

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1364-02  
Bill No.: SB 236  
Subject: Health Care; Pharmacy; Insurance - Medical  
Type: Original  
Date: February 28, 2011

Bill Summary: Establishes provisions regarding pharmacy services.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Unknown greater than \$31,125)	(Unknown greater than \$62,250)	(Unknown greater than \$62,250)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown greater than \$31,125)</b>	<b>(Unknown greater than \$62,250)</b>	<b>(Unknown greater than \$62,250)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Road	(Unknown greater than \$50,000)	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)
Insurance Dedicated	(\$32,827)	(\$60,902)	(\$61,593)
Other	(Unknown greater than \$6,715)	(Unknown greater than \$13,430)	(Unknown greater than \$13,430)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown greater than \$89,542)</b>	<b>(Unknown greater than \$174,332)</b>	<b>(Unknown greater than \$175,023)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 12 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
Federal	(Unknown greater than \$12,160)	(Unknown greater than \$24,320)	(Unknown greater than \$24,320)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Unknown greater than \$12,160)</b>	<b>(Unknown greater than \$24,320)</b>	<b>(Unknown greater than \$24,320)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</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 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Health and Senior Services** and **Missouri Department of Conservation** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Department of Mental Health (DMH)** state the proposal establishes requirements for communication by entities other than a primary health care provider to encourage patients/consumers to switch from their current medication to a different medication. It does not appear that the proposal would place any direct requirements or obligations on the DMH that would result in a direct fiscal impact. Therefore, the DMH assumes the proposal will have no fiscal impact on their organization.

Officials from the **Department of Social Services (DSS)** state this bill, which adds six (6) new sections to Chapter 376, deals with life, health and accident insurance. Therefore, the MO HealthNet Division (MHD) assumes that the provisions in this bill do not apply to the MHD. Additionally, Section 376.1460(1) defines "health carrier) to exclude the DSS.

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

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal is less than \$2,500. The SOS 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 SOS can sustain within its core budget. Therefore, the SOS reserves the right to request funding for the costs 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 the department is requesting one (1) Investigator II FTE to handle consumer complaints and investigations on switch communication grievances. The DIFP believes the drafting of rules and review of the switch communication format and language can be handled with current staffing levels. However, depending on the number of switch communications submitted for review, the DIFP may require additional staff to handle reviews within the sixty-day time frame allowed. If this occurs, the department will request additional FTE through the budget process.

ASSUMPTION (continued)

There will be an unknown increase in the cost of the DIFP's IRO (Independent Review Organization) 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 appropriation can cover, the department would request additional E&E appropriation through the budget process.

The DIFP estimate FY 11 costs of \$54,365; FY 12 costs of \$63,898; and FY 13 costs of \$65,524 to the Insurance Dedicated Fund.

Officials from the **Department of Public Safety - Missouri State Highway Patrol** 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 Transportation (MoDOT)** state section 376.388 regarding pharmacy benefits manager (PBM) proposes that the PBM will not automatically enroll or passively enroll the pharmacy in a contract, or modify an existing contract without affirmation from the pharmacy or pharmacist. The PBM will not discriminate between pharmacies or pharmacists on the basis of copayments or days of supply. The PBM will, however, remit to the covered entity each individual claim, prescription number, NDC number, quantity and amount the PBM paid each pharmacy/pharmacist, amount charged to the person/business/entity, as well as itemize by individual claim, the amounts the PBM actually paid each pharmacy/pharmacist. Further, the PBM will use the same NDC price used when calculating the reimbursement to the dispensing pharmacy and when an insured presents a prescription to a pharmacy in the PBM's network, the PBM will not reassign the prescription to be filled by another pharmacy.

The MoDOT/Missouri State Highway Patrol (MHP) Medical Plan uses a PBM for its prescription drug plan and the review of the proposed legislation stated that this section would apply to the MoDOT/MHP Medical Plan. This section would impact the medical plan since the cost of prescriptions would increase due to the fact that even though a pharmacy may offer a prescription at a lower price, the PBM cannot have that pharmacy fill the prescription if the insured did not present the prescription at the lower-cost pharmacy.

