COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4271S.01I
Bill No.: SB 751
Subject: Department of Commerce and Insurance; Consumer Protection; Federal - State Relations; Insurance - Health; Pharmacy; Merchandising Practices
Type: Original
Date: February 11, 2024

Bill Summary: This proposal enacts provisions relating to insurance coverage of pharmacy services.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue Fund*	(Unknown, could exceed $932,000)	(Unknown, could exceed $882,000)	(Unknown, could exceed $882,000)
Total Estimated Net Effect on General Revenue	**(Unknown, could exceed $932,000)**	**(Unknown, could exceed $882,000)**	**(Unknown, could exceed $882,000)**

* The fiscal impact is unknown, however, MCHCP estimates that it would be greater than $1.4 million split between General Revenue, Other State Funds and Federal Funds.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Other State	(Unknown, could exceed $210,000)	(Unknown, could exceed $210,000)	(Unknown, could exceed $210,000)
State Road Fund	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
Conservation Commission Fund	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	**(Unknown, could exceed $210,000)**	**(Unknown, could exceed $210,000)**	**(Unknown, could exceed $210,000)**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS

FUND AFFECTED	FY 2025	FY 2026	FY 2027
Federal Funds	(Unknown, could exceed $308,000)	(Unknown, could exceed $308,000)	(Unknown, could exceed $308,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	**(Unknown, could exceed $308,000)**	**(Unknown, could exceed $308,000)**	**(Unknown, could exceed $308,000)**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
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 2025	FY 2026	FY 2027
Local Government	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

FISCAL ANALYSIS

ASSUMPTION

§§376.411 - 376.415 – Insurance coverage of pharmacy services

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** estimate there is $12 million in savings associated with the current management of specialty drugs. SB 751 bill language constrains MCHCP's ability to manage clinician administered specialty drugs other than through a review of medical necessity. While MCHCP does have many specialty drugs that are allowed to be processed through either the pharmacy or medical channels, there are some that are restricted to the pharmacy channel. There are also certain drugs that are restricted to the medical channel such as anti-cancer and infused medications. MCHCP updated its fiscal impact to reflect only the impact to the loss of savings associated with those physician-administered drugs that are currently administered under the pharmacy benefit. MCHCP did not estimate an impact to oral or self-administered injectable specialty drugs. Based on an actuarial analysis, the additional cost to MCHCP is estimated to be unknown but greater than $1.4 million.

Below is a non-exhaustive list of some caveats, assumptions, and other considerations the actuary made during its analysis.

- **Impacted Drugs** – There may be other less common physician-administered drugs within MCHCP's utilization that are not captured within this analysis.
- **Assumed Cost Differential** – The actuary assumed that the gross-cost or point-of-sale costs of medications are roughly 11% higher under the medical channel than under pharmacy channel. There could be instances with certain drugs are less costly, or more costly, than this assumed differential.
- **Assumed Rebate Differential** – The actuary assumed that rebates for these physician-administered drugs would not be realized when billed under the medical benefit.
- **Utilization Management** – The actuary assumed a loss of utilization management savings associated with a move under the medical benefit.
- **Future White-Bagging Opportunities** – As more drugs come to market, it's likely that there are going to be other physician-administered drugs that could have cost benefits through white-bagging. The actuary analysis is based on actual MCHCP utilization in CY2022 trended to CY2024 and does not reflect the possibility of savings from new physician administered drugs in the future.
- **Manufacturer Coupon Programs** – PBMs are able to leverage manufacturer copay assistance on medications that are dispensed through their specialty pharmacy. These programs can provide cost savings to both members and plan sponsors. HB 198 would inhibit the PBM's ability to offer these programs for physician-administered drugs if the drug is not dispensed through their specialty pharmacy.
    - These coupon programs set the member cost sharing to $0 and use the manufacturer coupons to fund the cost sharing. Based on the data provided, members would save roughly $90,000 if MCHCP were to opt-in to this program. However, HB 198 would inhibit the PBM's ability to offer this program on physician-administered drugs.

  - The actuary did not calculate the potential impact as part of this analysis since MCHCP does not currently participate in these programs.
- **Member Out-of-Pocket-Maximum (OOPM)** – MCHCP has slight differences in the OOPM under the medical and pharmacy benefits. If the drugs are shifted to the medical benefit, which has a lower OOPM for members, the members may hit their OOPM limit sooner by paying more out-of-pocket moving from copayments under the pharmacy channel to coinsurance under the medical channel, and more residual costs may shift to MCHCP. The actuary did not calculate this potential impact as part of this analysis.

