



Ohio Legislative Service Commission

Wendy Risner

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 485 of the 130th G.A.

Date: April 9, 2014

Status: As Reported by House Health and Aging

Sponsor: Reps. Smith and Johnson

Local Impact Statement Procedure Required: No

Contents: To establish the Office of Human Services Innovation in the Department of Job and Family Services, require hospice care programs to establish opioid diversion procedures, etc.

State Fiscal Highlights

- **Office of Human Services Innovation.** As a result of the creation of the Office of Human Services Innovation, the Ohio Department of Job and Family Services (ODJFS) could realize an increase in administrative expenses. However, ODJFS maintains that existing staff and resources will be used to fund the Office. Additionally, other executive branch entities could realize an increase in administrative expenses if called upon to provide information and/or resources.
- **Hospice care program – opioid diversion.** The Ohio Department of Health (ODH) will experience an increase in costs as a result of the requirement that hospice care programs establish procedures to prevent diversion of controlled substances that contain opioids. These costs will include the hiring of a Non Long-Term Care Facilities Surveyor and additional survey costs, as well as rule promulgation and information technology costs primarily in the first year of implementation. The cost for these is anticipated to be approximately \$226,426 in the first year and \$176,200 in each subsequent year. There could also be costs to ODH to review, as part of the license renewal application, written evidence that a hospice program is in compliance with the bill's requirements. If ODH finds that a program is not in compliance, fine revenue might be collected.
- **Opioid prescriptions for minors.** The Dental Board, the Board of Nursing, the Medical Board, and the Board of Optometry may all experience an increase in costs related to investigations and disciplinary action for licensees who violate the provisions of the bill relating to requiring a prescriber to obtain written informed consent for minors before issuing a prescription for an opioid.
- **Opioid prescriptions for minors.** The Dental Board, the Board of Nursing, the Medical Board, and the Board of Optometry could experience a gain in revenue related to the fine established (up to \$20,000), which boards may impose for each violation of the bill.

- **Patient information review in the Ohio Automated Rx Reporting System (OARRS).** The State Board of Pharmacy will experience a minimal increase in annual operating costs as the number of users of OARRS and the volume of requests for information increase as a result of the provision that requires prescribers who furnish an opioid analgesic or a benzodiazepine to request certain information from OARRS.
- **Patient information review in OARRS.** Any increase in the annual operating expenses of certain professional licensing boards (the State Dental Board, the Board of Nursing, the State Board of Optometry, the State Board of Pharmacy, and the State Medical Board) will depend on the frequency with which a board has to implement provisions included in the bill (e.g., verifying licensees access to OARRS and subsequent disciplinary hearings if initiated).
- **State Medical Board teleconferencing.** Any associated savings or costs associated with conducting a teleconferencing pilot program will depend on the State Medical Board's decision regarding establishment of the pilot program since the provision is permissive.
- **Collection of health information in OARRS.** Any costs would depend on the Board of Pharmacy's decision regarding the collection of additional health information using OARRS. If the Board decides to collect this additional information, there could be administrative and information technology costs to both the Board and ODH.
- **Wilderness camps.** ODJFS may experience a minimal increase in administrative costs related to the creation of a license for private, nonprofit therapeutic wilderness camps, providing and reviewing applications for license renewals, and the inspection of therapeutic wilderness camps.
- **Ohio Healthier Buckeye Council and Grant Program.** There will be an increase in expenditures for grants awarded under the new program and reimbursements for actual and necessary expenses of council members. There could also be administrative expenses for implementing the program.

Local Fiscal Highlights

- **Hospice care program – opioid diversion.** Government-owned hospices could experience an increase in costs relating to the bill's requirements to establish procedures to prevent diversion of controlled substances that contain opioids.
- **Hospice care program – opioid diversion.** Local law enforcement could experience an increase in costs to investigate reports from hospice concerning the quantity and type of controlled substances containing opioids that are included in the patient's interdisciplinary plan of care and that are not relinquished to a hospice program. There would also be costs to dispose of these substances.
- **Hospice care program – opioid diversion.** Municipal courts could experience an increase in court costs if individuals fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care

after receiving a written request from a hospice program to do so. Any court costs could be offset, or partially offset, by any fine revenues collected.

