



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 373 of the 129th G.A.](#)

**Date:** January 24, 2012

**Status:** As Introduced

**Sponsor:** Reps. Johnson and Gonzales

**Local Impact Statement Procedure Required:** Yes

**Contents:** Tamper resistant opioid analgesic drugs

### State Fiscal Highlights

- It appears likely that a greater number of higher cost prescriptions will be filled annually, thus creating additional costs to the Bureau of Workers' Compensation, Ohio's Medicaid Program, the state's health insurance plan, and the health insurance plans of each of the state's five pension systems (Ohio Public Employees Retirement System (OPERS), State Teachers Retirement System of Ohio (STRS), School Employees Retirement System of Ohio (SERS), Ohio Police & Fire Pension System (OP&F), and Highway Patrol Retirement System (HPRS)).

### Local Fiscal Highlights

- Health insurance plans offered by the state's political subdivisions will likely experience an increase in prescription costs, the magnitude of which will vary from plan to plan.

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## Detailed Fiscal Analysis

The bill prohibits a pharmacist from substituting another drug for a tamper resistant opioid analgesic drug unless the substituted drug is also tamper resistant or consent is obtained from the prescribing health professional. Tamper resistant qualities will be determined by the State Board of Pharmacy (herein referred to as the "Board") after the drug manufacturer has demonstrated those qualities to the Board and after the drug has been approved by the U.S. Food and Drug Administration (FDA). Generally speaking, these tamper resistant qualities make it more difficult for these drugs to be crushed, melted, or in other ways altered leading to their ultimate misuse and/or abuse.

### State Board of Pharmacy

The bill will require the Board to create a list of opioid analgesic drugs which incorporate tamper resistant technologies. This list will include each drug for which a drug manufacturer or distributor has submitted satisfactory evidence of specified criteria and a determination as to which listed drugs have substantially similar tamper resistant properties.

At this time, it appears that very few medications will meet these requirements. However, as more medications are approved by the FDA and come to market, presumably more medications will be added to this list over time. The Board will likely be required to closely monitor these FDA approvals and update the list accordingly. It is uncertain how much of a burden this new duty will create, but it seems likely that any increase in staff time would be minimal at most.

### Systemic fiscal effects

If, as a result of the bill, obtaining lower cost alternatives to some of these tamper resistant medications becomes more difficult, overall health system costs could increase. These increases are highly variable however and will depend on a number of factors, which are discussed in more detail in the **Methodology** section below.

LSC fiscal staff has identified several state and local governmental systems that are likely to experience healthcare expenditure increases. This is primarily due to the possibility that lower cost prescription alternatives to certain opioid analgesics will no longer be available or will be filled with less frequency. These systems include the following:

1. Bureau of Workers' Compensation;
2. Ohio's Medicaid Program; and

3. Third-party health insurance providers (these include all the health insurance systems sponsored by the state and its political subdivisions as well as those sponsored by each of the five pension systems).<sup>1</sup>

In the case of the Bureau of Workers' Compensation, representatives have stated that the impact could be "potentially significant." This is primarily due to an administrative rule which mandates that an injured worker receive the generic form of a medication (if available). The bill would override this rule's authority, thus making the Bureau responsible for the cost difference between a generic alternative and brand name tamper resistant opioid analgesic. The primary drug of concern for the Bureau is oxycontin, for which there is a generic alternative currently available in the market.

According to a spokesperson for the Department of Job and Family Services, the bill could result in increased costs to the Medicaid Program for similar reasons as stated above. In addition, there could be an increase in Medicaid administrative costs as all tamper resistant drugs must receive prior approval. Medicaid is a joint federal and state program. If the federal government approves of the changes required in the bill, the state could receive some reimbursement for these costs.

## **Methodology**

In determining the potential fiscal effects of this bill, certain assumptions were utilized due to the lack of empirical market data concerning tamper resistant opioid analgesic drugs. It appears that very few of these types of drugs are currently available in the marketplace. This may change over time though.<sup>2</sup> Unfortunately, given the lack of marketplace data (i.e., the per unit cost, availability of lower cost alternatives, and the future prescribing patterns of healthcare providers), estimating the potential future fiscal effects of the bill, once enacted, will be speculative.

In the current marketplace, medication costs vary widely from brand to brand and, more notably, between brand names and generic alternatives. In general though, generic medications cost less than brand name alternatives. In October 2011, Consumer Reports updated their report entitled "Best Buy Drugs." The report offers a comparison of the costs of certain long-acting opioids. In all the cases cited in the report, the generic alternative was less expensive (by several hundreds of dollars in some cases).

Prescription costs may even vary from health plan to health plan. In fact, it is not uncommon for health insurance plans to either mandate generic alternatives, or to pass the cost difference onto the client. According to representatives of the Board, due to patent restrictions, the likelihood that generic alternatives will be available for some, if not most, of these tamper resistant opioid analgesic drugs is minimal. Therefore, if a

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<sup>1</sup> Ohio Public Employees Retirement System (OPERS), State Teachers Retirement System of Ohio (STRS), School Employees Retirement System of Ohio (SERS), Ohio Police & Fire Pension System (OP&F), and Highway Patrol Retirement System (HPRS).

<sup>2</sup> Two examples are Embeda (morphine sulphate co-formulated with naltrexone hydrochloride) and Oxecta (oxycodone hydrochloride).

prescription is written for one of these medications, a client may have difficulty in obtaining a lower priced alternative.

While the bill does allow for pharmacists to make substitutions, these substitutions may only be for other tamper resistant opioid analgesic drugs. The only exception that can be made is if written permission is obtained from the prescriber. However, it is impossible to predict how many clients would opt to wait to have their prescription filled while the pharmacist contacts the prescribing health care provider. It seems likely that for those who are subscribers to health plans that offer equal coverage for brand name medications, the prescription will be filled as it is written, at a higher cost to the plan. For those clients who are responsible for the cost difference, more effort may be made to seek out the lower cost alternative.

Despite the difficulty in predicting with any certainty how future behavior will be affected by these market changes, LSC fiscal staff has concluded, based on the assumptions discussed above, a greater number of higher cost prescriptions will be filled annually, thus creating additional costs to a number of different state and local entities.