Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 276 of the 130th G.A. **Date**: December 11, 2014

Status: As Enacted **Sponsor**: Sens. Jones and Tavares

Local Impact Statement Procedure Required: Yes

Contents: Creates the Commission on Infant Mortality and requires the establishment of infant safe sleep procedures and policies; modifies the offense of "corrupting another with drugs"; retains certain laws regarding nursing facilities' admission policies and exclusions of parts of nursing facilities from Medicaid provider agreements; declares an emergency, etc.

State Fiscal Highlights

- **Department of Health**. The Ohio Department of Health (ODH) estimates that it could experience a minimal increase in costs associated with establishing the Safe Sleep Education Program. Costs include staff time to make the required educational materials available on ODH's website, annual evaluations of the effectiveness of the program, and developing questions for screening procedures.
- **Commission on Infant Mortality**. Participating state agencies could experience a minimal increase in administrative costs to carry out the duties of the Commission on Infant Mortality, which the bill creates, and develop the required report.
- **Department of Health**. ODH may experience an increase in administrative costs to adopt rules regarding radiologic license reinstatement, to prescribe and provide an application form, and to review applications for reinstatement. However, the bill allows ODH to establish a reinstatement fee, which would help to offset these costs.
- **State Board of Pharmacy**. The State Board of Pharmacy would experience an increase in costs to develop the required report regarding prescriptions for controlled substances containing opioids and to make the report available on its website.
- **State Board of Pharmacy**. The State Board of Pharmacy may experience a minimal increase in costs to investigate and take disciplinary action if it discovers that a pharmacist has not been granted access to OARRS after the pharmacist has certified that he or she has been granted access. Additionally, the Board may realize a minimal decrease in administrative or monitoring costs since pharmacy interns are excluded from the requirement to have OARRS access.
- **Department of Medicaid**. The bill retains certain laws regarding nursing facilities' admission policies and exclusion of parts of nursing facilities from Medicaid provider agreements. If this law expired, this could increase the number of potential

facilities available to an individual who is or may become a Medicaid recipient. Thus, the bill might affect in which nursing facility these individuals end up receiving care. As a result, state and federal Medicaid costs could increase or decrease depending on the amount of the Medicaid payments made to the facility that ends up providing the care.

- **Departments of Rehabilitation and Correction and Youth Services**. There could be a small number of additional offenders/juveniles sentenced to a state prison/juvenile correctional facility each year, or sentenced to a longer stay due to the bill's prohibition against knowingly furnishing or causing a pregnant woman to use a controlled substance. Either outcome may result in a no more than minimal annual increase in the institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.

Local Fiscal Highlights

- **Public hospitals**. Public hospitals that meet certain criteria are required to make a good faith effort to arrange for a parent to obtain a safe crib free of charge, if prior to an infant's discharge, it is determined that an infant is unlikely to have a safe crib at the infant's residence. Public hospitals may obtain cribs using their own resources, collaborate with or obtain assistance from persons or government entities, or refer parents to certain entities that can provide a crib free of charge. As a result, public hospitals could experience an increase in costs to provide a safe crib if the public hospital does so by using its own resources. Public hospitals would also experience administrative costs to adopt safe sleep policies and screening procedures.
- **Distributing educational material**. Public hospitals that meet certain criteria and public children services agencies would likely experience an increase in administrative costs, including printing costs, to distribute educational material on safe sleep practices to parents or guardians of a newborn.
- **Public hospitals and clinics**. Public hospitals and public clinics that employ dentists, advanced practice registered nurses, physician assistants, or physicians and conduct Lyme disease testing may experience a minimal decrease in administrative and printing costs as a result of the elimination of requirements regarding patient notice of the limits of Lyme disease testing when a test is ordered for the presence of Lyme disease in a patient.
- **Public hospitals**. Public hospitals may experience a decrease in administrative costs related to the provision that excludes emergency facilities from having to obtain parental consent when providing treatment to a minor with an opioid analgesic.
- **County criminal courts**. County criminal courts could realize a minimal increase in costs to process and adjudicate certain felony cases due to the prohibition against knowingly furnishing or causing a pregnant woman to use a controlled substance.

