

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1596S.02I  
 Bill No.: SB 410  
 Subject: Education, Higher; Professional Registration and Licensing; Health Care Professionals; Medical Procedures and Personnel; Department of Health and Senior Services  
 Type: Original  
 Date: March 20, 2023

Bill Summary: Establishes the "Do No Harm Act" relating to diversity-equity-inclusion requirements.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	Unknown to Could exceed (\$86,184)	Unknown to Could exceed (\$99,998)	Unknown to Could exceed (\$101,687)
<b>Total Estimated Net Effect on General Revenue</b>	<b>Unknown to Could exceed (\$86,184)</b>	<b>Unknown to Could exceed (\$99,998)</b>	<b>Unknown to Could exceed (\$101,687)</b>

\* Oversight assumes penalties (\$191,145,10) collected (if any) will exceed \$250,000 since repayments are treble the amount received by the health care provider or college/university. Oversight assumes the loss of DMH training facilities and/or continuing education programs to be less than \$250,000 annually.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Colleges and Universities	(Unknown, potentially substantial)	(Unknown, potentially substantial)	(Unknown, potentially substantial)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(Unknown, potentially substantial)</b>	<b>(Unknown, potentially substantial)</b>	<b>(Unknown, potentially substantial)</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Federal*	\$0 to (Up to \$148,000,000)	\$0 to (Up to \$148,000,000)	\$0 to (Up to \$148,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 to (Up to \$148,000,000)</b>	<b>\$0 to (Up to \$148,000,000)</b>	<b>\$0 to (Up to \$148,000,000)</b>

\*Oversight notes DMH’s assumption of loss of federal funding for non-compliance with DEI provisions and the resulting loss of facilities’ accreditations.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
General Revenue	1 FTE	1 FTE	1 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>

- 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.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§191.1450 – Do No Harm Act

Officials from the **Department of Health and Senior Services (DHSS)** state their **Division of Regulation and Licensure (DRL), Section for Health Standards and Licensure (HSL)** will act on behalf of DHSS for the proposed legislation.

The proposed legislation prohibits and discourages required “diversity-equity-inclusion” or “DEI” education and training. Section 191.1450.2(3) defines DEI as education, training and programs that instruct people on subjects of anti-racism, implicit bias, health equity, social determinants of health, and any other instructions related to the relevance of race, gender, religion, ethnicity, sexual preferences, and national origin relating to access to care, or treatment by health care providers.

Section 191.1450.3 requires each institution of higher education that receives state funding and offers health care related degrees or certifications to submit a certification to the DHSS by December 31st of each year that their institution does not require applicants or students to study or ascribe to DEI ideologies. Institutions must publish all course titles and syllabi on its website in an online database readily searchable to the public. This section requires DHSS to set up a mechanism to receive the certifications. DHSS is only required to collect and store the certifications; no publication of certifications is required. A collection and storage mechanism would be required.

Section 191.1450.4 requires each health care provider and also institutions of higher education with health care related degree programs to certify with the DHSS each year by December 31st, that they do not and shall not require their employees, contractors, volunteers, vendors, or agents to ascribe to, study, or be instructed with DEI ideologies or materials. DHSS is only required to collect and store the certifications; no publication of certifications is required. A collection and storage mechanism would be required. A rough estimate of “institutional providers” is at least 4,801, with some unknown. A rough estimate of “individual practitioners” is at least 196,361 with some unknown.

Section 191.1450.7 requires any public entity applying for a federal health-care grant, related to DEI, to publish its grant applications materials on a website and submit a copy of the grant proposal to DHSS. DHSS would need to collect these proposals. The law does not indicate what DHSS is to do with them.

Section 191.1450.9 states that during each year, the DHSS would be collecting “certifications” from both health care institutions and individuals that they do not require DEI activities. This list will include, state contractors, grant recipients, medical educators, providers, organizations, institutes of higher education, etc. DHSS is to provide a list of all these parties in a report to the

Governor and Legislature. This could be a list that is well over 201,162 entries long.

