

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1146-01
Bill No.: HB 374
Subject: Health Care; Health Care Professionals; Medicaid; Insurance-Medical
Type: Original
Date: March 9, 2011

Bill Summary: This legislation establishes the Missouri False Claims Act for the prosecuting of MO HealthNet fraud.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Unknown but Greater than \$367,874) to Unknown	(Unknown but Greater than \$386,458) to Unknown	(Unknown but Greater than \$390,043) to Unknown
Total Estimated Net Effect on General Revenue Fund	(Unknown but Greater than \$367,874) to Unknown	(Unknown but Greater than \$386,458) to Unknown	(Unknown but Greater than \$390,043) to Unknown

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 9 pages.

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

*Income and cost would net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	4 FTE	4 FTE	4 FTE
Total Estimated Net Effect on FTE	4 FTE	4 FTE	4 FTE

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 208.380 - 208.388:

Officials from the **Office of Administration-Administrative Hearing Commission, Office of Administration-Budget and Planning** and the **Office of the State Courts Administrator** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a similar proposal from last year (SB 639), officials from the **Department of Mental Health, Office of the Governor, Missouri House of Representatives, Office of the State Auditor, Missouri Senate, and Office of the State Public Defender** assume the proposal would have no fiscal impact on their agencies.

In response to a similar proposal from last year (SB 639), officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

In response to a similar proposal from last year (SB 639), officials from the **Department of Corrections (DOC)** assume the penalty provision, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor.

DOC cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender per day, or an annual cost of \$1,354 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of the Attorney General (AGO)** assumes this legislation will create a fiscal impact. While the number of claims is unknown, AGO assumes that reviewing materials associated with potential claims of fraud, filing pleadings as intervenors, bringing causes of

ASSUMPTION (continued)

action alleging Medicaid fraud and providing mandated reports to the General Assembly and Governor will require additional staff. AGO assumes it would require 2 AAG I and 2 Investigators to meet the requirements of the legislation.

Officials from the **Department of Social Services-Division of Legal Services** assume the proposal would have no fiscal impact on their agency.

Officials from the **Department of Social Services-Human Resource Center** assume this legislation would duplicate the "Whistleblower" protections that Department employees already have under RSMo105.055; however, it would increase the restitution to effected employees. Currently, employees with regular status may appeal to the Administrative Hearing Commission (AHC) whenever they allege that they have been retaliated against (disciplined) for disclosure of prohibited activities.

Under this proposed legislation, any employee who is retaliated against is entitled to all relief necessary to make the employee whole including: reinstatement with the same seniority status the employee would have had but for the discrimination; two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorneys' fees; and the employee may bring action in the appropriate circuit court for relief.

This increases the liability to the agency because of the additional restitution to the effected party (for example, currently employees receive back pay not two times the amount of back pay; do not receive interest on the back pay; and they are not entitled to special damages). Additionally, it's noted that no limit is established on the special damages that can be awarded.

Officials from the **Department of Social Services-MO HealthNet Division** assume Section 6031 of the Deficit Reduction Act of 2005, section 1909 of the Social Security Act provided a financial incentive for States to enact false claims acts that establish liability to the State for the submission of false or fraudulent claims to the State's Medicaid program. If a State false claims act is determined to meet certain enumerated requirements, the State is entitled to an increase of 10 percentage points in the State medical assistance percentage.

If it is assumed this legislation will meet the requirements of the Deficit Reduction Act the state will be entitled to an additional 10% for the medical assistance percentage. It is estimated General Revenue would be increased by an additional unknown amount > \$3,923,723 annually. Fiscal Impact would be a general revenue increase for FY 12 of Unknown > \$1,961,861 (6 months), FY 13 Unknown > \$3,923,723, and FY 14 Unknown > \$3,923,723.

SEC:LR:OD (12/02)

ASSUMPTION (continued)

Oversight assumes the proposal may qualify Missouri for the federal financial incentive for the recovery of false or fraudulent Medicaid claims. Oversight assumes the amount recovered as a result of passage of this legislation to be speculative. Therefore, Oversight has reflected the General Revenue increase to be a range from \$0 to Unknown.

In response to a similar proposal from last year (SB 639), Officials from the **Department of Health and Senior Services (DHSS)** assume the proposal allows any person to bring an action for MO HealthNet (Medicaid) fraud on behalf of the person and the state. The proposed legislation would allow employees or ex-employees of providers who know of Medicaid fraud to bring a suit themselves initially and provides detailed course of action for the state, through the Attorney General's Office (AGO), to respond to the suit. There is also a financial incentive built into bringing the suit as part of the recovery would go to the person bringing the suit. Current law allows these persons to bring the information to the AGO's attention, but leaves it up the AGO in filing the cases as it deems appropriate.

