>	<b><u>(Unknown, could exceed \$187,285)</u></b>	<b><u>(Unknown, could exceed \$374,570)</u></b>	<b><u>(Unknown, could exceed \$374,570)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposal may impact small businesses that provide prescription insurance coverage for their employees if HMOs or other health insurers adjust premiums.

FISCAL DESCRIPTION

This proposal specifies that when the usual and customary retail price of a prescription drug is less than the co-payment applied by a health maintenance organization or health insurer, the enrollee is only required to pay the usual and customary retail price of the prescription drug and there will be no further charge to the enrollee or plan sponsor for the prescription.

This proposal also establishes regulations regarding pharmacy benefit managers. In its main provisions, the proposal: (1) Requires pharmacy benefit managers remit monthly a summary of each claim submitted to the plan sponsor; (2) Prohibits pharmacy benefit managers from automatically enrolling pharmacies in contracts or modifying an existing contract without a written affirmation from the pharmacy or pharmacist, from requiring pharmacies or pharmacists from participating in a contract in order to participate in another, and from discriminating between pharmacies or pharmacists on the basis of co-payments or days of supply; (3) When an insured presents a prescription to a pharmacy in the pharmacy benefits manager's network, the pharmacy benefits manager can not reassign the prescription to be filled by another pharmacy; (4) A health benefit plan or health care services contract that covers prescription drugs

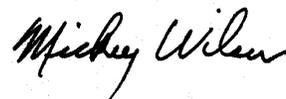
FISCAL DESCRIPTION (continued)

shall not limit, reduce, or deny coverage for any immunosuppressive drug, if the insured was using the drug and the drug was covered under the plan; (5) Anytime a patient's prescribed medication is recommended to be switched to a medication other than that originally prescribed, a switch communication shall be sent to the patient and plan sponsor or health carrier regarding the recommended medication, the cost or the originally prescribed medication, and financial incentive the health carrier or pharmacy benefits manager may be utilizing to encourage or induce the switch. These provisions do not apply to substitutions made under subsection 2 of section 338.056, RSMo, unless the substitute results in a higher cost to the patient or health insurance payer; (6) The Department of Insurance, Financial Institutions and Professional Registration shall promulgate rules governing switch communications; (7) Certain fines for issuing or delivering or causing to be delivered a switch communication that has not been approved and is not in compliance with section 376.1460, providing a misrepresentation or false statement in a switch communication, or other material violation is punishable by a specified fine; and, (8) When medications are restricted by a step therapy or fail first protocol, the prescriber shall have access to a clear and convenient process to override the restrictions from the pharmacy benefits manager or health carrier when certain conditions are met.

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

Office of Attorney General  
Office of State Courts Administrator  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Health and Senior Services  
Department of Social Services  
Missouri Department of Transportation  
Department of Public Safety -  
    Director's Office  
    Missouri State Highway Patrol  
Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
Office of Secretary of State  
University of Missouri



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