

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1777-08
Bill No.: SS for SCS for HCS for HB 697
Subject: Administrative Rules; Administrative Law; State Departments
Type: Original
Date: May 12, 2011

Bill Summary: This proposal creates an automatic six year sunset for all administrative rules.

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Ambulance Provider Tax Fund*	\$0	\$0	\$0
Nursing Facility Reimbursement Allowance Tax Fund**	\$0	\$0	\$0
Managed Care Provider Tax Fund***	\$0	\$0	\$0
Hospital Reimbursement Allowance Fund****	\$0	\$0	\$0
Pharmacy Provider Tax Fund*****	\$0	\$0	\$0
ICF/MR Provider Tax Fund*****	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

*Revenues and expenditures of approximately \$9,000,000 net to \$0.

**Revenues and expenditures of approximately \$104,000,000 net to \$0.

***Revenues and expenditures of approximately Unknown net to \$0.

****Revenues and expenditures of up to approximately \$919,000,000 net to \$0.

*****Revenues and expenditures of approximately \$56,000,000 net to \$0.

*****Revenues and expenditures of approximately \$6,000,000 net to \$0.

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

*Revenues and expenditures of approximately \$1,900,000,000 to Unknown net to \$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 190.839, 198.439, 208.437, 208.480, 338.550 & 633.401:

Officials from the **Department of Health and Senior Services, Department of Revenue, Missouri State Treasurer** and the **Office of Administration-Budget and Planning** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of 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 Mental Health (DMH)** states the proposed legislation extends the sunset date of various federal reimbursement allowances from 2011 to 2014. The DMH assumes there would be no fiscal impact should the sunset be extended to 2014. The provider assessment for ICF/MR's will generate approximately \$7.4 million in revenue for DMH next year. If similar to last year's amount, the extension of the federal reimbursement allowance pertaining to the Hospital program RSMo 208.453 will generate approximately \$14.8 million in additional revenues. If this legislation does not pass and the date does sunset, DMH would stand to lose approximately \$22.2 million in funding for next year, of which \$14.1 million is Federal and \$8.1 million is General Revenue.

Oversight notes that the Department of Social Services (DSS) is the contact Department that works with the Federal government on Medicaid programs. Therefore, Oversight has decided to use DSS provider tax numbers for the ICF/MR provider tax program.

ASSUMPTION (continued)

Officials from the **Department of Social Services - MO HealthNet Division (MHD)** stated the passage of the proposed legislation would not fiscally impact the MHD.

MHD states, the proposed legislation grants a three-year extension for the Managed Care Organization Reimbursement Allowance, the Hospital Federal Reimbursement Allowance, the Ambulance Provider Tax, the Pharmacy Tax, the ICF/MR tax program and the Nursing Facility Reimbursement Allowance Tax. This proposal extends the FRAs only through 2014. If the proposed legislation does not pass, additional funding will be needed to maintain the current level of services as listed below.

Section 190.839 - Ambulance Provider Tax:

MHD is not currently collecting the Ambulance Provider Tax. In FY 12 it is anticipated MHD will collect \$9,069,225 in ambulance tax.

Section 198.439 - Nursing Facility Reimbursement Allowance Tax:

The proposed legislation allows the MHD to collect \$104,175,945 in Nursing Facility Tax, which will allow MHD to draw in federal funds of \$180,847,160 in fiscal year 2012. The FY 12 budget submitted by the DSS assumed the nursing facility tax would continue through fiscal year 2012. If this proposed legislation does not pass, additional General Revenue funds of \$104,175,945 would be needed to continue the current level of services.

Section 208.437 – Managed Care Provider Tax:

The MHD is not currently collecting the Managed Care Provider Tax. The federal sunset for the managed care organization reimbursement allowance was September 30, 2009. This section of the proposed legislation will not have an impact on MO HealthNet.

Section 208.480 – Hospital Reimbursement Allowance:

The proposed legislation allowed the MHD to collect \$919,155,726, in hospital tax, which would allow MHD to draw in federal funds of \$1,605,650,553 in fiscal year 2012. The FY 12 budget submitted by the DSS assumed the hospital tax would continue through fiscal year 2012. If this proposed legislation does not pass, additional General Revenue funds of \$919,155,726 would be needed to continue the current level of services.