DHSS assumes it is unknown how the changes in Section 191.907 would impact the Medicaid fraud work since it is unknown how many complaints would be filed as a result of this legislation. The DHSS would be required to work with the AGO in evaluating these fraud cases, if the Medicaid dollars passed through the department. The ability for a person to file the case might also have a negative impact on the cases filed. Someone may file a case before it has been fully investigated and force the case to go forward before it is proper causing a case to be lost. The impact of this bill on the DHSS is unknown due to the fact that they cannot estimate the increase in the number of Medicaid fraud cases that will result. DHSS assumes the cost to be Unknown, less than \$100,000 per year, and impacting the General Revenue and Federal Funds.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
 GENERAL REVENUE FUND			
 <u>Revenues</u> - Department of Social Services-MO HealthNet Division			
Increase in recoveries	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
 <u>Cost Avoidance</u> - Department of Social Services-MO HealthNet Division			
Incentive for recovery of false or fraudulent Medicaid claims	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
 <u>Costs</u> - Office of the Attorney General			
Personal Service	(\$129,167)	(\$156,550)	(\$158,116)
Fringe Benefits	(\$67,606)	(\$81,938)	(\$82,758)
Equipment and Expense	(\$71,101)	(\$47,970)	(\$49,169)
<u>Total Costs</u> - AGO	<u>(\$267,874)</u>	<u>(\$286,458)</u>	<u>(\$290,043)</u>
FTE Change - AGO	4 FTE	4 FTE	4 FTE
 <u>Costs</u> - Department of Social Services-Human Resource Center			
Increase in Liability	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 <u>Costs</u> - Department of Health and Senior Services			
Evaluating/investigating fraud cases	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
	<u>(Unknown but Greater than \$367,874) to Unknown</u>	<u>(Unknown but Greater than \$386,458) to Unknown</u>	<u>(Unknown but Greater than \$390,043) to Unknown</u>
 Estimated Net FTE Change for General Revenue Fund	 4 FTE	 4 FTE	 4 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
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FEDERAL FUNDS

Income - Department of Health and Senior Services

Federal Assistance	<u>Less than</u> <u>\$100,000</u>	<u>Less than</u> <u>\$100,000</u>	<u>Less than</u> <u>\$100,000</u>
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Costs - Department of Health and Senior Services

Evaluating/investigating fraud cases	<u>(Less than</u> <u>\$100,000)</u>	<u>(Less than</u> <u>\$100,000)</u>	<u>(Less than</u> <u>\$100,000)</u>
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**ESTIMATED NET EFFECT ON
FEDERAL FUNDS**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Sections 208.380 - 208.388:

The proposed legislation establishes the Missouri False Claims Act. In its main provisions, the act:

- (1) Specifies that any individual who makes certain specified false claims to the state will be liable to the state for three times the amount of damages the state sustains due to the individual's actions, the costs of a civil action brought to recover any of those penalties or damages, and a civil penalty of at least \$5,000 but not more than \$10,000 for each violation;

FISCAL DESCRIPTION (continued)

- (2) Allows the court to assess a penalty for the person's actions of at least two times the amount of damages the state sustains but no separate civil penalty if the court finds certain circumstances exist;
- (3) Requires the Attorney General to diligently investigate a false claim violation and allows him or her to bring a civil action against any person if a violation is found;
- (4) Allows an individual to bring a civil action on behalf of himself or herself and the state for a false claim violation;
- (5) Requires any civil action to be filed in camera, remain under seal for at least 60 days, and not be served on the defendant until the court orders the action to be served;
- (6) Specifies that a defendant is not required to respond to any civil action filed under seal until the action is unsealed and the defendant is served with notice of the action;
- (7) Specifies that if the state chooses not to proceed with the civil action, the individual who initiated the action has the right to conduct the action; and
- (8) Requires a civil action for a false claim violation to be brought within 10 years after the date on which the violation was committed.

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 Administration-Administrative Hearing Commission
Office of the State Courts Administrator
Department of Health and Senior Services
Department of Social Services
Department of Mental Health
Office of the Governor
Missouri House of Representatives
Missouri Senate
Office of the State Auditor

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SOURCES OF INFORMATION (continued)

Department of Corrections
Office of Prosecution Services
Office of Administration-Administrative Hearing Commission-Budget and Planning
Office of the State Public Defender

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 9, 2011