It is assumed HSL will require the following additional position to meet the requirements of the proposed legislation.

One (1) FTE Senior Regulatory Auditor (salary \$59,622) will be needed to receive and review data and create the annual report to the Governor and Legislature.

**Oversight** does not have any information to the contrary. Although, **Oversight** assumes DHSS would not need additional rental space for 1 new FTE for this single proposal, Oversight notes, depending on the number of proposals passed during the legislative session that, cumulatively, DHSS may need additional rental space or capital improvements as determined by the Office of Administration, Facilities Management, Design and Construction.

Officials from the **Department of Mental Health (DMH)** state this proposal establishes the “Do No Harm Act” relating to diversity-equity-inclusion (DEI) requirements.

**Section 191.1450** shall be known as the “Do No Harm Act”.

**Subsection 3** states each institution of higher education receiving state funding and offering health care-related degrees or certifications shall certify to Department of Health and Senior Services (DHSS) by December 31 each year that the institution does not require applicants or students to study or ascribe to DEI ideologies during the course of the students’ application to or education through the institution. Each institution shall publish all mandatory course titles and syllabi on its website in an online database searchable by the public.

**Subsection 4** states each health care provider and institution of higher education with health care-related degree programs shall certify to DHSS by December 31 each year that they do not and shall not require its employees, contractors, volunteers, vendors or agents to ascribe to, study, or be instructed with DEI ideologies or materials.

**Subsection 6** states 1) no health care-related professional licensing boards shall impose any requirements for licensure that subjects the applicant to DEI ideologies 2) no organization that issues health care-related professional certifications shall use DEI ideologies or require DEI training as part of the certification process and 3) no health care continuing education courses that use DEI ideologies be counted towards a health care profession’s continuing education requirements.

**Subsection 7** states any public entity applying for a federal health care-related grant related to DEI shall publish on its website all materials and requirements related to the federal grant application and submit a copy of the grant proposal to DHSS.

**Subsection 8** states each recipient of state health care-related contracts or grants shall certify, prior to being awarded a contract or grant, that it does and shall not require its employees,

contractors, volunteers, vendors or agents to ascribe to, study or be instructed with DEI ideologies.

**Subsection 9** states DHSS shall provide the governor and the general assembly with a list of all of the state contractors, grant recipients, medical educators, providers and organizations that are not engaging in promoting, teaching or requiring DEI ideologies.

**Subsection 10** states health care providers and institutions of higher education in violation of the provisions of this section shall not be eligible for state funding, grants, contracts, or any other state benefit and shall repay to the state treble the amount of funds they received from the date of the initial violation until it ceases.

The Department of Mental Health inpatient facilities are accredited by The Joint Commission (TJC) and Center for Medicare/Medicaid Services (CMS). TJC and CMS set several standards that facilities are required to meet for accreditation; cultural competency is included in seven areas of TJC Standards and in three areas of CMS hospital Conditions of Participation. Loss of accreditation by their facilities would result in the loss of federal funding. The fiscal impact is estimated to be **\$0 - \$148 million**.

The DMH additionally offers training for various clinical disciplines. Various regulatory bodies oversee the training of these clinicians and specify the need to incorporate cultural competency. For example, the Accreditation Council for Graduate Medical Education (ACGME) has recognized cultural competency as a part of three out of six core competencies (patient care, interpersonal and communication skills and professionalism) that residency training programs are to provide training in. Loss of training sites would lead to further shortages in clinical disciplines.

Also, DMH clinicians (psychiatrists, psychologists, social workers, nurses, etc.) have continuing education requirements to maintain licensure to practice. Reducing acceptable types of continuing education by excluding those that contain DEI, could result in DMH clinicians being unable to attain the requisite amount of continuing education.

