

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0934-02
Bill No.: HB 392
Subject: Health Care; Disabilities
Type: Original
Date: March 8, 2011

Bill Summary: This legislation establishes the Adult Health Care Consent Act which provides for a priority of person who can make health care decisions for persons unable to consent.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on FTE	0	0	0

- 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).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 191.1300 - 191.1312:

Officials from the **Department of Social Services, City of Raytown, St. Louis County Public Administrators, Office of the State Courts Administrator, Office of the Secretary of State, Department of Health and Senior Services, Department of Insurance, Financial Institutions and Professional Registration** and the **City of Kansas City** each assume the proposal would have no fiscal impact on their respective agencies.

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

Officials from the **Department of Mental Health (DMH)** states the legislative proposal enacts the Adult Health Care Consent Act. The proposed language establishes a process and priority for patients and individuals on behalf of incapacitated adults to provide consent for healthcare decisions. These healthcare decisions include diagnosis, treatment, providing intermediate or skilled nursing care, rehabilitation of disabled persons, and placement in facilities, among other health care processes. Section 191.1302.2 establishes a process for any interested person to petition the probate court should there be conflicts. Section 191.1308.3 provides that the proposed language does not limit evidence on which a court may determine a patient's intent in a judicial proceeding.

The language of Section 191.1312 provides that none of the proposed sections shall affect the ability of the state agency or health care provider working in conjunction with a state agency to conduct testing or provide treatment which is mandated or allowed by other provisions of law. However, this proposal would prohibit transfers of an incapacitated or mental health patient from one mental health facility to another without the consent of the patient or the patient's parent or legal guardian if the patient's nearest known relative is an adult. The current standard is that transfers may be made by the Department if the Department determines it is consistent with the medical needs of the patient to do so.

There appears to be a potential for significant fiscal impact to the Department. Instead of using a standard based upon the medical needs of the patient, the Department would be required to determine the appropriate individual to consent to a transfer, locate the individual, consult and obtain a written consent. There would be an expanded opportunity for legal review regarding the Department's actions in identifying the appropriate individual and the legality of their consent.

ASSUMPTION (continued)

The language also adds to the number of parties who may be entitled to seek participation and legal review of the Department's decision.

The DMH is not able to anticipate or project the number of individuals who would be affected by this legislation; however, the DMH anticipates a cost of greater than \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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GENERAL REVENUE FUND

<u>Costs - Department of Mental Health</u> Program Costs	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>
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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>	<u>(Greater than</u> <u>\$100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Sections 191.1300 - 191.1312:

The proposed legislation establishes the Adult Health Care Consent Act which provides for an order of priority of persons who can make health care decisions for an individual who is physically and cognitively unable to consent to his or her own health care. The order of priority will be:

FISCAL DESCRIPTION (continued)

- (1) A court-appointed guardian;
- (2) An attorney-in-fact appointed in a durable power of attorney;
- (3) An individual appointed by law;
- (4) A spouse, except a spouse who is separated or has a divorce pending;
- (5) A parent or adult child;
- (6) An adult sibling, grandparent, or adult grandchild;
- (7) Any other relative by blood or marriage who has a close personal relationship with the patient; and
- (8) A person given authority by another statutory provision.

Any person in the order of priority who is not reasonably available, is not willing to make a health care decision, or is unable to consent will not be given a priority. If persons of equal priority disagree on whether certain health care should be given, an authorized person, an involved health care provider, or any other interested person can petition the probate court for an order to determine what care is to be provided to the patient or for the appointment of a temporary or permanent guardian.

If a patient communicates to his or her physician prior to becoming unable to consent to care that a certain person should not be involved in any health care decisions, the physician cannot give priority or authority to that individual. Any authorized person willing to make a health care decision must base that decision on any known wishes of the patient or, if the patient's wishes cannot be determined, on the patient's best interest. Health care decisions on behalf of a patient who is unable to consent may be made by a person on the priority list if no person having higher priority is available immediately and, in the reasonable judgment of the attending health care professional, the delay in attempting to locate a person having higher priority presents a substantial risk or serious threat to the health of the patient. If no one on the priority list is available under these circumstances, the attending health care professional is authorized to make health care decisions for the patient. Treatment for the relief of suffering can be provided without consent at any time that an authorized person is unavailable, but a physician cannot make health care decisions that contradict a patient's religious beliefs or expressed instructions unless contrarily stated by the patient prior to becoming unable to consent.

FISCAL DESCRIPTION (continued)

A person acting in good faith regarding a health care decision cannot be subject to criminal or civil liability for the outcome of the decision, and any health care provider acting in good faith cannot be subject to criminal or civil liability or disciplinary action as long as the care was not provided in a negligent manner. Nothing in the act will prohibit a state agency or health care provider from conducting tests or providing treatment which is mandated or allowed by other provisions of law.

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 the Attorney General
Office of the 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
Office of the Secretary of State
City of Raytown
City of Kansas City
St. Louis County Public Administrators



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Director
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