

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (16-056)**

**Subject**

Initiative petition from Jeffrey Mazur regarding a proposed amendment to Chapter 208 of the Revised Statutes of Missouri. (Received May 12, 2015)

**Date**

June 1, 2015

**Description**

This proposal would amend Chapter 208 of the Revised Statutes of Missouri.

The amendment is to be voted on in November 2016.

**Public comments and other input**

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, and **St. Louis Community College**.

**The Missouri Home Care Union** provided information for this proposal to the State Auditor's office.

## Assumptions

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Economic Development** indicated no impact for their department.

Officials from the **Department of Elementary and Secondary Education** indicated no cost to their department.

Officials from the **Department of Higher Education** indicated they have reviewed the provisions of this initiative petition and determined it would have no direct fiscal impact on their department.

Officials from the **Department of Health and Senior Services** indicated no fiscal impact on their department.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated their department would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated no impact.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact on their department.

Officials from the **Department of Revenue** indicated this petition will have no fiscal impact on their department.

Officials from the **Department of Public Safety** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Social Services** indicated total costs for salaries, fringe benefits, equipment and expenses will be \$115,438 (\$57,719 from the General Revenue Fund) for fiscal year 2016, \$118,188 (\$59,094 from the General Revenue Fund) for fiscal year 2017, and \$119,538 (\$59,769 from the General Revenue Fund) for fiscal year 2018.

16-056 proposes to enact Section 208.162, RSMo. The proposal would require in-home service providers and vendors of Consumer Directed Services (CDS) to expend no less

than 85% of the revenue generated by any payment for reimbursement by the MO HealthNet Program.

The proposal requires that providers and vendors must cooperate in any request for information or audit by the State. It also provides that if a provider or vendor fails to comply with the percentage requirement, then Missouri Medicaid Audit and Compliance Unit (MMAC) may impose sanctions, including but not limited to imposition of a corrective action plan, suspension or termination of contracts, etc.

The Department of Health and Senior Services and the Department of Social Services, including MMAC has the authority to promulgate rules to implement the provisions of this section.

MMAC:

If the intention of the proposed legislation is that MMAC review each provider report to verify the accuracy, additional FTE would be required.

Assumptions:

Currently there are approximately 1,250 active personal care providers. Validation of the information on a provider report to include verification of the salary of each personal care attendant, through individual queries of external databases, is estimated to require approximately 4 hours per provider report.

Calculation

1,250 providers X 4 hours review time = 5,000 hours annually

1 FTE = 2080 hours

Total FTE required = 5,000 / 2080 = 2.40 FTE Rounded up to 2.5 FTE.

Total Impact:

FY16 (10 months) \$115,438 (\$57,719 GR)

FY17 \$118,188 (\$59,094 GR)

FY18 \$119,538 (59,769 GR)

MHD and DLS assume no fiscal impact.

Officials from the **Governor's office** indicated there should be no fiscal impact to their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact to their agency.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated they assume there will be no fiscal impact.

Officials from the **Office of Administration (OA)** indicated:

The proposal enacts Section 208.162 RSMo. related to wages and benefits for in-home service employees and personal care attendants. Effective 1/1/17, In-home service providers who receive payments through the MO HealthNet program and vendors who receive payments on behalf of consumers for person care services, would be required to spend at least 85% of the revenue generated by any payment for in-home services performed by an employee on that employee's wages and benefits. The providers and vendors are required to report compliance with these provisions to the MO Department of Social Services and the Department of Health and Senior Services.

This proposal will not impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and their office was appropriated \$1.19 million to publish the full text of the measures. Due to this reduced funding, their office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost \$1.1 million to publish (an average of \$122,000 per issue). Despite the FY 2015 reduction, their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, we reserve the right to request funding to meet the cost of our publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition will not have any substantial impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Greene County** indicated there are no estimated costs or savings to report from their county for this initiative petition.

Officials from the **City of Columbia** indicated this proposal does not appear to have a direct fiscal impact on their city.

Officials from the **City of Kansas City** indicated this initiative petition has no fiscal impact on their city.

Officials from the **City of Raymore** indicated no fiscal impact.

Officials from **Metropolitan Community College** indicated no anticipated impact for their college.

Officials from **University of Missouri** indicated the University of Missouri Health Care has reviewed this proposed petition and has determined that as written it could create additional expenses in excess of \$100,000. These expenses would be incurred as the payment systems change for health care services from “fee for service” methodology to a more bundled or capitated payment system. The amounts are not able to be estimated at this time due to the language of the petition itself and the future timeline of the payment systems.