- **Patient information review in OARRS.** For those health care professionals employed by a local governmental entity, such as a hospital or jail, there could be some additional expense incurred in order to comply with the bill's requirements regarding the mandated use of OARRS. However, these costs would likely manifest themselves in terms of additional time spent per patient or client. It is unlikely that the additional time added to the processing of claims or the providing of services would necessitate the hiring of additional staff.
 - **Wilderness camps.** If the Director of ODJFS delegates inspection of a therapeutic wilderness camp to a county department of job and family services, the county department may experience an increase in costs related to the inspection of the facility.
-

Detailed Fiscal Analysis

Office of Human Services Innovation

The bill establishes the Office of Human Services Innovation in the Ohio Department of Job and Family Services (ODJFS). The bill requires the ODJFS Director to establish the Office's organizational structure and permits the Director to reassign staff and resources as necessary to support the Office's activities. The Superintendent of Public Instruction, Chancellor of the Ohio Board of Regents, Director of the Office of Workforce Transformation, and Director of the Governor's Office of Health Transformation are required to assist the ODJFS Director with leadership and organizational support for the Office. The bill requires the Office to submit to the Governor, not later than January 1, 2015, recommendations for the following: (1) coordinating services across all public assistance programs to help individuals find employment, succeed at work, and stay out of poverty; revise incentives for public assistance programs to foster person-centered case management; standardizing and automating eligibility determination policies and processes for public assistance programs; and other matters deemed appropriate.

In its development of recommendations, the Office is required to have as its goal the coordination and reform of state programs to assist Ohioans in preparing for life and the dignity of work and to promote individual responsibility and work opportunity. Additionally, not later than three months after the bill's effective date, the Office is to establish, in consultation with the Ohio Healthier Buckeye Council, clear principles to guide the development of the recommendations, clearly identify problems to be addressed in the recommendation, and make an inventory of all existing and other resources that the Office considers relevant to the development of the

recommendations. The bill also requires the Office to convene the Ohio Healthier Buckeye Council directors and staff of the departments, agencies, boards, commissions, and institutions of the executive branch as necessary. These entities are required to comply with all requests and directives. The Office must also convene other interested individuals.

Fiscal impact

As a result of the creation of the Office of Human Services Innovation, ODJFS could realize an increase in administrative expenses. However, ODJFS maintains that existing staff and resources will be used to fund the Office. Additionally, other executive branch entities could realize an increase in administrative expenses if called upon to provide information and/or resources.

If recommendations are implemented, there could be indirect fiscal impacts to state and local government entities.

Hospice care programs – opioid diversion

The bill requires each hospice care program, licensed by the Ohio Department of Health (ODH) and that provides hospice care and services in a hospice patient's home, to establish a written policy that establishes procedures for preventing the diversion of controlled substances containing opioids that are prescribed for a patient. The policy is to include procedures for the disposal of any such drugs prescribed to a hospice patient as part of the patient's interdisciplinary plan of care that are relinquished to the program after a hospice patient's death or that otherwise are no longer needed by a hospice patient. The policy is to require the disposal be documented by a program employee and conducted in any of the following manners: (1) performed by a program employee and witnessed by the patient or patient's family member, (2) performed by the patient or patient's family member and witnessed by a program employee, or (3) performed by a program employee and witnessed by another program employee.

The bill requires, as part of a hospice patient's interdisciplinary plan of care, each hospice program that provides hospice care and services in the patient's home, to do the following: (1) before providing hospice care and services, distribute a copy of the written procedures to the patient and patient's family and discuss the policies with them, (2) assess the patient, patient's family, and care environment for any risk factors associated with diversion, (3) maintain records of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan of care, including accurate counts of the numbers dispensed and used, (4) monitor the use and consumption of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan of care, including prescription refills, for signs of diversion, (5) report any sign of suspected diversion to local law enforcement, (6) before providing hospice care and services, inform the patient and the patient's family that the program will dispose of any controlled substances containing opioids that are no longer needed by the patient and were included in the patient's

interdisciplinary plan of care, (7) after a patient's death, or when no longer needed by the patient, request, in writing, that the patient's family relinquish to the program for disposal any remaining controlled substances containing opioids that were included in the patient's interdisciplinary plan of care, and (8) report to law enforcement the quantity and type of controlled substances containing opioids that were included in the patient's interdisciplinary plan of care and that were not relinquished to the program. The bill specifies that if a hospice care program complies with certain provisions, neither the program nor its employees, officers, or directors are liable in damages to any person or government entity in a civil action unless the action or omission constitutes willful or wanton misconduct.

