

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4212S.07A
 Bill No.: SS for SCS for HCS for HB Nos. 2116, 2097, 1690 and 2221, as amended
 Subject: Disabilities; Elderly; Health Care; Health Care Professionals; Health and Senior Services, Department of; Hospitals; Mental Health, Department of; Nursing Homes and Long- Term Care Facilities
 Type: Original
 Date: May 10, 2022

Bill Summary: This proposal modifies provisions relating to visitation rights of patients.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue*	\$0 to (\$1,570,626)	\$0 to (\$1,903,598)	\$0 to (\$1,922,635)
Total Estimated Net Effect on General Revenue	\$0 to (\$1,570,626)	\$0 to (\$1,903,598)	\$0 to (\$1,922,635)

*Costs to the Department of Mental Health depend upon the declaration of an emergency pursuant to chapter 44 relating to infectious, contagious, communicable, or dangerous diseases.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive some agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek approval to publish a new fiscal note.

Senate Amendment (SA) 1

Oversight assumes SA 1 will have no fiscal impact.

§191.1400 – No Patient Left Alone Act

Officials from the **Department of Health and Senior Services (DHSS)** state §191.1400(10) provides that a compassionate care visitor of a patient or resident of a health care facility may report any violation of the provisions of this section by a health care facility to the department of health and senior services. The department shall begin investigating any such complaint filed under this subsection within thirty-six hours of receipt of the complaint. The purpose of such investigation shall be to ensure compliance with the provisions of this section and any such investigation shall otherwise comply with the complaint processes established by section 197.080 for a hospital, section 197.268 for a hospice facility, and section 198.532 for a long-term care facility.

The addition in this bill will require an investigation into compassionate care violations within 36 hours of such complaint being filed. This will require staff throughout the Division be on-call to investigate concerns in hospice, hospitals and long-term care- on weekends and holidays. These additional requirements have an unknown fiscal impact to the Section for Long-term Care Regulation (SLCR). SLCR staff are currently on-call to initiate complaints and investigate Abuse and Neglect complaints within 24 hours, however, placing such time constraints for investigation into this type of complaint could limit SLCR's ability to investigate Abuse and Neglect and other high priority quality of care complaints in a timely manner.

§191.2290 – Essential Caregiver Program Act

DHSS states §191.2290.3 of the proposal provides “During a state of emergency declared pursuant to chapter 44 relating to infectious, contagious, communicable, or dangerous diseases, a facility shall allow a resident or patient who has not been adjudged incapacitated under chapter 475, a resident's or patient's guardian, or a resident's or patient's legally authorized representative to designate an essential caregiver for in-person contact with the resident or patient in accordance

with the standards and guidelines developed by the department under this section. Essential caregivers shall be considered as part of the resident's or patient's care team, along with the resident's or patient's health care providers and facility staff.” The DHSS will have to develop “standards and guidelines” regarding essential caregiver’s in-person visitation at a hospital. Although not specified, this will likely be done through the standard rule promulgation process.

It is assumed it will take two (2) Nurse Managers (average salary \$69,630) a total of approximately 160 hours to make the required change in Chapter 198 for LTC and Chapter 197 for Hospitals. Based on 2080 working hours per year, this would require 0.08 FTE (160 hour ÷ 2,080 hours per year) to accomplish these duties for personal service costs of \$4,642 (\$69,630 x 0.08 x 10/12) plus fringe benefits of \$2,525, for a total cost of \$7,167 in FY 2023 .

DHSS state §191.2290.3 requires that a facility may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven days. The department may deny the facility's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health risk. A facility may request from the department an extension of a suspension for more than seven days provided, that the department shall not approve an extension period for longer than seven days at a time.

DHSS/Division of Regulation and Licensure (DRL) is unsure of the number of facilities and hospitals that will apply for the suspension of in person contact visitation during a state of emergency. This creates a Zero to unknown fiscal impact for the DRL.

Oversight notes it is unknown when there may be a declared state of emergency. Therefore, Oversight assumes any costs that may be incurred can be absorbed with existing resources. If additional funding and resources are needed, DHSS may request additional funding through the appropriations process.

§630.202 – Mental health facilities and Essential Caregiver Act

Officials from the **Department of Mental Health (DMH)** state §630.202 applies the Essential Caregiver Act to the Department of Mental Health (DMH) during declared emergencies. This section includes requiring twenty-four hour in-person access for an essential caregiver as necessary and appropriate for the well-being of the resident or client. Visitation in DMH hospitals is very different from those settings and cannot be effectively implemented in the same way. This would create substantial risk and cost for DMH facilities, particularly those housing forensic clients. Forensic facilities have separate visitation areas for the safety of all within the building, and the logistics of allowing 24-hour visitation access would strain DMH staff and facility capabilities. DMH would need to provide staff in these facilities to ensure the safety and security of both clients and staff.

In order to provide 24-hour access to clients, staff coverage will need to be established in each facility. Due to the difficulty in hiring staff for DMH facilities, current FTE would be utilized to provide necessary oversight for visitation, relief and patient escorting, causing an increase to current overtime costs. DMH estimates a total General Revenue cost for FY23 is \$1,570,626, FY24 is \$1,903,598, and FY25 is \$1,922,635.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the fiscal impact provided by DMH as a range of \$0 (no emergency) to DMH's estimates.