**The Missouri Home Care Union** provided the following information for this initiative petition.

**Proposed statement of fiscal impact**  
**for proposed statutory amendment to Chapter 208, version 1 (2016-056)**

Cost of the proposed legislation to the state for next two fiscal years

To quantify the incremental cost to both the State and the in-home service providers (for in-home service employees) and the consumer-directed services vendors (for personal care attendants) associated with enactment of the proposed legislation, we need to do the following:

- model baseline utilization, revenue, and expenditure for two years beginning January 1, 2017
- evaluate baseline to ensure compliance with proposed legislation
- estimate costs associated with increases in reimbursement rates and/or wages & benefits
- estimate costs associated with administrative compliance

Baseline

To model the baseline scenario, we need to understand the expected utilization of home care services provided by both in-home service employees and personal care attendants, the expected reimbursement rates for each type of home care services, and the expected labor costs associated with the provision of each type of home care services in the two years beginning January 1, 2017.<sup>1</sup>

<b>Metric</b>	<b>Source</b>
total hours of home care services <ul style="list-style-type: none"><li>• in-home service employees</li><li>• personal care attendants</li></ul>	state Medicaid report / plan waiver application
reimbursement rate per hour	state Medicaid report / plan
wage & benefit cost per hour	in-home service provider reports <sup>2</sup> consumer-directed service vendor reports <sup>3</sup>

Using the above metrics, we can generate annual cost estimates for both the State and the in-home service providers and the consumer-directed services vendors.

- Cost to State: # of hours of service x reimbursement rate per hour for in-home service

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<sup>1</sup> In the event we are unable to get forecasted metrics for this time period, we can use data from the most recent year.

<sup>2</sup> Need to determine what reports are available

<sup>3</sup> Consumer Directed Service vendors are required to submit quarterly financial reports (insert statutory cite). Data requested in such reports should provide information need to calculate each vendor's wage and benefit cost per hour. However, a Missouri Home Care Union review of all such reports filed by vendors for one quarter of 2014 found a number of apparent errors and inconsistencies that, in addition to the fact that a significant percentage of vendors had apparently failed to file the required report, would make reliable calculations difficult at best.

- Cost to State: # of hours of service x reimbursement rate per hour for consumer-directed service
- Cost to in-home service providers: # of hours of service x wage & benefit cost per hour
- Cost to consumer-directed service vendors: # of hours of service x wage & benefit cost per hour

### Baseline Evaluation

To determine if the baseline scenario is in compliance with the proposed legislation, first we need to evaluate the expected reimbursement rate for home care services in relation to federal, state, and local minimum wage provisions. Second, we need to evaluate expected labor costs as a share of the expected reimbursement rate.

Metric	Calculation	Compliance
reimbursement rate per hour	0.85 x rate	compliant if above statutory binding minimum wage
wage & benefit cost per hour	wage & benefit cost / reimbursement rate per hour	compliant if share is at or above 85%

### Direct Cost

To determine the direct cost associated with compliance with the proposed legislation, first we need to consider any cost accruing to the State and second we need to determine any cost accruing to the in-home service providers and the consumer-directed services vendors.

### **Cost to State**

In accordance with the proposed measure, wages paid to a direct care worker should be at or above the binding minimum wage law. The Missouri minimum wage at \$7.65 is presently above the federal minimum wage of \$7.25. If 85% of the reimbursement rate were below the state minimum wage, the cost to the state would be the amount needed to raise the reimbursement rate to that threshold multiplied by the expected utilization of home care services in the two years beginning January 1, 2017.<sup>4</sup> However, at this point, that is not the case, and it is unlikely to be the case on January 1, 2017. Thus, there will be no direct cost to the state.

### **Cost to in-home service providers and consumer-directed services vendors**

In accordance with the proposed measure, in-home service providers and consumer-directed services vendors are to ensure that at least 85% of the revenue associated with the provision of home care services is transmitted to the direct care worker in the form of wage and benefits. If the share of revenue is less than 85%, the cost to the in-home service providers or the consumer-directed services vendors would be the amount needed to raise the worker's wages & benefits to

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<sup>4</sup> With adjustments for any projected increase in the Missouri or federal minimum wage.

the threshold multiplied by the expected utilization of home care services in the two years beginning January 1, 2017, less any overall increase in reimbursement rates.

