

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1948-01
Bill No.: HB 821
Subject: Health Care; Pharmacy; Insurance - Medical
Type: Original
Date: April 5, 2011

Bill Summary: Establishes provisions regarding pharmacy services.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
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)
Total Estimated Net Effect on General Revenue Fund	(Unknown greater than \$31,125)	(Unknown greater than \$62,250)	(Unknown greater than \$62,250)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
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 State	(Unknown greater than \$6,715)	(Unknown greater than \$13,430)	(Unknown greater than \$13,430)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown greater than \$89,542)	(Unknown greater than \$174,332)	(Unknown greater than \$175,023)

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

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Insurance Dedicated	1	1	1
Total Estimated Net Effect on FTE	1	1	1

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

Officials from the **Missouri Department of Conservation** assume the proposal would have no fiscal impact on their agency.

Officials from the **Department of Mental Health (DMH)** state the proposal does not appear to place any direct requirements or obligations on the DMH that would result in a direct fiscal impact. Therefore, the DMH assumes no fiscal impact.

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

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 **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 department may require additional staff to handle reviews within the sixty day time-frame allowed. If this occurs the DIFP 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 department's current expense and equipment appropriation can cover, the DIFP would request additional E&E appropriation through the budget process.

The DIFP estimate FY 11 costs of \$52,948; FY 12 costs of \$60,902; and FY 13 costs of \$61,593 to the Insurance Dedicated Fund.

Officials from the **Missouri Department of Transportation (MoDOT)** state Section 338.098 regarding all prescription drug orders will be communicated electronically to allow the physician to review the patient's current medications and history and all medications available to the physician. The DOT's PBM uses e-prescribing for the DOT's Medicare population currently and charges the Plan per inquiry and charged an initial start-up fee. The amount paid per inquiry would impact the Plan. The system would also have the ability to electronically adjudicate prior authorizations and step therapy protocols. The DOT's PBM does not have this in place and it would require a considerable investment for for the BPM. This investment would be passed on to the Plan. The charge for this service would also impact the Plan. The impact of both is unknown, but could be greater than \$100,000.

DOT officials also 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.

ASSUMPTION (continued)

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 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. It may also increase the amount of prescriptions for each patient based on the fact that a patient does not have the expertise to prescribe a medication and would increase the prescriptions to obtain the desired results.

ASSUMPTION (continued)

Also included in Section 376.1460, 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. This liability will increase the PBM's liability cost, which would be passed on to the Plan. The impact is unknown, but the PBM states it would be significant. It would be greater than \$100,000 annually.

Section 376.1464 requires if a medication for the treatment of any medical condition is restricted for use by a health carrier of a PBM by a step therapy or fail first protocol, a prescriber shall have access to a clear and convenient process to request an override for such restriction from the PBM or health carrier. Unless this process for prior authorizations is deemed to be more strict than the new federal PA process established under the Patient Protection and Affordable Care Act, this state process will be preempted by the new federal process.

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

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** state under section 338.098, the MCHCP anticipates increased administrative fees from its pharmacy benefit manager to cover the cost of changes to its electronic transmission devices. The MCHCP estimates the cost to be unknown, greater than \$100,000 annually. The MCHCP also assumes this section does not mandate that a prescription drug plan provide an exceptions process for coverage of non-formulary medications under the electronic prior authorization process.

Under section 376.388.1(2), the MCHCP would not be allowed to reassign a prescription to be filled by another pharmacy. After the initial prescription, the MCHCP reassigns all specialty medications to a single mail order pharmacy. Specialty drugs treat chronic, complex conditions such as hepatitis C, multiple sclerosis and rheumatoid arthritis. They require frequent dosing adjustments, clinical monitoring and special handling. Some specialty medications are unavailable at retail pharmacies. Medications are delivered to a member's home or any approved location at no additional cost. In 2010, 1,696 members utilized specialty medications at a cost of approximately \$18.3 million or 18% of the total prescription drug costs for the MCHCP. The average cost for one specialty drug is \$2,132.24 compared to \$49.69 for a non-specialty drug. The MCHCP utilizes a single mail order pharmacy to help control specialty medication costs and provide consistent clinical support and monitoring of member prescription needs. According to MCHCP's pharmacy benefit manager, the MCHCP saved \$590,600 in CY10 by utilizing a single mail order pharmacy. The MCHCP's pharmacy benefit manager reports MCHCP's specialty drug spend is trending at 22.8% based on new drugs entering the marketplace, utilization and ingredient costs. Under this provision, the MCHCP expects to lose all savings received by utilizing a single home delivery pharmacy for all specialty medications. Based on 22.8% specialty pharmacy trend, the MCHCP expects to lose unknown, greater than \$890,615 for CY 12; 1,093,676 for CY 13; and \$1,343,034 for CY 14.

ASSUMPTION (continued)

Under section 376.1460, costs associated with "switch communication" would be passed directly to the MCHCP from its pharmacy benefit manager. 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 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; for 2010 this amounted to \$4,331,300. The MCHCP utilizes several different clinical programs in order to achieve these goals including step therapy and prior authorization. The MCHCP's pharmacy benefit manager predicts 2011 savings for the step therapy program alone is unknown, greater than \$1.7 million. This proposal will inhibit savings received through the step therapy and prior authorization programs.

Total fiscal impact of this proposal on the MCHCP is unknown, greater than \$2.7 million for CY 12; \$2.9 million for CY 13; and \$3.2 million CY 14.