Oversight contacted MCHCP officials about the term "white bagging". MCHCP stated white-bagging blocks certain drugs under the medical benefit and routes those prescriptions to the specialty pharmacy. The specialty pharmacy then ships the drugs to the physician's office/facility where it is then administered to the patient. All of the transitioned drugs are then billed under the pharmacy benefit. This process of white-bagging prevents physicians/facilities from purchasing the drugs themselves from a pharmacy of their choosing, administering to the patient, and then billing the medical carrier for costs that are generally higher than under the pharmacy benefit. This type of billing is referred to as a "buy-and-bill" method by physicians.

Oversight will reflect MCHCP's unknown, but greater than $1.4 million annual cost to the General Revenue Fund, Other State Funds and Federal Funds.

General Revenue	Greater than $882,000	63%
Federal Funds	Greater than $308,000	22%
Other Funds	Greater than $210,000	15%
Total	**Greater than $1,400,000**	**100%**

*MCHCP Fund Split Percentages provided by Budget & Planning

Officials from the **Missouri Department of Transportation (MoDOT)** assume the proposal may increase costs for PBMs, which will likely pass on costs to the MoDOT-MSHP medical plan. This would have an unknown negative impact to the State Road Fund.

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

Oversight assumes this provision could have a fiscal impact MoDOT as well as other government health plans. Since it is unknown if this legislation will increase cost for PBM's or not, **Oversight** will reflect a $0 to Unknown fiscal impact to the State Road Fund, the Conservation Commission Fund and local political subdivisions.

Oversight notes, in 2011, the Missouri General Assembly enacted section 376.1190, which states, "any health care benefit mandate proposed after August 28, 2011, shall be subject to review by the Oversight Division of the Joint Committee on Legislative Research. The Oversight Division shall perform an actuarial analysis of the cost impact to private and public payers of any new or revised mandated health care benefit proposed by the general assembly after August 28, 2011, and a recommendation shall be delivered to the speaker and the president pro tem prior to mandate being enacted."

The customary process for an actuarial analysis involves Oversight contracting with an outside firm who will request experience data from the largest insurance carries in the State of Missouri. Since current law (§376.1190) requires any "proposed" mandate receive an actuarial analysis, the timing may not allow for such in-depth reviews. In 2013 Oversight contracted with a company to perform an actuarial analysis for Senate Bill 262, Senate Bill 159, and Senate Bill 161. Due to the timing of the analysis, the company noted requesting outside data was not possible. This limited analysis in 2013 cost almost $25,000. Given the cost increases over the last ten years, the varying degree of available information to the outside firm and the potential for more in-depth analysis if the information and timing allow, Oversight can easily assume that a current analysis "could exceed $50,000".

The Oversight Division does not currently have the appropriation to cover the costs of an actuarial analysis and would need to request such additional funding through the budget process. Oversight will reflect a onetime cost of "Could Exceed $50,000" to the General Revenue Fund in FY 2025.

Officials from the **Department of Commerce and Insurance**, the **Department of Social Services** and **Kansas City** 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.

Officials from the **Department of Public Safety - Missouri Highway Patrol** defer to the MoDOT/MHP Health Care Board for response relating to the fiscal impact of this proposal on their organization.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other city officials 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.

FISCAL IMPACT – State Government	FY 2025 (10 Mo.)	FY 2026	FY 2027

GENERAL REVEUE FUND			
Cost – Oversight Division §376.687 & 376.689 p. 5 Actuarial Analysis	(Could exceed $50,000)	$0	$0
Loss – MCHCP Elimination of channel management programs (§376.411) p.3-4	(Unknown, could exceed $882,000)	(Unknown, could exceed $882,000)	(Unknown, could exceed $882,000)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	**(Unknown, could exceed $932,000)**	**(Unknown, could exceed $882,000)**	**(Unknown, could exceed $882,000)**
OTHER STATE FUNDS			
Loss – MCHCP Elimination of channel management programs (§376.411) p.3-4	(Unknown, could exceed $210,000)	(Unknown, could exceed $210,000)	(Unknown, could exceed $210,000)
ESTIMATED NET EFFECT TO OTHER FUNDS	**(Unknown, could exceed $210,000)**	**(Unknown, could exceed $210,000)**	**(Unknown, could exceed $210,000)**
STATE ROAD FUND			
Cost – MoDOT Elimination of channel management programs (§376.411) p.4	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
ESTIMATED NET EFFECT TO THE STATE ROAD FUND	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

CONSERVATION COMMISSION FUND			
Cost – MDC Elimination of channel management programs (§376.411) p.4	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
ESTIMATED NET EFFECT TO THE CONSERVATION COMMISSION FUND	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**
FEDERAL FUNDS			
Loss – MCHCP Elimination of channel management programs (§376.411) p.3-4	(Unknown, could exceed $308,000)	(Unknown, could exceed $308,000)	(Unknown, could exceed $308,000)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	**(Unknown, could exceed $308,000)**	**(Unknown, could exceed $308,000)**	**(Unknown, could exceed $308,000)**

FISCAL IMPACT – Local Government	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL POLITICAL SUBDIVISIONS			
Cost – Local Political Subdivisions Elimination of channel management programs (§376.411) p.3	$0 to (Unknown)	$0 to (Unknown)	$0 to (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUDBVISIONS	**$0 to (Unknown)**	**$0 to (Unknown)**	**$0 to (Unknown)**

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This act provides that a health carrier or pharmacy benefits manager (PBM) shall not impose any penalty, impediment, differentiation, or limitation on participating providers for providing medically necessary clinician-administered drugs, regardless of whether the participating provider obtains the drugs from an in-network provider, including but not limited to refusing to approve or pay, or reimbursing less than the contracted payment amount.