Independent Pharmaceutical Consultants, Inc. (IPC) reviewed the legislation on behalf of the MoDOT/MHP Medical Plan. According to IPC's review, 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 MoDOT can afford to

ASSUMPTION (continued)

cover these drugs under the benefit. In addition, this is a practice that is allowed in the federal Medicare program. If the MoDOT were not allowed to take advantage of these industry practices, the Plan and member cost would generally increase, and specifically it would also affect MoDOT's ability to continue to manage its cost of the Medicare retiree plan.

It is difficult to estimate the actual cost to the MoDOT benefit since MoDOT 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 which is approximately \$254,649 to \$509,298 each year on an ongoing basis. However, this is a very rough estimate. The Plan is comprised of 23% Patrol participation and 77% MoDOT participation; therefore, the impact to MHP would range from \$58,570 to \$117,139 per calendar year and the impact for MoDOT would be \$196,080 to \$392,160 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, the MoDOT/MHP members' 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 the proposed medications, explain the cost sharing changes, be given a copy of "switch communication," and explain any financial incentives that maybe provided to the prescribing health care professional. The plan sponsor will be informed of the cost of 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 (employers as well) will be notified of medication switches, including health incentives.

This section above would most likely impact the MoDOT/MHP Medical Plan because there is the 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.

The MoDOT assumes the proposal will have an unknown cost exceeding \$100,000 annually.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state the MCHCP has consistently worked to increase generic utilization by members of the plan. The MCHCP's 2010 generic fill rate was 78.7%, up from 76.4% in 2009. For every 1% increase in the generic fill rate, the plan saves 1.1% in plan cost savings and for 2010 savings totaled \$4,331,300.

ASSUMPTION (continued)

The MCHCP utilizes several different clinical programs in order to achieve these goals including prior authorization and step therapy. The MCHCP's pharmacy benefit manager (PBM) predicts 2011 savings for the step therapy program only is unknown but greater than \$1.7 million.

With thousands of MCHCP members participating in step therapy, prior authorization and generic substitution programs each year, costs associated with "switch communication" would be passed on directly to the MCHCP by the PBM. In 2009, physicians modified their written prescriptions 2,109 times for prior authorization and 10,424 times for step therapy. Assuming communication would be sent for each instance a prescription is modified by a physician, the MCHCP would incur over \$15,000 each year in postage costs.

The MCHCP anticipates increased administrative fees from its pharmacy benefit manager to cover the cost of changes to its electronic transmission devices used to communicate a prescription to the pharmacist. The MCHCP estimates the cost to be unknown but greater than \$100,000 annually.

Therefore, the total fiscal impact of this proposal is unknown, greater than \$1.8 million annually.

Based on the uncertainty that the MCHCP will actually experience a significant decrease in the use of generic drugs as a result of this proposal, **Oversight** assumes the MCHCP will incur an increase in costs of an unknown amount exceeding \$100,000 annually.

Officials from the **University of Missouri (University or UM)** state the university has worked consistently to increase generic utilization and the use of lower-cost therapeutically equivalent prescription drugs by members of the health plan. The 2010 generic fill rate increased 4.3% from 2009 to 2010 thereby saving the University Plan \$1,492,435 in prescription drug costs. Every 1% increase in generic utilization translates into a 1.1% plan cost savings.

The University System utilizes several different clinical programs in order to achieve its goal of maintaining the lowest possible cost of coverage for its employees. These programs include Prior Authorization and Step Therapy.

Using the assumptions above, this proposal would require an additional appropriation to FY 12 up to \$1.7 million and each subsequent year thereafter due to the proposal diminishing the effectiveness of UM's step-therapy program. Modification of 376.1464.1 to clarify that the pharmacy benefit manager or employer retains the final decision on coverage could eliminate this potential cost.

ASSUMPTION (continued)

Section 376.388.1(3) would preclude UM pharmacies from offering lower costs to UM employees and retirees. Modification of this section to exempt employer-owned pharmacies from this provision would eliminate this potential cost which, at this time, has not been valued.

Section 388.2 would preclude employers from establishing mandatory home deliver/mail order coverage for maintenance prescription drugs. UM has considered this approach in the past and, along with other employers, would prefer that this provision not apply to home delivery/mail order coverage for maintenance medications.

**Oversight** assumes the potential costs estimated by the University of Missouri would not be picked up by the state.

**Oversight** assumes the provisions of this proposal would become effective January 1, 2012 when state health insurance plan changes become effective.