Detailed Fiscal Analysis

Safe Sleep Education Program

The bill requires ODH to establish the Safe Sleep Education Program by developing educational materials that present information on safe sleeping practices and possible causes of sudden unexpected infant death. This educational information will be made available on the Department's website. These educational materials must be distributed to parents, guardians, or other individuals responsible for an infant by staff members of obstetricians' offices, pediatric physicians' offices, hospitals and freestanding birthing centers when an infant is discharged to the infant's residence following birth, public children services agencies, and ODH's Help Me Grow Program during home-visiting services. Materials must also be distributed by each child care facility operating in the state to each of its employees. ODH does not expect any additional costs to develop these educational materials, as they are already being developed and are nearly completed.

The bill also expands the ways in which educational materials on shaken baby syndrome must be distributed. Educational materials on shaken baby syndrome and safe sleeping practices are to be distributed in the same way, as outlined above. Each entity or person required to disseminate this information is immune from any civil or criminal liability for injury, death, or loss resulting from an act or omission associated with disseminating the educational materials, unless the act or omission constitutes willful or wanton misconduct.

ODH estimates that there will be a minimal increase in costs to post the information on its website. Public hospitals, public children services agencies, and ODH's Help Me Grow Program may experience an increase in administrative costs to distribute the educational material to parents or guardians when receiving services from these entities.

Additionally, beginning in 2015, the bill requires ODH to conduct annual evaluations of the reports submitted by child fatality review boards to assess the effectiveness of the Safe Sleep Education Program. ODH may realize an increase in costs to collect the reports (sudden unexplained infant death investigation reporting forms) submitted from the child fatality review boards and to perform the required annual evaluations of the program.

Infant safe sleep screening procedures

The bill requires hospitals and freestanding birthing centers to implement an infant safe sleep screening procedure to determine whether there will be a safe crib at the infant's residence once the infant is discharged from the facility. The procedure must consist of questions for the parents, guardians, or other individuals responsible for the infant regarding the infant's intended sleeping environment. Hospitals subject to the bill's requirements include those that have maternity units or those that receive for care infants who have been transferred to it from other facilities and who have never been discharged to their residences following birth. The Director of Health is required to develop questions which these facilities may use when implementing safe sleep screening procedures. ODH estimates that there may be a minimal increase in costs to develop the screening questions and make them available on ODH's website. There also may be administrative costs involved for public hospitals that meet criteria to develop their screening procedures.

If a facility determines that the infant does not have a suitable safe sleeping place, the bill requires that the facility make a good faith effort to arrange for the parents to leave the facility with a safe crib or portable play yard at no charge to the parents. Hospitals and freestanding birthing centers may obtain cribs using their own resources, collaborate with or obtain assistance from persons or government entities that are able to procure suitable sleeping places or provide money to purchase those items, or refer parents to those government entities. If funds are available, hospitals may also refer the parent, guardian, or other person responsible for the infant to a site, designated by ODH for purposes of the Cribs for Kids program or a successor program the Department administers, at which a suitable sleeping place may be obtained at no charge. The bill exempts critical access hospitals and other hospitals which the ODH Director shall identify that are not critical access hospitals and are not served by a Cribs for Kids site from having to comply with the bill's safe sleep screening procedure provisions. ODH has recently entered into a contract with Cribs for Kids which will provide approximately $180,400 in fiscal year (FY) 2014 and $300,200 in FY 2015 for the organization, which provides safe sleep education and resources to parents.

The bill requires hospitals and freestanding birthing centers, when renewing registration or licenses, to report to ODH the number of cribs that the facility distributed using its own resources, the number distributed that were obtained by collaborating with other entities, the number of referrals made to Cribs for Kids sites or other persons or government entities, demographic information regarding the individuals to whom cribs were provided or a referral was provided, and any other information the Director deems appropriate. Critical access hospitals and other exempt hospitals must submit demographic information regarding parents and guardians determined to be unlikely to have a safe crib or play yard. Public hospitals could experience an increase in administrative costs to submit the required information to ODH.

The bill requires the ODH Director to prepare a report which summarizes the collected information not later than July 1 of each year beginning in 2015. The report shall be submitted to the Governor and the General Assembly. ODH may experience a minimal increase in costs to collect the information and prepare the required report.