The bill specifies that no person who receives a written request shall fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care. The bill requires law enforcement, immediately following a report, to investigate and dispose of the substances containing opioids. Additionally, the bill specifies that any person who fails to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care after receiving a written request from a hospice program, is guilty of a minor misdemeanor.

The bill requires the hospice program, if the program provides hospice care and services in a hospice patient's home, to submit written evidence that the program is in compliance with the bill's requirements as part of the license renewal application required every three years. This is required not later than one year after the effective date of the bill. If after review of this written evidence, ODH determines that the program is not in compliance with the bill's requirement, ODH may suspend a hospice care program's license for not more than six months and may also impose a fine not to exceed \$20,000. The bill also requires, not later than one year after the bill's effective date, the ODH Director to adopt rules establishing and procedures for the submission and review of the written evidence required for license renewal.

Fiscal impact

As a result of the bill, there would be additional duties related to the survey process for ODH. According to ODH, an additional day would be necessary to complete the survey process relating to the bill's requirements. ODH estimates that the additional survey costs would be approximately \$232,635 over the three-year renewal cycle (\$77,545 per year). ODH would also need to hire a Non Long-Term Care Facilities Surveyor at a cost of \$98,655 per year (including fringe benefits). Lastly, ODH maintains that there would be rule development and information technology costs of approximately \$50,226 in the first year of implementation. There could also be costs to ODH to review, as part of the license renewal application, written evidence that a hospice program is in compliance with the bill's requirements. If ODH finds that a program is not in compliance, fine revenue might be collected.

The Midwest Care Alliance, which represents hospices, stated that hospices already have some procedures in place to prevent controlled substance diversion.

However, hospices might experience an increase in administrative costs as a result of the bill. The increase would depend on how the requirements were actually implemented and on what diversion measures are currently in place in hospice programs.

Local law enforcement could experience an increase in costs to investigate reports from hospice programs concerning the quantity and type of controlled substances containing opioids not relinquished to the hospice program. There would also be costs to dispose of these substances.

Municipal courts could experience an increase in court costs if individuals fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care after receiving a written request from a hospice program to do so. Any court costs could be offset, or partially offset, by any fine revenues collected.

Prescriber to obtain written informed consent for minor

The bill requires a prescriber to obtain written informed consent from a parent or guardian before issuing a prescription for a controlled substance that contains an opioid to a minor. The informed consent must be recorded on a form separate from any other document the prescriber uses and included in the patient's medical record. In addition to obtaining informed consent, the prescriber must assess whether the minor has suffered from mental health or substance abuse disorders and whether the minor has or is currently taking prescription drugs for those disorders. The prescriber must also discuss with the minor and the minor's parent or guardian about the risk of addiction and dangers of taking controlled substances containing an opioid with central nervous system depressants. A statement certifying that the prescriber had this discussion with the minor and minor's parent or guardian must be present on the informed consent form.

The bill specifies that informed consent is not required in a medical emergency or when treatment is associated with surgery. Provisions of the bill regarding a minor's treatment are not required if, in the prescriber's professional judgment, they would be a detriment to the minor's health or safety. However, the prescriber must notify the appropriate public children services agency of the reasons for which this exemption was invoked. Involved public children services agencies may experience an increase in administrative costs related to the intake of information and any follow-up action, if necessary. The bill also provides an exemption for when treatment is provided in a hospital, ambulatory surgical facility, nursing home, pediatric respite care program, residential care facility, freestanding rehabilitation facility, or similar institutional facility. However, this particular exemption does not apply when treatment is rendered in a prescriber's office located on the premises or adjacent to any of the above-mentioned facilities.

Licensees of the Dental Board, the Board of Nursing, the Medical Board, and the Board of Optometry are subject to disciplinary action from their respective boards for failing to comply with the provisions of the bill. For an initial violation by a licensee, the relevant board may impose a fine of up to \$20,000. For each subsequent violation by a licensee, the board may impose an additional fine of up to \$20,000, suspend the relevant license, certificate of authority, certificate of practice, and/or certificate to prescribe of a prescriber for at least six months, or both.