**Oversight** notes Section 376.1462 provides for fines not to exceed twenty-five thousand (\$25,000) for certain violations of Section 376.1460. **Oversight** assumes pharmacy benefits managers will try to comply with the legislation so as not to incur the fines. As a result, **Oversight** assumes income from fines will be minimal and is not presenting fine income in the fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
<b>GENERAL REVENUE FUND</b>			
<u>Costs - MCHCP</u>			
Increase in state share of health insurance costs	<u>(Unknown greater than \$31,125)</u>	<u>(Unknown greater than \$62,250)</u>	<u>(Unknown greater than \$62,250)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Unknown greater than \$31,125)</u></b>	<b><u>(Unknown greater than \$62,250)</u></b>	<b><u>(Unknown greater than \$62,250)</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
<b>ROAD FUND</b>			
<u>Costs - MoDOT</u>			
Increase in employee health insurance expenditures	<u>(Unknown greater than \$50,000)</u>	<u>(Unknown greater than \$100,000)</u>	<u>(Unknown greater than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON ROAD FUND</b>	<b><u>(Unknown greater than \$50,000)</u></b>	<b><u>(Unknown greater than \$100,000)</u></b>	<b><u>(Unknown greater than \$100,000)</u></b>
<b>INSURANCE DEDICATED FUND</b>			
<u>Costs - DIFP</u>			
Personal service (1 FTE)	(\$17,981)	(\$36,322)	(\$36,685)
Fringe benefits	(\$9,411)	(\$19,011)	(\$19,201)
Equipment and expense	<u>(\$5,435)</u>	<u>(\$5,569)</u>	<u>(\$5,707)</u>
Total <u>Costs - DIFP</u>	<u>(\$32,827)</u>	<u>(\$60,902)</u>	<u>(\$61,593)</u>
FTE Change - DIFP	1.0 FTE	1.0 FTE	1.0 FTE
<b>ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND</b>	<b><u>(\$32,827)</u></b>	<b><u>(\$60,902)</u></b>	<b><u>(\$61,593)</u></b>
Estimated Net FTE Change on Insurance Dedicated Fund	1.0 FTE	1.0 FTE	1.0 FTE
<b>OTHER STATE FUNDS</b>			
<u>Costs - MCHCP</u>			
Increase in state share of health insurance costs	<u>(Unknown greater than \$6,715)</u>	<u>(Unknown greater than \$13,430)</u>	<u>(Unknown greater than \$13,430)</u>
<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>	<b><u>(Unknown greater than \$6,715)</u></b>	<b><u>(Unknown greater than \$13,430)</u></b>	<b><u>(Unknown greater than \$13,430)</u></b>

<u>FISCAL IMPACT - State Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
<b>FEDERAL FUNDS</b>			
<u>Costs - MCHCP</u>			
Increase in state share of health insurance costs	<u>(Unknown greater than \$12,160)</u>	<u>(Unknown greater than \$24,320)</u>	<u>(Unknown greater than \$24,320)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>(Unknown greater than \$12,160)</u></b>	<b><u>(Unknown greater than \$24,320)</u></b>	<b><u>(Unknown greater than \$24,320)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposal may impact small businesses that provide pharmacy benefit coverage for employees if insurers increase premiums as a result of this legislation.

FISCAL DESCRIPTION

This proposal establishes provisions relating to pharmacy services.

ELECTRONIC PRESCRIBING

This proposal provides that all prescription drug orders communicated by way of electronic transmission shall be transmitted directly to a pharmacist or pharmacy technician in a licensed pharmacy of the patient's choice with no intervening person having access to the prescription drug order. The electronic transmission shall be deemed the original prescription drug order so long as it meets the requirements under the proposal. The proposal delineates the procedure for the electronic transmission, including how such transmission devices shall be used to communicate a prescription to a pharmacist or pharmacy technician. Nothing in this proposal shall preclude the use of paper prescriptions. (§338.098)

## FISCAL DESCRIPTION (continued)

### PHARMACY BENEFIT AND PHARMACY BENEFIT MANAGERS

This proposal prohibits pharmacy benefit managers (PBMs) from automatically enrolling a pharmacy in a contract, modifying an existing contract without affirmation from the pharmacy, or requiring a pharmacy or pharmacist to participate in one PBM contract in order to participate in another contract. A PBM shall not discriminate between in-network pharmacies or pharmacists on the basis of copayments or days of supply unless such pharmacy declines to fill such prescriptions at the price allowed to other in-network pharmacies for such prescription.

