

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1562-01
Bill No.: HB 544
Subject: Elderly; Disabilities; Nursing and Boarding Homes; Crimes and Punishment;
Type: Original
Date: March 2, 2011

Bill Summary: This legislation changes the requirements for background screenings for long-term care workers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Criminal Records	\$0	\$1,163,870	\$787,980
Total Estimated Net Effect on Other State Funds	\$0	\$1,163,870	\$787,980

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
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 208.909, 210.900 - 210.933 & 660.317:

Officials from the **Office of the State Public Defender, Office of Administration-Administrative Hearing Commission, Office of the State Courts Administrator, Department of Mental Health, Department of Insurance, Financial Institutions and Professional Registration** and the **Office of Prosecution Services** each assume the proposal would have no fiscal impact on their respective agencies.

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

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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Social Services** assume section 208.909.4: no fiscal impact as personal care services are covered by Department of Health and Senior Services.

Section 210.904.1-4: possible increased cost for background checks would not be directly reimbursed by MO HealthNet, but would be a part of the on-going operating costs for the long-term care facilities.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state the DOC, cannot predict the number of new commitments which may result from the enhancement 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 courts.

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 (FY10 average of \$3.92 per offender, per day or an annual cost of \$1,431 per offender).

In summary, supervision by the DOC through probation 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 **Department of Elementary and Secondary Education** assume DESE believes that DHSS will need access to look up individuals in our educator certification database. What DHSS will be able to view will need to be determined at a later date. In order to allow access, a portal would need to be created. OA/ITSD provided estimates for creation of the portal.

To technically support this legislation would require 160 hours of development effort at a rate of \$26.50/hour. This is based on the hourly wage of a Computer Information Technologist III, not including fringe and benefits. The total IT costs for this legislation would be \$4,240.

Once the portal is operational, DHSS could look up someone's record and determine whether there is a discipline noted. DHSS would then need to contact DESE's Conduct & Investigation section for further information. Depending upon the number of requests, it could be very time consuming for our staff. This would most likely require gathering information and preparing letters to be sent to DHSS. OA-ITSD DESE will require 1.0 FTE administrative assistant.

Oversight assumes OA-ITSD (DESE) is provided with core funding to handle a certain amount of activity each year. If multiple bills pass which require additional staffing and duties at substantial costs, DESE could request funding through the appropriation process.

Officials from the **Missouri State Highway Patrol** assume this proposed legislation would require long-term care workers to submit to a background check through the State Criminal History Repository. The Patrol is awaiting an estimated number of increased background checks from the DHSS. Therefore, the Patrol assumes an unknown impact.

ASSUMPTION (continued)

However, the charge for each background check processed is \$39.25. Twenty dollars for the state fingerprint check and an additional \$19.25 for the nationwide federal check ($\$20 + 19.25 = \39.25). The state retains the \$20. And of the \$19.25, the state pays the FBI \$17.25 and keeps \$2 for a pass-thru fee.

Oversight notes that the Department of Health and Senior Services calculated the unknown impact to the criminal records fund . Therefore, Oversight has decided to use DHSS numbers for the fiscal note fiscal impact.

Officials from the **Department of Health and Senior Services (DHSS)** assume costs associated with implementing the proposed legislation, including development of a new Family Care Safety Registry (FCSR) system, will be funded with federal funding already obtained and existing state funds identified and approved by the Centers for Medicare and Medicaid Services as match. Therefore, the Department is not including any implementation costs in the fiscal note response.

The proposed legislation will result in increased revenue collections due to the requirement to obtain fingerprinted background checks.

New FCSR Registrants:

In FY 2010, the FCSR processed 76,707 new registrations. Approximately 29,916 or 39% of these registrations related to elder care and personal care workers. No growth is projected in registrations for future years. For revenue projections, 29,916 is used as the number of new registrations for FY 2013 and 2014.

Turnover:

The FCSR projects 119,352 screenings processed during FY 2011. Because there has been an increase in demand for screenings, FCSR anticipates the upward trend to continue (15 percent growth rate in 2012 and 20 percent growth rate factors for 2013 and 2014).

