



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 412 of the 129th G.A.](#)

Date: December 11, 2012

Status: As Introduced

Sponsor: Reps. Antonio and Carney

Local Impact Statement Procedure Required: No

Contents: To establish the Ohio Health Benefit Exchange Agency and to establish the Ohio Health Benefit Exchange Program consisting of an exchange for individual coverage and a Small Business Health Options Program

State Fiscal Highlights

- The bill establishes a new agency, the Ohio Health Benefit Exchange Agency (OHBEA), to facilitate the purchase and sale of qualified health plans in the individual and small group markets. It creates an Ohio Health Benefit Exchange Program within the OHBEA.
- The bill creates a new board, the Ohio Health Benefit Exchange Agency Board of Directors, which would be responsible for the oversight of the OHBEA and the compliance with all federal and state rules and regulations.
- The bill creates a new fund, the Ohio Health Benefit Exchange Operating Fund, in the state treasury, to pay for the OHBEA's operating expenses, including expenses related to a navigator program. Expenditures from the Fund to pay for the bill requirements would be in the tens of millions of dollars per year.
- All revenues from any assessments and user fees charged by the OHBEA, as authorized by the bill, must be deposited into the Fund. Revenues from the assessments and fees would be up to tens of millions of dollars per year.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

The bill creates a new state agency, the Ohio Health Benefit Exchange Agency (OHBEA) and establishes a new program, the Ohio Health Benefit Exchange Program (hereinafter referred to as the "Exchange"). Under the federal Patient Protection and Affordable Care Act (ACA), states must establish a health care exchange, where individuals and small businesses can purchase health insurance, on or before January 1, 2014. The exchange can be federally run, state run, or can operate as a combination of the two.

Under the bill, the OHBEA would operate a state-run exchange, the Exchange, to facilitate the purchase and sale of qualified health plans in the individual market in this state, and provide for the establishment of a Small Business Health Options Program (SHOP). The SHOP would assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health plans offered in the small group market. The bill also specifies the criteria that individuals and employers must meet in order to purchase health insurance through the Exchange.

The bill creates a nine-member board, the Board of Directors of the Ohio Health Benefit Exchange Agency (hereinafter referred to as the "Board"), which will be responsible for the oversight of the OHBEA, the Exchange, and the compliance with all federal and state rules and regulations. The bill requires the Board to appoint an Executive Director for the OHBEA. Details of the various provisions of the bill are available in the LSC bill analysis.

Ohio Health Benefit Exchange Agency

The bill allows the OHBEA to charge assessments or user fees to insurance carriers offering a qualified health plan under the Exchange and generate necessary funding to support its operations and the administration of the Exchange. The bill creates in the state treasury a new fund, the Ohio Health Benefit Exchange Operating Fund (hereinafter referred to as the "Fund"), where such assessments and user fees are deposited, and to pay for all expenses related to the bill. The bill prohibits the OHBEA from using any funds intended for its administrative and operational expenses for staff retreats, promotional giveaways, excessive executive compensation, or promotion of federal or state legislative and regulatory modifications.

The bill also requires the OHBEA to publish the average costs of licensing, regulatory fees, and any other payments required by the OHBEA and the Exchange, and their administrative costs, on the OHBEA's web site to educate consumers on such costs. This information must include information on moneys lost to waste, fraud, and abuse.

The bill requires the OHBEA to make available supplemental coverage for enrollees of the Exchange to the extent permitted by the federal ACA. The bill prohibits

the OHBEA from using any money in the new Fund to pay the cost of the supplemental coverage. Any supplemental coverage offered in the Exchange must be subject to the charge imposed on qualified health plans under this bill.

Ohio Health Benefit Exchange Agency Board

The nine-member OHBEA Board would consist of the Superintendent of Insurance, or the Superintendent's designee; the Director of Medicaid, or the Director's designee; the Director of Health, or the Director's designee; and six members to be appointed by the Governor, following the nomination process specified by the bill. The bill also specifies the term limits and criteria for appointing those six members.

The bill provides that each of the six members of the Board appointed by the Governor will receive \$5,000 per month if the member attends a meeting of the Board. The bill limits each member's total compensation to \$60,000 per year, regardless of the number of Board meetings attended in the year.¹ In addition, all members of the Board will be reimbursed for mileage and necessary expenses while engaging in the performance of their duties. The bill also requires the Board to consult with a list of stakeholders relevant to carrying out its duties.

The bill specifies duties and responsibilities of the Board, including establishing reasonable compensation for the Executive Director and OHBEA's employees, publishing those salaries in the Board's annual budget, and posting the annual budget on the OHBEA's web site.

The Board must also develop standardized quality measures to evaluate health benefit plans offered by the Exchange and privacy policies to protect sensitive applicant and enrollee information under the Exchange.

The bill requires the Board to establish a "navigator" program, which is designed to advise individual consumers and employers on the use of the Exchange. The bill also specifies duties for a navigator. The bill requires the Board to select individuals and entities to be part of the navigator program. The bill also specifies that an individual or entity must meet certain criteria in order to be considered for a grant under the navigator program. Funding for the grants must be withdrawn from the Fund.

The bill allows the Board and the Executive Director to adopt rules to implement the requirements under this bill. Such rules must not conflict with or prevent the application of regulations promulgated by the Secretary of the United States Department of Health and Human Services under the federal ACA.

Any action taken by the Board or the Executive Director under this bill must not be construed to preempt or supersede the authority of the Superintendent of Insurance to regulate the business of insurance within this state. All carriers offering qualified health plans in this state must comply fully with all applicable health insurance laws of this state and rules adopted and orders issued by the Superintendent.