Fiscal impact

The specified boards may experience an increase in costs for investigations and disciplinary action, which could be offset by fines that the boards may impose for each violation. The Medical Board anticipates investigation costs to include subpoena costs, enforcement attorney costs, the cost of a hearing examiner, a court reporter, and Board deliberations. The Nursing Board anticipates any costs due to the bill's provisions to be negligible. Any fines collected by the Dental Board, Board of Nursing, or the Optometry Board would be deposited in the Occupational Licensing and Regulatory Fund (Fund 4K90). Fines collected by the Medical Board would be deposited in the State Medical Board Operating Fund (Fund 5C60).

Requirements for prescribers in reviewing patient information in OARRS

Beginning April 1, 2015, the bill requires a health care professional who is prescribing or personally furnishing a drug that is either an opioid analgesic or a benzodiazepine to request certain information related to the patient from the Ohio Automated Rx Reporting System (OARRS) administered by the State Board of Pharmacy. Various exceptions to this requirement are included in the bill (e.g., surgical pain treatment). Any person found to be in violation of the bill may be subject to disciplinary action by his or her respective professional licensing board.¹

The bill requires that each prescriber who prescribes or personally furnishes opioid analgesics or benzodiazepines as part of their regular practice obtain access to OARRS not later than January 1, 2015, unless the Board of Pharmacy has restricted the professional from obtaining information from OARRS. Failure to obtain access to OARRS would subject the professional to suspension of his or her license/certificate.

Under the bill, any licensed health care professional who fails to comply with the bill's request and review requirements may be subject to disciplinary action by the licensing board that regulates their conduct. The following boards are authorized to discipline health care professionals: the State Dental Board, the Board of Nursing, the State Board of Optometry, and the State Medical Board.

¹ The bill applies to the following health care professionals: dentists, advanced practice registered nurses holding certificates to prescribe, optometrists holding therapeutic pharmaceutical agents certificates, physician assistants holding certificates to prescribe, and physicians authorized to practice medicine, osteopathic medicine, or podiatry.

The bill requires that the Board of Pharmacy provide to the medical director of a managed care organization (MCO) an OARRS report relating to a workers' compensation claimant assigned to the MCO.

Fiscal impact

The Board of Pharmacy anticipates that the number of users of OARRS and the volume of requests for information will increase. The Board believes that OARRS can accommodate this additional user activity with a minimal increase in related annual operating expenses. Routine operating and maintenance expenses have been primarily funded through moneys appropriated from Fund 4K90, the Occupational Licensing and Regulatory Fund.² Money appropriated from Fund 4K90 consists primarily of license fees and other assessments collected by certain professional and occupational boards. OARRS was established to monitor the misuse and diversion of controlled substances and certain dangerous drugs. The program began full operation in October 2006. Currently, the database includes more than 50 million prescription records. This number has steadily increased over the years.

For those health care professionals employed by a state agency (e.g., the Department of Rehabilitation and Correction, the Department of Mental Health and Addiction Services, or a state college or university) or a local governmental entity (e.g., a hospital or jail), there could be some additional expense incurred in order to comply with the bill's requirements. However, these costs would likely manifest themselves in terms of additional time spent per patient or client. It is unlikely that the additional time added to the processing of claims or the providing of services would necessitate the hiring of additional staff.

The boards referenced above may experience an increase in annual operating costs that would be dependent on the frequency with which a board has to investigate and sanction its licensees. These boards may also experience negligible one-time administrative costs in order to update their current administrative rules.

According to representatives of the Board of Pharmacy, the provision above that requires the Board of Pharmacy to provide to an MCO an OARRS report relating to a workers' compensation claimant assigned to the MCO, will have no notable fiscal effect on its annual operating expenses.

State Medical Board teleconferencing

The bill allows the State Medical Board to conduct a pilot program under which any method of teleconferencing, including interactive video teleconferencing, is permitted to be used for Board committee meetings. If a pilot program is conducted, the Board may permit any of its members to attend a committee meeting by teleconference.