In addition, the Value Based Payment learning path follows the National Direct Support Professional (DSP) best practices which includes multiple DEI trainings and would be in conflict with the proposed language. In addition, this would impact DMH's contracting process since certification would have to occur prior to the award of a contract and subsequently may negatively impact its ability to attract new providers. This could possibly cause a safety issue to those individuals DMH is in charge of care if at the last minute there are providers the department can no longer contract with. The term "certification" is not defined so it is unclear as to what would be involved with the process and the effect on DMH's workforce. This may cause an **unknown** impact to the department.

**Oversight** does not have any information to the contrary. Oversight has no information on the amount of federal funding that could potentially be lost. In addition, Oversight has no

information relating to the likelihood of a loss of training sites or continuing education programs that could be used by DMH if they offer DEI training. Therefore, Oversight will reflect \$0 to Unknown costs to General Revenue (assumed to be less than \$250,000 annually) and a \$0 to (\$148,000,000) loss in Federal funds for this agency.

Officials from the **Office of Administration (OA)** state the proposed legislation will require OA Purchasing to develop internal processes and self-certification/attestation form/language/exhibits. OA-Purchasing will then for, new procurements, include vendor/contractor self-certification/attestation language and exhibits to ensure that contracts are not awarded to such entities that have the stipulations in the proposed legislation. OA-Purchasing assumes this would take approximately 1,000 hours of staff time at an average hourly salary of \$20.00 per hour to develop the internal processes, forms/language/ exhibits, and to include the forms/language/exhibit to any new procurements. Therefore, OA-Purchasing estimates the total fiscal impact of this bill to be at least \$20,000. At this time, it is believed that the additional staff time and resources can be absorbed by OA-Purchasing. However, if there are multiple pieces of legislation passed where OA-Purchasing has responded that the costs can be absorbed, OA-Purchasing would need to reevaluate to see if additional staff and associated expenses would then be required.

Further, it is possible that the restrictions on companies may cause certain vendors to be unable to be a contractor or do business with Missouri. Such a fiscal impact cannot be ascertained.

Additional fiscal impact could also result if OA-Purchasing's assumption is incorrect that compliance with this bill can be achieved with a self-certification/attestation form. The bill language does not require OA-Purchasing to take any specific steps to investigate contractor's compliance with this requirement, but if such compliance checks are implied, then fiscally the impact would be higher. **Note:** OA-Purchasing can only address those contracts issued by it, and each state agency would have to do their own compliance checks or reviews for every one of its purchases and contracts covered by the law.

**Oversight** does not have any information to the contrary. Oversight assumes OA has sufficient staff and resources available to absorb the additional responsibilities of this proposal and will present no fiscal impact for this organization. Oversight notes, depending on the number of proposals passed during the legislative session that, cumulatively, the OA may need additional staff and resources.

Officials from the **University of Missouri System (UM)** state this legislation could result in loss of accreditation for their medical schools, costing the University of Missouri System more than \$1 million.

Officials from the **University of Central Missouri** state this proposal may result in increased costs in terms of employee time being used to comply with the provisions of this proposal.

**Oversight** does not have any information to the contrary. However, Oversight notes the provisions of subsection .10 of this proposal states that health care providers and institutions of higher education in violation of the provision shall repay to the state treble the amount of funds they received from the date of the initial violation until the date the acts in violation of the section cease. Therefore, for fiscal note purposes Oversight will present costs to colleges and universities as Unknown, potentially substantial and show an unknown positive fiscal impact to General Revenue for the possible payments related to violations. Oversight assumes any penalties collected will exceed \$250,000 annually since repayments are treble the amount of funds received by the entity.

Officials from the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Social Services**, **Northwest Missouri State University**, **St. Charles Community College**, the **Office of the Governor**, the **Missouri House of Representatives**, the **Missouri Senate**, the **Missouri Office of Prosecution Services** and the **Office of the State Courts Administrator** 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.

#### Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 \$5,000. 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 its 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** only reflects the responses received from state agencies and political subdivisions; however, other colleges and universities were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>GENERAL REVENUE FUND</b>			
<u>Income – Penalties received from health care providers and colleges &amp; universities p.7</u>	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Costs – DHSS (§191.1450) p.3-4</u>			
Personal service	(\$49,685)	(\$60,814)	(\$62,031)
Fringe benefits	(\$31,575)	(\$38,337)	(\$38,792)
Equipment and expense	(\$4,924)	(\$847)	(\$864)
<b>Total Costs - DHSS</b>	<b>(\$86,184)</b>	<b>(\$99,998)</b>	<b>(\$101,687)</b>
FTE Change - DHSS	1 FTE	1 FTE	1 FTE
<u>Costs – DMH – loss of training sites/ continuing education programs (§191.1450) p.5</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>Unknown to Could exceed (\$86,184)</u></b>	<b><u>Unknown to Could exceed (\$99,998)</u></b>	<b><u>Unknown to Could exceed (\$101,687)</u></b>
Estimated Net FTE Change on the General Revenue Fund	1 FTE	1 FTE	1 FTE
<b>COLLEGES AND UNIVERSITIES</b>			
<u>Costs/Losses – Colleges and Universities (§191.1450) – costs and losses associated with DEI requirements or loss of accreditation p.6-7</u>	(Unknown, potentially substantial)	(Unknown, potentially substantial)	(Unknown, potentially substantial)
<b>ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES</b>	<b><u>(Unknown, potentially substantial)</u></b>	<b><u>(Unknown, potentially substantial)</u></b>	<b><u>(Unknown, potentially substantial)</u></b>



<u>FISCAL IMPACT – State Government</u> (continued)	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>FEDERAL FUNDS</b>			
Loss – DMH (§191.1800) – Reduction in federal funds for loss of accreditation p.5	\$0 to (Up to \$148,000,000)	\$0 to (Up to \$148,000,000)	\$0 to (Up to \$148,000,000)
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0 to (Up to \$148,000,000)</u></b>	<b><u>\$0 to (Up to \$148,000,000)</u></b>	<b><u>\$0 to (Up to \$148,000,000)</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT – Small Business

This proposal could directly impact small business health care providers. (§191.1450)

FISCAL DESCRIPTION

This act establishes the "Do No Harm Act". Each institution of higher education receiving state funding, health care provider, health care-related professional licensing board, or recipient of a state health care-related contract or grant shall certify to the Department of Health and Senior Services, as described in the act, that it does not and shall not require students, applicants, employees, contractors, vendors, volunteers, or agents to ascribe to, study, or be instructed with diversity-equity-inclusion (DEI) ideologies or materials.

Each medical school shall require the MCAT as one of the requirements of admission. Each institution of higher education receiving state funding and offering health care-related degrees or certifications shall not reduce the academic standards for student admission or advancement within health care-related academic programs without receiving prior approval by the General Assembly through a concurrent resolution. No organization issuing health care-related professional certifications or continuing education using DEI ideologies or materials as part of the certification or education process.

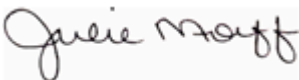
Any public entity applying for a federal health care-related grant related to DEI shall publish on its website all materials, requirements, and instructions related to said federal grant applications that are in the entity's possession and submit a copy of the grant proposal to the Department.

Health care providers and institutions of higher education violating this act shall not be eligible for state funding, grants, contracts, or any other benefit and shall repay the state treble the amount of funds they received, as described in the act.

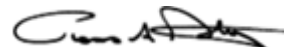
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office  
Department of Commerce and Insurance  
Department of Elementary and Secondary Education  
Department of Higher Education and Workforce Development  
Department of Health and Senior Services  
Department of Mental Health  
Department of Social Services  
Office of Administration  
Office of the Secretary of State  
University of Missouri System  
Northwest Missouri State University  
University of Central Missouri  
St. Charles Community College  
Office of the Governor  
Missouri House of Representatives  
Joint Committee on Administrative Rules  
Missouri Senate  
Missouri Office of Prosecution Services  
Office of the State Courts Administrator



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