Section 338.550 – Pharmacy Provider Tax:

The proposed legislation allows the MHD to collect \$55,553,508 in pharmacy tax, which will allow DMS to draw in federal funds of \$96,273,516 in fiscal year 2012. The FY 12 budget submitted by the DSS assumed the pharmacy tax would continue through fiscal year 2012. If this

ASSUMPTION (continued)

proposed legislation does not pass, additional General Revenue funds of \$55,553,508 would be needed to continue the current level of services.

Section 633.401 - ICF/MR Provider Tax:

The proposed legislation allows the MHD to collect \$5,840,357 in intermediate care facilities for the mentally retarded tax, which will allow MHD to draw in federal funds of \$4,003,572 in fiscal year 2012. The FY 12 budget submitted by the Department of Mental Health assumed the intermediate care facilities for the mentally retarded tax would continue through fiscal year 2012. If this proposed legislation does not pass, additional General Revenue funds of \$5,840,357 would be needed to continue the current level of services.

Section 536.032 and 536.175 - Sunset on Administrative Rules:

Officials at the **Joint Committee on Administrative Rules (JCAR)** assumed this legislation is not anticipated to cause a fiscal impact to the Joint Committee on Administrative Rules beyond its current appropriation within the next three fiscal years.

JCAR states, currently, there are approximately 349 rules that were promulgated prior to 12/31/1982 (more than 30 years old). Those rules are spread across the agencies as follows:

Office of Administration - 3
Department of Agriculture - 35
Department of Conservation - 3
Department of Economic Development - 22
Department of Elementary and Secondary Education - 12
Department of Higher Education - 20
Department of Transportation - 3
Department of Labor and Industrial Relations - 32
Department of Natural Resources - 60
Department of Public Safety - 14
Department of Revenue - 63
Department of Social Services - 16
Elected Officials - 2
Retirement Systems - 16
Department of Health and Senior Services - 29
Department of Insurance, Financial Institutions, and Professional Registration 30

ASSUMPTION (Continued)

JCAR notes, that the initial report will contain the most rules. Thereafter, the amount added each year should be negligible. JCAR states 6,281 total rules exist in regulation.

Officials at the **Office of Secretary of State (SOS)** states 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.

Officials at the **Missouri Gaming Commission** interpret Section 536.175 to refer to agencies with rules that have not been modified since first promulgated 30 years or more ago. The Missouri Gaming Commission has only been in existence since April 1993. Therefore, this section would not apply to the Commission until at least 2023.

Officials at the **Department of Agriculture** assume section 536.175 of this bill will have a fiscal impact beginning in FY12 as the Department must review within 90 days any of its 80 different chapters of administrative rules that meet the criteria established in this legislation. The Department may require additional legal, planning, and support staff to complete the rule reviews and reestablish the rules through the process required by this bill. The exact amount the impact is unknown; additional analysis will be required to determine specific cost estimates.

Officials at **Budget and Planning (BAP)** stated the proposed legislation should not result in additional costs or savings to BAP. However, the legislation could impact other state agencies.

ASSUMPTION (Continued)

Officials at the **Department of Mental Health (DMH)** assume this version removes the requirements for rule reviews as stated previously. It now would require an annual listing of rules promulgated thirty or more years ago to be reviewed by each State agency. It removes some specific requirements relating to those reviews from previous versions.

DMH states, this proposal would not appear to create a fiscal impact to the Department - any cost created would be unknown.

Oversight assumes only rules 30 years or older would be subject to review. Any costs associated with sections 536.032 and 536.175 could be absorbed by the agencies due to the minimal number of rules required to be reviewed on an annual basis.

Officials at the **Office of Prosecution Services, Office of the State Auditor, Missouri Senate, Office of State Courts Administrator, Department of Higher Education,, Missouri Consolidated Health Care Plan, Administrative Hearing Commission, Department of Corrections, State Treasurer's Office, Joint Committee on Public Employees' Retirement, Department of Public Safety - Division of Fire Safety, State Emergency Management Agency, State Treasurer's Office, and Missouri State Highway Patrol** assumed there was no fiscal impact from this proposed legislation.

In response to the previous version of this proposal, Officials at the **Missouri House of Representatives, State Public Defender's Office, Department of Public Safety - Division of Alcohol and Tobacco Control, Department of Transportation Missouri Tax Commission, Missouri Veterans Commission, Missouri Ethics Commission, Capitol Police** assumed there was no fiscal impact from this proposed legislation.