More specifically, the cost to the State and the in-home service providers and consumer-directed services vendors would be as follows:

- Cost to State: # of hours of service x (binding minimum wage - 0.85 x reimbursement rate)
- Cost to in-home service providers and consumer-directed services vendors: # of hours of service x (0.85 x reimbursement rate - baseline wages & benefits) - increase in reimbursement rate

### Administrative Costs

In addition to direct costs associated with increases in reimbursement rates and/or increases in labor costs, the State and the in-home services providers and the consumer-directed services vendors will likely experience indirect costs related to program administration. Namely, the State will likely witness incremental costs associated with monitoring and enforcement, and in-home services providers and the consumer-directed services vendors will likely witness incremental costs associated with reporting and auditing.

### Notes on current reimbursement rates

- In-Home
  - Basic Personal Care - Agency Model service reimbursement rate = \$4.47/15 min. unit<sup>5</sup> = \$17.88/hour
  - 85% of \$17.88 = \$15.20
  - An hourly rate of \$13.12 results in a total loaded wage of \$15.20/hour (Social Security, Medicare, SUTA, FUTA, and Worker's Compensation).
- Consumer-directed services
  - Personal Care Assistance - Consumer Directed Model service reimbursement rate = \$3.89/15 min. unit = \$15.56/hour
  - 85% of \$15.56/hour = \$13.23.
  - An hourly rate of \$11.42 for an attendant who is covered by Worker's Compensation results in a total hourly loaded wage of \$13.23.
  - However, most CDS attendants are not covered by Worker's Compensation.
  - An hourly rate of \$11.71 for an attendant who is not covered by Worker's Compensation results in a total hourly loaded wage of \$13.23.

### Other states with similar requirements for minimum ratios

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<sup>5</sup> "Service Reimbursement Rates (Correction)", Memorandum for All Home and Community Based Care Providers, Celesta Hartgraves, Division of Senior and Disability Services, June 26, 2014 (PM-14-17, VM-14-18). <http://health.mo.gov/seniors/hcbs/pmvmdocs/PM-14-17VM14-18.doc> - accessed May 21, 2015.

- Illinois – 77%
  - In-home services agencies must expend a minimum of 77% of the total revenues on the direct service worker.<sup>6</sup>
  - Effective July 1, 2008, the rate was enhanced to cover health insurance costs under PA 95-713.<sup>7</sup>
- Minnesota – 72.5%
  - Provider agencies must use a minimum of 72.5% of the revenue generated by the medical assistance rate for personal care assistance services for employee personal care assistant wages and benefits.<sup>8</sup>
  - The Minnesota legislature also required providers to dedicate 80% of a 2014 rate increase to “compensation-related costs for employees directly employed by the program.”<sup>9</sup>
- New York – 85%
  - No less than 85% of the State financial assistance or State-authorized payments to a provider for operating expenses shall be directed to provide direct care or services rather than to support administrative costs. There are also limits on executive compensation.<sup>10</sup>

### Medical Loss Ratio Requirements

- The Medical Loss Ratio (MLR) mechanism under the Affordable Care Act is broadly comparable to what is contemplated under the proposed legislation. It requires insurance companies to spend at least 80% or 85% of premium dollars on medical care. If they fail to meet these standards, the insurance companies are required to provide a rebate to their customers.<sup>11</sup>
- The Affordable Care Act MLR requirement does not apply to Medicaid. However, as of 2010, eleven states had established minimum MLR requirements for their Medicaid

<sup>6</sup> Illinois Administrative Code, Title 89-Chapter II-Part 240-Sections 2020 through 2050 – <http://www.ilga.gov/commission/jcar/admincode/089/08900240sections.html> (accessed May 20, 2015).

<sup>7</sup> <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0713&GA=95>

<sup>8</sup> 2014 Minnesota Statutes, 256B.0659 Personal Care Assistance Program, Subd. 21. Requirements for provider enrollment of personal care assistance provider agencies.

<https://www.revisor.mn.gov/statutes/?id=256b.0659#stat.256B.0659.21>

<sup>9</sup> See Department of Human Services “2014 Rate Changes Frequently Asked Questions” at

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&dDocName=dhs16\\_177815&RevisionSelectionMethod=LatestReleased](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&dDocName=dhs16_177815&RevisionSelectionMethod=LatestReleased) (accessed May 20, 2015)

<sup>10</sup> Executive Order No. 38: Limits on State-Funded Administrative Costs & Executive Compensation, January 18, 2012 – [http://nygovernorstg.prod.acquia-sites.com/sites/governor.ny.gov/files/atoms/files/EO38\\_0.pdf](http://nygovernorstg.prod.acquia-sites.com/sites/governor.ny.gov/files/atoms/files/EO38_0.pdf) (accessed May 21, 2015). Also see <http://executiveorder38.ny.gov/> (accessed May 21, 2015).