Carriers and PBMs shall not impose any penalty, impediment, differentiation, or limitation on a covered person who is administered medically necessary clinician-administered drugs, regardless of whether the participating provider obtains the drugs from an in-network provider, including but not limited to: limiting coverage or benefits; requiring an additional fee, higher co-payment, or higher coinsurance amount; or interfering with a patient's ability to obtain a clinician-administered drug from the patient's provider or pharmacy of choice by any means, including but not limited to inducing, steering, or offering financial or other incentives.

Carriers and PBMs shall not impose any penalty, impediment, differentiation, or limitation on any pharmacy that is dispensing medically necessary clinician-administered drugs, regardless of whether the participating provider obtains the drugs from an in-network provider, including but not limited to requiring a pharmacy to dispense the drugs to a patient with the intention that the patient will transport the medication to a health care provider for administration.
These provisions shall not apply if the clinician-administered drug is not otherwise covered by the carrier or PBM.

Under this act, no health carrier or pharmacy benefits manager (PBM) shall discriminate against a covered entity or a pharmacy, as such terms are defined in the act, by:

• Reimbursing a covered entity or specified pharmacy for a quantity of a 340B drug, as defined in the act, in an amount less than the carrier, PBM, or affiliate would pay to any other similarly situated pharmacy for such quantity of the drug on the basis that the entity or pharmacy is a covered entity or a pharmacy, or that the entity or pharmacy dispenses 340B drugs. (Section 376.414.2(1));

• Imposing any terms or conditions on covered entities or specified pharmacies which differ from the terms or conditions applicable to other similarly situated pharmacies or entities on the basis that the entity or pharmacy is a covered entity or dispenses 340B drugs, including but not limited to certain terms and conditions described in the act. (Section 376.414.2(2));

• Interfering with an individual's choice to receive a 340B drug from a covered entity or pharmacy. (Section 376.414.2(3));

• Requiring a covered entity or specified pharmacy to identify 340B drugs, either directly or through a third party, except as required to comply with rebate transparency requirements of a pharmaceutical manufacturer. (Section 376.414.2(4));

• Requiring a covered entity or pharmacy to identify a 340B drug sooner than 45 days after the point of sale of the drug. (Section 376.414.2(5));

• Refusing to contract with a covered entity or pharmacy for reasons other than those that apply equally to entities or pharmacies that are not covered entities or similarly situated pharmacies, or on the basis that the entity or pharmacy is a covered entity as described under federal law, or on the basis that the entity or pharmacy is described as a covered entity under provisions of federal law. (Section 376.414.2(6));

• Denying the covered entity the ability to purchase drugs at 340B program pricing by substituting a rebate discount. (Section 376.414.2(7));

• Refusing to cover drugs purchased under the 340B drug pricing program. (Section 376.414.2(8)); or

• Requiring a covered entity or pharmacy to reverse, resubmit, or clarify a 340B-drug pricing claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to the 340B drug pricing, except as required by federal law. (Section 376.414.2(9)).

Under the act, a pharmaceutical manufacturer shall not discriminate against the acquisition or delivery of 340B drugs to pharmacies that are under contract with a covered entity to receive and dispense 340B drugs on behalf of the covered entity. Violation of this provision shall be an unlawful merchandising practice. (Section 376.414.3).

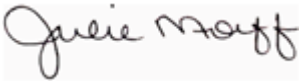
The Director of the Department of Commerce and Insurance shall impose a civil penalty on any health carrier or PBM violating certain provisions of the act, not to exceed $5,000 per violation per day. (Section 376.414.4).

A health carrier or PBM providing coverage for a reference product or a biological product that is biosimilar to the reference product shall provide coverage for the reference product and all biological products that have been deemed biosimilar to the reference product. The scope, extent, and amount of the required coverage shall be the same, including but not limited to any payment limitations or cost-sharing obligations.

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 Public Safety – Missouri Highway Patrol
Department of Social Services
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Consolidated Health Care Plan
City of Kansas City
City of Springfield



Julie Morff
Director
February 11, 2024

Ross Strope
Assistant Director
February 11, 2024

KC:LR:OD