The actual turnover rate for all provider types is unknown, but the Long-Term Care industry estimates that the Certified Nurse Assistant turnover rate is approximately 70%. Assuming that turnover rate applies to all provider types covered under the proposed legislation, FCSR estimates 86,471 screenings will include the fingerprint based state and federal criminal record checks in the last nine months of FY 2013, the first year to be affected by the new requirements in the proposed legislation. DHSS assumes the 70% turnover factor, because only those employees who are newly hired or who change to another facility will be required to submit to the full background screening. In subsequent years, the demand for the full screenings should

ASSUMPTION (continued)

decrease, due to RAP-back capabilities (where DHSS will be automatically notified by the Patrol if a registrant re-offends, without having to pay for and conduct an additional fingerprint based criminal record check).

Fiscal Year	Projected FCSR Screenings for Long Term Care Workers	70% turnover that will require fingerprint based criminal record checks
2012	137,255	N/A
2013	164,706	86,471 (164,706 x 70% x .75 (9 months))
2014	197,647	48,882 ((197,647 x 70%) - 86,471)

The provisions in the proposed legislation become effective on September 30, 2012. Therefore, there is no fiscal impact assumed for state fiscal year 2012 or the first three months of state fiscal year 2013.

<u>FISCAL IMPACT - State Government</u>	FY 2012	FY 2013 (9 Mo.)	FY 2014
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CRIMINAL RECORDS FUND

Income - Missouri State Highway Patrol & Department of Health and Senior Services

Background Checks	<u>\$0</u>	<u>\$1,163,870</u>	<u>\$787,980</u>
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ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND

	<u>\$0</u>	<u>\$1,163,870</u>	<u>\$787,980</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

Sections 208.909, 210.900 - 210.933 & 660.317:

Providers covered by the proposed legislation, some of which would be small businesses, may opt to pay fees related to the background check on behalf of the applicant. Under Section 43.540, DHSS may assess a fee to the provider to cover the cost of handling the criminal record review and may establish an account solely for the collection and dissemination of fees associated with the criminal record reviews.

FISCAL DESCRIPTION

Sections 208.909, 210.900 - 210.933 & 660.317:

The proposed legislation changes the laws regarding criminal background checks of personal care attendants, long-term care providers, and long-term care workers. In its main provisions, the legislation:

- (1) Prohibits a personal care attendant with a disqualifying finding on a state or federal criminal background check from being reimbursed by the state for providing personal care assistant services;
- (2) Adds a long-term care provider or long-term care worker to the list of individuals who must comply with the background check requirements of the Family Care Safety Registry;
- (3) Requires, beginning September 30, 2012, the registry to include a check of the National Sex Offender Public Website accessible through the State Highway Patrol; the certified nurse assistant registry and the nursing home administrator disciplinary action data maintained by the Department of Health and Senior Services; the licensure data of certain physicians, physician assistants, and nurses collected by the Department of Insurance, Financial Institutions and Professional Registration; and the educator certification data maintained by the Department of Elementary and Secondary Education;
- (4) Establishes within the Department of Health and Senior Services a background screening and employment eligibility determination process for long-term care workers which will allow a person to be hired on a provisional basis to provide services until a complete screening is conducted. A provider must make an annual inquiry to the family care registry in order to maintain the employee's employment eligibility and must abide by the employment eligibility determination as made by the department;

FISCAL DESCRIPTION (continued)

- (5) Requires a long-term care worker hired on or after September 30, 2012, to submit to the background screening and employment eligibility determination process;
- (6) Requires the department to share registry information for employer-volunteer relationship purposes;
- (7) Requires the department to submit an annual report by December 1 to the Speaker of the House of Representatives and the President Pro Tem of the Senate regarding certain information on the registry. Currently, the report is to be submitted by July 1;
- (8) Requires a provider to request a registry background screening and employment eligibility determination registry prior to hiring a personal care attendant who will have direct access to a patient, resident, client, or consumer;
- (9) Allows the department to assess a fee to any provider to cover the cost of handling the criminal record review and to create an account for the deposit of the fees;
- (10) Requires an applicant for a position with direct access to a patient, client, or consumer to disclose any findings that may appear on the registry. An applicant failing to disclose any disqualifying finding will be guilty of a class A misdemeanor; and
- (11) Specifies that any provider required to deny employment to an applicant or to discharge a provisional employee as a result of information obtained from the screening process cannot be liable in any action brought by the applicant or provisional employee or charged for unemployment benefits in the case of the provisional employee.

The bill becomes effective September 12, 2012.

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 Elementary and Secondary Education
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Missouri State Highway Patrol
Office of Prosecution Services
Office of the Secretary of State
Office of the State Public Defender



Mickey Wilson, CPA
Director
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