A PBM is also prohibited from reassigning a prescription that has been presented in one pharmacy to another pharmacy in the PBM's network. When the PBM contacts the prescribing health care practitioner to affirm or modify the original prescription, the affirmed or modified prescription shall be filled at the in-network pharmacy of the patient's choice to which the insured presented the original prescription. This provision is not applicable to any prescribed specialty drug with a specific formulation. (§376.388)

### SWITCH COMMUNICATIONS

This proposal establishes procedures for governing switch communications. A switch communication is defined as a communication from a health insurance carrier or PBM to a patient or the patient's physician that recommends a patient's medication be switched by the original prescribing practitioner to a different medication than the medication originally prescribed.

The switch communication shall, among other requirements, explain any financial incentives that may be provided to, or have been offered to, the prescribing practitioner by the health carrier or PBM that could result in the switch to the different drug. In addition, the communication shall explain any clinical effects that the proposed medication may have on the patient which are different than those of the originally prescribed medication. The patient shall also be informed of any cost sharing changes for which the patient shall be responsible and advise the patient of his or her rights to discuss any proposed switch with the patient's prescribing practitioner.

Any time a patient's medication is recommended to be switched to a medication other than that originally prescribed by the prescribing practitioner, a switch communication shall be sent to the patient. Also, information shall be sent to the plan sponsor or health carrier using a PBM regarding, among other information, the recommended medication and the cost, shown in currency form, of the originally prescribed medication. These provisions do not apply to generic substitutions allowed under current law in section 338.056, RSMo, unless such substitution results in a higher cost to the patient or health insurance payer.

### FISCAL DESCRIPTION (continued)

All health carriers and PBMs shall submit the format and language to the Department of Insurance, Financial Institutions, and Professional Registration for approval. The department shall have sixty days to review and inform the health carrier or PBM that the format and language of the switch communication either does or does not comply with the statute. If the department finds noncompliance with the statute, the department shall cite specific reasons for such decision.

The department shall promulgate rules governing switch communications. Such rules shall include procedures for verifying the accuracy of any switch communications from health carriers and PBMs to ensure that such switch communications are truthful, accurate, and not misleading. Also, except for a substitution due to the Food and Drug Administration's withdrawal of a drug for prescription, such rules shall include a requirement that all switch communications bear a prominent notification on a first page clearly indicating the switch communication is not a product safety notice.

This proposal also specifies that a PBM owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law. A PBM shall notify the covered entity in writing of any activity, policy, or practice of the PBM that directly or indirectly presents any conflict of interest with the duties imposed by this proposal. (§§376.1460 and 376.1462)

### PHYSICIAN OVERRIDE OF MEDICATION RESTRICTIONS

This proposal governs the practice by health carriers and pharmacy benefit managers of restricting medications for the treatment of any medical condition by requiring step therapy or a fail first protocol. A prescribing practitioner may override such restrictions if the prescriber can demonstrate, based on sound clinical evidence, that the step therapy or fail first protocol treatment has been ineffective in treating the patient's disease or medical condition, is expected to be ineffective, or is likely to cause an adverse reaction. The duration of any step therapy or fail first protocol cannot last longer than 14 days when such treatment is deemed clinically ineffective by the prescribing physician. However, when the health carrier or PBM can show, through sound clinical evidence, the originally prescribed medication is likely to require more than two weeks to provide any relief to the patient, the step therapy or fail first protocol may be extended up to seven additional days.

Nothing in the proposal shall require coverage for a condition specifically excluded by the policy which is not otherwise mandated by law. (§376.1464)

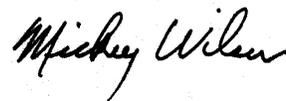
FISCAL DESCRIPTION (continued)

This proposal also requires PBMs and health carriers to provide a website with a list of medications which require preauthorizations and the process required to comply with the PBM's or health carrier's policies. (§376.1466)

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 -  
    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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February 28, 2011