<u>FISCAL IMPACT - State Government</u>	FY 2012	FY 2013	FY 2014
AMBULANCE PROVIDER TAX FUND (Section 190.839)			
<u>Income - Department of Social Services</u>			
Assessment on Medicaid			
Ambulance Organizations	<u>\$9,069,225</u>	<u>\$9,069,225</u>	<u>\$9,069,225</u>
<u>Costs - Department of Social Services</u>			
Medicaid Program Costs	<u>(\$9,069,225)</u>	<u>(\$9,069,225)</u>	<u>(\$9,069,225)</u>
ESTIMATED NET EFFECT ON AMBULANCE PROVIDER TAX FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 NURSING FACILITY REIMBURSEMENT ALLOWANCE TAX FUND (Section 198.439)			
<u>Income - Department of Social Services</u>			
Assessment on Medicaid Nursing Facility Organizations			
	<u>\$104,175,945</u>	<u>\$104,175,945</u>	<u>\$104,175,945</u>
<u>Costs - Department of Social Services</u>			
Medicaid Program Costs	<u>(\$104,175,945)</u>	<u>(\$104,175,945)</u>	<u>(\$104,175,945)</u>
ESTIMATED NET EFFECT ON NURSING FACILITY REIMBURSEMENT ALLOWANCE TAX FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**MANAGED CARE PROVIDER
TAX FUND (Section 208.437)**

Income - Department of Social Services
Assessment on Medicaid Managed
Care Organizations

Unknown Unknown Unknown

Costs - Department of Social Services
Medicaid Program Costs

(Unknown) (Unknown) (Unknown)

**ESTIMATED NET EFFECT ON
MANAGED CARE PROVIDER
TAX FUND**

\$0 \$0 \$0

**HOSPITAL REIMBURSEMENT
ALLOWANCE FUND (Section
208.480)**

Income - Department of Social Services
Assessment on Medicaid Hospital
Organizations

\$919,155,726 \$919,155,726 \$919,155,726

Costs - Department of Social Services
Medicaid Program Costs

(\$919,155,726) (\$919,155,726) (\$919,155,726)

**ESTIMATED NET EFFECT ON
HOSPITAL REIMBURSEMENT
ALLOWANCE FUND**

\$0 \$0 \$0

**PHARMACY PROVIDER TAX
 FUND (Section 338.550)**

<u>Income</u> - Department of Social Services Assessment on Medicaid Pharmacy Organizations	<u>\$55,553,508</u>	<u>\$55,553,508</u>	<u>\$55,553,508</u>
<u>Costs</u> - Department of Social Services Medicaid Program Costs	<u>(\$55,553,508)</u>	<u>(\$55,553,508)</u>	<u>(\$55,553,508)</u>
ESTIMATED NET EFFECT ON PHARMACY PROVIDER TAX FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**ICF/MR PROVIDER TAX (Section
 633.401)**

<u>Income</u> - Department of Social Services Assessment on Medicaid ICF/MR Organizations	<u>\$5,840,357</u>	<u>\$5,840,357</u>	<u>\$5,840,357</u>
<u>Costs</u> - Department of Social Services Medicaid Program Costs	<u>(\$5,840,357)</u>	<u>(\$5,840,357)</u>	<u>(\$5,840,357)</u>
ESTIMATED NET EFFECT ON ICF/MR PROVIDER TAX FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL DESCRIPTION

Sections 190.839, 198.439, 208.437, 208.480, 338.550 & 633.401:

This legislation extends the sunsets from September 30, 2011 to September 30, 2016 for the Ground Ambulance, Nursing Facility, Medicaid Managed Care Organization, Hospital, Pharmacy, and Intermediate Care Facility for the Mentally Retarded Reimbursement Allowance Taxes.

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

Administrative Hearing Commission
Budget and Planning
Capitol Police
Department of Agriculture
Department of Conservation
Department of Economic Development
Department of Higher Education
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Transportation
Division of Alcohol and Tobacco Control
Division of Fire Safety
Joint Committee on Administrative Rules
Joint Committee on Public Employees' Retirement
Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Ethics Commission
Missouri Gaming Commission
Missouri House of Representatives
Missouri Senate
Missouri State Highway Patrol

SOURCES OF INFORMATION (Continued)

Missouri Tax Commission
Missouri Veterans Commission
Office of Administration
Office of Prosecution Services
Office of Secretary of State
Office of State Courts Administrator
Office of the State Auditor
State Emergency Management Agency
State Public Defender's Office
State Treasurer's Office



Mickey Wilson, CPA
Director
May 12, 2011