<sup>11</sup> “Medical Loss Ratio,” The Center for Consumer Information & Insurance Oversight/Centers for Medicare & Medicaid Services, <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Medical-Loss-Ratio.html> (accessed May 21, 2015)

Managed Care Organizations. The minimum MLR percentages ranged from 80% to 93%.<sup>12</sup>

### Economic impact on small businesses

There are approximately X total in-home service providers. Approximately X of the providers meet the definition of a small business (a corporation, partnership, sole proprietorship or other business entity, including its affiliates, that: (a) is independently owned and operated; and, (b) employs fifty or fewer fulltime employees.

There are approximately 350 consumer-directed services vendors. The majority of the consumer-directed services vendors meet the definition of a small business.

There are approximately 10,000 personal care attendants that provide consumer-directed services. All of the personal care attendants can be considered “individual provider” small businesses that hire themselves out to the consumers.

It appears that many of the small businesses are well positioned in the event of enactment of the proposed legislation. Profit margins for some home care agencies are relatively high, with gross margins reported in the range of 30% to 40%.<sup>13</sup> Such agencies may see a reduction in their profit margins.

On the other hand, the personal care attendants – the “individual provider” small businesses – will generally see an improvement in their financial situation. These individuals often live in poverty – “With median annual earnings of \$13,000, one in four home care workers live in households with incomes below the federal poverty level (FPL) and more than half live in households with incomes below 200 percent of FPL.”<sup>14</sup>

### Positive impact on public assistance costs

Nationally, a “significant number of home care workers rely on public assistance because their earnings are not enough to make ends meet. Among home care workers, nearly 50 percent live in households that receive public assistance benefits such as Medicaid, food stamps, and housing

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<sup>12</sup> “Quick Take: Medicaid MCOs and Medical Loss Ratio (MLR) Requirements,” Kaiser Family Foundation, April 13, 2012, <http://kff.org/medicaid/fact-sheet/medicaid-mcos-and-medical-loss-ratio-mlr/> (accessed May 21, 2015).

<sup>13</sup> “It is not uncommon among the top senior care franchises to build gross revenues to a million dollars or more, with gross margins of 30%–40%.” (Source: Franchise Business Review, “Special Report: Senior Care Franchises,” Spring 2014, page 5 ([http://franchisebusinessreview.com/content/files/FBR\\_2014-TopSeniorCareFranchises-web.pdf](http://franchisebusinessreview.com/content/files/FBR_2014-TopSeniorCareFranchises-web.pdf) - accessed May 20, 2015).

<sup>14</sup> “It is simply not possible for a worker to support herself, much less a family, on the average income of a home care aide. In all 50 states, the living wage (accounting for regional differences) for a two-person household is nearly double the median wage of a home care worker.” Source: “Paying the Price: How Poverty Wages Undermine Home Care in America,” Paraprofessional Healthcare Institute, February 2015, page 5, <http://phinational.org/sites/phinational.org/files/research-report/paying-the-price.pdf> - accessed May 20, 2015.

and heating assistance.”<sup>15</sup> It appears that Missouri is no different from the rest of the nation in this regard. Thus, the full fiscal impact will also include reduced public assistance costs resulting from higher wages paid to home care workers.

#### Positive impact on Missouri’s economy

Raising home care workers’ wages will benefit both the workers and the Missouri economy. A recent study concerning the impact of increased wages for home care workers nationally noted that “Low-wage workers, such as home care aides and personal care aides, are more likely to spend these extra earnings immediately for basic necessities,” and that such increased consumer spending would generate new economic activity, which in turn would lead to the creation additional jobs.<sup>16</sup>

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<sup>15</sup> “Giving Caregivers a Raise: The Impact of a \$15 Wage Floor in the Home Care Industry,” National Employment Law Project, February 2015, page 2. This report provides estimates of the enrollment and costs of public support programs for home care workers. Also see Technical Appendix.  
<https://www.nelp.org/content/uploads/2015/03/Giving-Caregivers-A-Raise.pdf> (accessed May 20, 2015).

<sup>16</sup> “Giving Caregivers a Raise: The Impact of a \$15 Wage Floor in the Home Care Industry,” National Employment Law Project, February 2015, page 2 – also see Technical Appendix,  
<https://www.nelp.org/content/uploads/2015/03/Giving-Caregivers-A-Raise.pdf> - accessed May 20, 2015.

The State Auditor's office did not receive a response from the **Department of Agriculture, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County Legislators, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, and St. Louis Community College.**

### **Fiscal Note Summary**

State universities and governmental entities estimate one-time costs exceeding \$100,000 with the total costs being unknown and increased annual costs of at least \$115,000. Local governmental entities estimate no costs or savings from this proposal.