² The system is primarily funded through federal grants. However, these grants are typically restricted to expenses related to planning, implementation, and improvements.

The bill specifies that a pilot program is to conclude activities two years after the date that it began. The Board is to prepare a report of its finding and recommendations.

Fiscal impact

The above provision is permissive, so any associated savings or costs will depend on the Board's decision regarding establishment of the pilot program.

OARRS with immunization and other health information

The bill allows the Board of Pharmacy to use its drug database (OARRS) for the collection of other health information to be transmitted to the Ohio Department of Health (ODH). If the Board establishes and maintains a drug database for this use, the Board may use the database as a means for the collection of any health information submitted by any entities currently required to submit drug-related information. The Board and ODH are required to collaborate in determining the health information that may be collected and transmitted. The information may include records of immunizations administered by pharmacists and pharmacy interns for inclusion in any immunization registry maintained by ODH. The Board is to adopt rules as necessary and is required to consult with ODH regarding these rules.

Fiscal impact

The provision is permissive, so any costs would depend on the Board's decision regarding the collection of additional health information. If the Board decides to collect this additional information, there could be administrative and information technology costs to both the Board and ODH. Also, if this collection would require local government entities to submit new data to the drug database, then they might also experience administrative increases.

Wilderness camps

The bill requires the Director of ODJFS to issue a license for private, nonprofit therapeutic wilderness camps. The bill includes therapeutic wilderness camps in the definition of "out-of-home care" and requires these camps to meet specified minimum standards. Minimum standards include a written policy that establishes standards for hiring staff, behavioral intervention, recordkeeping, and handling complaints. The policy must also establish standards for emergency and disaster preparedness, ensuring children's civil rights, and for admission and discharge of children attending the camp. Additionally, the camps must allow the Director to inspect the facilities and furnish any records or policies of the camp at the Director's request. Inspection of facilities may be delegated to a county department of job and family services. The license for private, nonprofit wilderness camps is valid for five years and may be renewed by submitting a renewal application which the Director of ODJFS will prescribe.

If the Director of ODJFS determines that a camp is operating without a license, the Director may petition the court of common pleas in the county in which the camp is located for an order enjoining its operation. The court shall order injunctive relief upon

showing that the camp is operating without a license. If a camp fails to meet the minimum standards outlined in the provisions of the bill, the Director must notify the camp that the Director intends to revoke the license. Camps will have 90 days to meet the minimum standards, unless the violation poses an imminent risk to the life, health, or safety of the children attending the camp. Camps may appeal the decision of the Director to revoke the license.

Fiscal impact

ODJFS may experience a minimal increase in administrative costs related to the creation of a license for private, nonprofit therapeutic wilderness camps, providing and reviewing applications for license renewals, and the inspection of the camps. If the Director delegates inspection of a therapeutic wilderness camp to a county department of job and family services, the county department may experience an increase in costs related to the inspection of the facility. There is a possibility that hearings may be requested in the local court of common pleas to appeal an order of revocation, though the number of requests would likely be small and any costs for the involved court of common pleas would be absorbed in the daily cost of doing business.

Ohio Healthier Buckeye Council and Grant Program

The bill creates the Ohio Healthier Buckeye Council and specifies the membership of the Council. Council members will receive reimbursements for actual and necessary expenses, but no compensation. The bill specifies the duties of the Council, which includes some of the following: promoting the establishment of county healthier buckeye councils; developing and promoting means by which county councils may reduce the reliance of individuals on publicly funded assistance programs; establishing eligibility criteria, application processes, and maximum grant amounts for grants; collecting and analyzing specified information.

The bill also creates the Ohio Healthier Buckeye Grant Program and specifies that grants are to be provided to county healthier buckeye councils for specified activities. The bill requires the Council to, among other things, establish grant application processes, eligibility criteria, and amounts by December 31, 2014.

The Council is to submit a report to the Joint Medicaid Oversight Committee no later than April 30, 2016, and every year thereafter. The bill requires the Ohio Healthier Buckeye Council to submit the report to the Joint Medicaid Oversight Committee (JMOC) and requires JMOC to electronically submit the report to county councils.

Fiscal impact

There will be an increase in expenditures for grants awarded under the new program and reimbursements for actual and necessary expenses of council members. There could also be administrative expenses for implementing the program.