Bill as a whole

Officials from the **Department of Commerce and Insurance**, the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Revenue**, the **Department of Social Services** and the **Newton County Health Department** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to the previous version of this proposal, officials from the **Department of Corrections (DOC)** stated this version does not include §191.1437 which exempts the DOC. If the proposed legislation (§§191.1400 and 191.2290/630.202) does not apply to offenders in the custody of the DOC, the DOC will assume a no impact. If this legislation does apply to those incarcerated offenders, there will be an operational impact to the department.

Oversight does not have any information to the contrary. For fiscal note purposes, Oversight assumes the provisions of this proposal do not apply to incarcerated offenders and there will be no fiscal impact on the DOC.

In response to a previous version of this proposal, officials from the the **Department of Labor and Industrial Relations**, the **Department of Public Safety –Missouri Veterans Commission**, the **Office of the State Public Defender**, the **Missouri Office of Prosecution Services**, the **Kansas City Health Department**, the **St. Louis County Health Department** and the **Hermann Area Hospital District** each assumed the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
Costs – DMH (§630.202) p.4-5	\$0 to...	\$0 to...	\$0 to...
Overtime salaries	(\$1,151,992)	(\$1,396,214)	(\$1,410,177)
Overtime fringe benefits	(\$418,634)	(\$507,384)	(\$512,458)
<u>Total Costs – DMH</u>	(\$1,570,626)	(\$1,903,598)	(\$1,922,635)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to</u> <u>(\$1,570,626)</u>	<u>\$0 to</u> <u>(\$1,903,598)</u>	<u>\$0 to</u> <u>(\$1,922,635)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

SCS/HCS/HBs 2116, 2097, 1690, & 2221

This act establishes the "Compassionate Care Visitation Act". Under this act, a health care facility, defined as a hospital, hospice, or long-term care facility, shall allow a resident, patient, or guardian of such, to permit in-person contact with a compassionate care visitor during visiting hours.

The compassionate care visitation is a visit necessary to meet the physical or mental needs of the patient or resident, including end-of-life care, assistance with hearing and speaking, emotional support, assistance with eating or drinking, or social support.

A health care facility shall allow a resident to permit at least 2 compassionate care visitors simultaneously to have in-person contact with the resident during visitation hours. Visitation hours shall include evenings, weekends, and holidays, and shall be no less than 6 hours daily. 24-

hour visitation may be allowed when appropriate. Visitors may leave and return during visitor hours. Visitors may be restricted within the facility to the patient or resident's room or common areas and may be restricted entirely for reasons specified in the act.

By January 1, 2023, the Department of Health and Senior Services shall develop informational materials for patients, residents, and their legal guardians regarding the provisions of this act. Health care facilities shall make these informational materials accessible upon admission or registration and on the primary website of the facility.

No health care facility shall be held liable for damages in an action involving a liability claim against the facility arising from compliance with the provisions of this act; provided no recklessness or willful misconduct on the part of the facility, employees, or contractors has occurred.

The provisions of this act shall not be terminated, suspended, or waived except by a declaration by the Governor of a state of emergency, in which case the provisions of the "Essential Caregiver Program Act" shall apply.

Additionally, this act establishes the "Essential Caregiver Program Act". During a governor-declared state of emergency, a hospital, long-term care facility, or facility operated, licensed, or certified by the Department of Mental Health shall allow a resident of such facility, or the resident's guardian or legal representative, to designate an essential caregiver for in-person contact with the resident in accordance with the standards and guidelines developed under this act.

An "essential caregiver" is defined as a family member, friend, guardian, or other individual selected by a resident, or the guardian or legal representative of the resident. Essential caregivers shall be considered a part of the patient's care team, along with the resident's health care providers and facility staff.

The Department of Health and Senior Services and the Department of Mental Health shall develop the program's standards and guidelines, including: (1) allowing the resident to select at least two caregivers, although the facility may limit in-person contact to one at a time; (2) establishing an in-person contact schedule allowing for at least four hours each day; and (3) establishing procedures enabling physical contact between the caregiver and resident. The facility may require the caregiver to follow infection control and safety measures; provided that such measures are no more stringent than required for facility employees. Caregiver in-person contact may be restricted or revoked for caregivers who do not follow such measures.

A facility may request a suspension of in-person contact for a period not to extend seven days. The suspension may be extended, but not for more than fourteen consecutive days in a twelve-month period or more than forty-five days in a twelve-month period. The Department shall suspend in-person contact by essential caregivers under this act if it determines that doing so is

required under federal law, including a determination that federal law requires a suspension of in-person contact by members of the resident's care team.

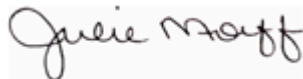
The provisions of this act shall not apply to those residents whose condition necessitates limited visitation for reasons unrelated to the stated reason for the declared state of emergency.

A facility, its employees, and its contractors shall be immune from civil liability for (1) an injury or harm caused by or resulting from exposure of a contagious disease or harmful agent or (2) acts or omissions by essential caregivers who are present in the facility, as a result of the implementation of the caregiver program. This immunity shall not apply to any act or omission of the facility, its employees, or its contractors that constitutes recklessness or willful misconduct.

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 Commerce and Insurance
Department of Health and Senior Services
Department of Mental Health
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety
Department of Social Services
Office of the State Public Defender
Kansas City Health Department
Newton County Health Department
St. Louis County Health Department
Hermann Area Hospital District
Missouri Office of Prosecution Services



Julie Morff
Director
May 10, 2022



Ross Strope
Assistant Director
May 10, 2022