¹ The bill requires the Board to meet at least 12 times per year.

Nominating Council and Advisory Committee

The bill creates an OHBEA Board of Directors Nominating Council to review and evaluate possible appointees for the Board. Under the bill, the Nominating Council would consist of 15 individuals, including the Executive Director of the Ohio Developmental Disabilities Council, or the Executive Director's designee and the Executive Director of the Ohio Commission on Minority Health, or the Executive Director's designee. The bill specifies that members of the Nominating Council will be compensated on a per diem basis plus reasonable travel expenses. All the expenses of the Nominating Council must be paid from moneys appropriated to the Fund for such purpose.

The bill also allows the Board to appoint an Advisory Committee consisting of ten to twelve individuals who are prohibited from voting on any issues placed before the Board.

Executive Director duties

The bill specifies the duties and responsibilities that the Executive Director must perform.

The bill provides that the Executive Director is responsible for the operation of the Exchange, including making qualified health plans available to qualified individuals and qualified employers beginning on January 1, 2014 and establishing procedures by rule for the certification, recertification, and decertification of qualified health benefit plans according to state and federal law. The bill specifically requires the Executive Director to make available a toll-free telephone hotline to respond to requests for assistance.

The Executive Director is to contract with carriers in order to provide health care coverage choices that offer the optimal combination of choice, value, quality, and service and maintain a robust system of regional plans. The bill prohibits the Executive Director and any carrier offering a health benefit plan through the Exchange from charging an individual a fee or penalty for termination of coverage under certain circumstances.

The Executive Director is required to collaborate with agencies and departments of this state, including the departments of Job and Family Services and Insurance, to allow an individual to remain enrolled with the individual's carrier and provider network under certain conditions.

The bill specifies the reporting requirements related to the Exchange. The bill also requires the Executive Director to conduct an ongoing study of the Exchange activities and the enrollees in qualified health plans offered through the Exchange before January 1, 2019. The study must include the cost and affordability of insurance provided under both the individual coverage and the SHOP, the number of physicians by area and specialty who are not taking or accepting new patients that are enrolled in

qualified health plans through the Exchange, and the adequacy of provider networks of qualified health plans.

The bill requires the Executive Director to prepare an annual report on the implementation and performance of the Agency's functions during the preceding fiscal year, including the Fund expenditures, and the progress toward, and the achievement of, the requirements under this bill. A copy of the report must be submitted to the General Assembly and the Governor and must be made available to the public on the OHBEA's web site.

Fiscal effects

The bill provides for compensation costs of approximately \$400,000 per year for members of the Board, including expenses. It would establish a new state agency. The duties specified for the staff of that agency would call for a staff possibly numbering several dozen. One-time start-up expenses related to planning and establishing an exchange are likely to be in the millions of dollars. Additionally, the annual costs of operating a state-run exchange potentially may be several millions of dollars. Those are highly dependent on a variety of factors such as enrollment levels, transaction volumes, product mix, and personnel costs. Overall, these provisions would increase the state's expenditures potentially in the tens of millions annually.

The bill also allows the newly created state agency, the OHBEA, to assess and charge fees to insurance carriers, and "otherwise" to generate funding, thereby providing revenues to pay for its operations and administration of a state-run exchange. The bill may also increase various state agencies' administrative costs related to the requirements mentioned above. The bill does not provide any appropriations to pay for start-up costs related to the requirements of the bill. However, the state may apply for federal grants for planning and establishment of a state-run exchange.

The bill would have no direct fiscal effect on local governments.

According to a report² commissioned by the Ohio Department of Insurance, and prepared by actuarial consulting firm Milliman Inc., the estimated total non-IT expenses for a state-run exchange would be between \$18 million and \$35 million per year, between the period of 2014 and 2016. In addition, the report provides an estimate that start-up costs related to planning and establishing a state-run exchange may be substantially higher than one year of non-IT operating costs for running such exchange. The report stated that the costs of operating a state-run exchange are highly dependent on a variety of factors such as enrollment levels, transaction volumes, product mix, and personnel costs. The Milliman report also provides an estimate of the potential revenue to cover the estimated non-IT operating costs. The potential revenue is estimated based

² Milliman Client Report, *Planning Ohio's Health Benefit Exchange: Financing options to sustain Ohio's Exchange*. August 31, 2011. See Appendix 4 of this report for detailed estimates of non-IT expenses.

on state-run participation scenarios as projected by another Milliman report.³ The report estimated that a state-run exchange would need to accumulate approximately between \$34 and \$56 per member participating in a state-run exchange per year, or between 0.8% and 1.2% of such exchange's member premiums. The non-IT operating costs and revenue for a state-run exchange were estimated based on various assumptions using two design scenarios; one in which the exchange provides minimal services, and another in which it provides more robust services.

Based on a report prepared by KPMG,⁴ the estimated total IT expenses to set up a state-run exchange would be about \$21 million or \$22 million per year, or a total of \$63 million during the three-year period from 2014 to 2016. In addition, the state would incur about \$9 million in annual IT operations and support costs. The KPMG report assumed that the state would need to implement all related IT functions if it chooses to establish a state-run exchange.

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³ The report analyzes the impacts of the federal ACA on Ohio's insurance market in 2014 and beyond. Milliman Inc., *Assist with the first year of planning for design and implementation of a federally mandated American Health Benefit Exchange*, August 31, 2011.

⁴ KPMG, *State of Ohio Health Insurance Exchange Planning: Strategic Architecture Roadmap and Budget Report*, September 14, 2011.