Based on the uncertainty that the MCHCP will actually experience a significant decrease in the use of generic drugs or that specialty medication prescriptions would not be filled by MCHCP's current mail order pharmacy 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 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.

Section 376.1464 requirements would result in 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.

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.

ASSUMPTION (continued)

Sections 388.098 and 376.1460 increase the burden on the Pharmacy Benefit Manager (PBM), which UM believes will increase the overall administrative cost for the plan. This has not yet been quantified.

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
GENERAL REVENUE FUND			
<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>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown greater than \$31,125)</u>	<u>(Unknown greater than \$62,250)</u>	<u>(Unknown greater than \$62,250)</u>
ROAD FUND			
<u>Costs - MoDOT</u>			
Increase in share of health insurance costs	<u>(Unknown greater than \$50,000)</u>	<u>(Unknown greater than \$100,000)</u>	<u>(Unknown greater than \$100,000)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>(Unknown greater than \$50,000)</u>	<u>(Unknown greater than \$100,000)</u>	<u>(Unknown greater than \$100,000)</u>
INSURANCE DEDICATED FUND			
<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	(\$5,435)	(\$5,569)	(\$5,707)
Total <u>Costs</u> - DIFP	<u>(\$32,827)</u>	<u>(\$60,902)</u>	<u>(\$61,593)</u>
FTE Change - DIFP	1.0 FTE	1.0 FTE	1.0 FTE
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$32,827)</u>	<u>(\$60,902)</u>	<u>(\$61,593)</u>
Estimated Net FTE Change on Insurance Dedicated Fund	1.0 FTE	1.0 FTE	1.0 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2012 (6 Mo.)	FY 2013	FY 2014
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OTHER STATE FUNDS

Costs - MCHCP

Increase in state share of health insurance costs

(Unknown greater than \$6,715)	(Unknown greater than \$13,430)	(Unknown greater than \$13,430)
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ESTIMATED NET EFFECT ON OTHER STATE FUNDS

<u>(Unknown greater than \$6,715)</u>	<u>(Unknown greater than \$13,430)</u>	<u>(Unknown greater than \$13,430)</u>
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FEDERAL FUNDS

Costs - MCHCP

Increase in state share of health insurance costs

(Unknown greater than \$12,160)	(Unknown greater than \$24,320)	(Unknown greater than \$24,320)
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ESTIMATED NET EFFECT ON FEDERAL FUNDS

<u>(Unknown greater than \$12,160)</u>	<u>(Unknown greater than \$24,320)</u>	<u>(Unknown greater than \$24,320)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 (6 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

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 changes the laws regarding the electronic transmission of prescriptions and pharmacy benefit managers.

ELECTRONIC TRANSMISSION OF PRESCRIPTIONS

All prescriptions ordered electronically transmitted must allow for the review of the patient's current medication list and history by the physician as well as all medication available to the physician for the patient's condition; allow for an electronic prior authorization process for approval of exceptions or restrictions to a prescription; and minimize interference between physician and patient through a neutral and open platform. These provisions cannot prevent the use of paper prescriptions.

PHARMACY BENEFIT MANAGERS

The proposal: (1) Prohibits a pharmacy benefit manager from automatically enrolling a pharmacy in a contract or modifying an existing contract without an affirmation from the pharmacy or pharmacist, from requiring a pharmacy or a pharmacist to participate in a particular contract in order to participate in another contract, and from discriminating between in-network pharmacies or pharmacists on the basis of co-payments or days of supply with certain exceptions; (2) Prohibits, when an insured presents a prescription to a pharmacy in the pharmacy benefit manager's network, the pharmacy benefit manager from reassigning the prescription to be filled by any other pharmacy; (3) Requires a switch communication to clearly identify the originally prescribed medication and the medication to which it has been proposed that the patient should be switched; disclose any financial incentives that the pharmacy benefit manager or the prescribing practitioner may receive in the patient's decision to switch to a different medication; explain any clinical effects that the proposed medication may have which are different from the original prescription; advise the patient of the right to discuss the proposed change in treatment before a switch takes place, including with the patient's prescribing practitioner; and clearly identify any net change in the cost to the health insurance payer. The patient must also be advised of any cost-sharing changes for which he or she is responsible. A copy of any switch communication must be sent to the patient and the patient's physician and to the plan sponsor or health carrier using a pharmacy benefit manager regarding the recommended medication and the cost. Any person who issues or delivers or causes to be issued or delivered a switch communication that has not been approved, provides a misrepresentation or false statement in a switch communication, or commits any other material violation of these provisions will be subject to a fine of up to \$25,000; (4) Allows the prescribing physician to override any step therapy or fail first protocol when the treatment has been ineffective in treating the patient's disease or medical condition or based on sound clinical evidence or medical and scientific

HWC:LR:OD

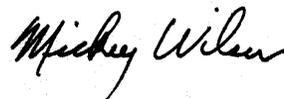
FISCAL DESCRIPTION (continued)

evidence that it is likely to be ineffective or will likely cause an adverse reaction or other harm. The duration of any step therapy or fail first protocol cannot last longer than 14 days. However, when the health carrier or the pharmacy benefit manager can show through sound clinical evidence that the originally prescribed medication is likely to require more than two weeks to provide any relief, the step therapy or fail first protocol may be extended up to seven additional days; and (5) Requires every pharmacy benefit manager and health carrier requiring preauthorization or step therapy for a specific medication to provide a web site with a list of the medications which require preauthorization and the process required to comply with the pharmacy benefit manager's or health carrier's policies.

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

Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
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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