The bill provides that a facility, and any employee, contractor, or volunteer of a facility which implements safe sleep screening procedures are not liable for damages in a civil action or subject to criminal prosecution or professional disciplinary action related to an act or omission associated with implementation of the safe sleep procedures, unless the act or omission constitutes willful or wanton misconduct. The bill also grants absolute immunity from civil liability and criminal prosecution to a facility, and any employee, contractor, or volunteer of the facility for injury, death, or loss to person or property that arises from a crib obtained by a parent as a result of the provisions of the bill. This immunity reduces the possibility that civil action or criminal prosecution related to the provisions of the bill may take place, or, if filed, such actions may be more promptly adjudicated.

The Ohio Hospital Association (OHA) estimates the bill could cost hospitals that meet criteria between $3 million and $5 million statewide, a portion of which would be incurred by public hospitals, if their own resources are used to provide a safe sleeping place before discharging an infant if it is determined that the infant does not have a safe crib, portable play yard, or other suitable sleeping place at the infant's residence. Of the 219 member hospitals of OHA, 18 are public hospitals. However, the bill does allow a hospital to collaborate with or obtain assistance with the procurement of a safe crib from persons or government entities and also allows the hospital to refer a parent or guardian to these entities or a Cribs for Kids site.

Internal infant safe sleep policies

The bill requires the Director of Health to adopt a model internal infant safe sleep policy for use by entities required to distribute safe sleep educational materials and have infants regularly sleeping at a facility under the entity's control. The policy must specify safe sleep practices, include images depicting safe sleep practices, and specify sample content for an infant safe sleep education program that entities and individuals may use when conducting new staff orientation programs. ODH does not estimate any additional costs related to this provision.

Entities that are required to disseminate the safe sleep educational material and have infants regularly sleeping at a facility under the entity's control must adopt their own internal infant safe sleep policies. These policies must specify when and to whom educational materials on infant safe sleep practices are to be distributed to employees or volunteers of the facility and must be consistent with ODH's model internal infant safe sleep policy. Administrative costs may be involved for public hospitals to adopt an internal infant safe sleep policy.

Commission on Infant Mortality

The bill also creates the Commission on Infant Mortality, which shall be required to conduct a complete inventory of services provided or administered by the state that are available to address the infant mortality rate in Ohio, as well as the sources of funds used to pay for the services and whether a service and its funding have a connection with programs provided by community-based entities and, to the extent they do not, whether they should. With assistance from academic medical centers, the Commission will also track and analyze infant mortality rates by county in order to determine the impact of state and local initiatives to reduce those rates.

The Commission will be comprised of certain members of the General Assembly and executive directors or a director's designee from the departments of Medicaid and Health, the Office of Health Transformation, the Commission on Minority Health, and the Attorney General or the Attorney General's designee. The Governor will appoint a health commissioner of a city or general health district, a coroner, and two individuals who represent community-based programs that serve pregnant women or new mothers whose infants tend to be at a higher risk for infant mortality. An individual from the Ohio Hospital Association and an individual from the Ohio Children's Hospital Association will also serve on the Commission. A member of the Commission will serve without compensation, except to the extent that serving is considered part of the member's regular duties of employment. The Commission may also request assistance from staff of the Legislative Service Commission.

Additionally, the bill requires the state registrar to provide access to any electronic system of vital records that the registrar or ODH maintains. Not later than six months after the effective date, the Commission shall prepare a written report of its findings and recommendations and submit the report to the Governor and General Assembly. The abovementioned state and local public entities may experience a minimal increase in administrative costs related to Commission participation and the development of the required report.

Nursing facility admission policies and exclusion of parts from provider agreements

Current law permits a nursing facility to do both of the following until January 1, 2015: (1) exclude one or more parts from its Medicaid provider agreement, even though those parts meet federal and state standards for Medicaid certification, under certain conditions, and (2) refuse to admit an individual who is or may become a Medicaid recipient if at least 25% of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted. Beginning January 1, 2015, a nursing facility will no longer have statutory authority to exclude any of its parts from its Medicaid provider agreement and will be allowed to refuse to admit an individual who is or may become a Medicaid recipient if at least 80% (rather than 25%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time of

admission. The bill adds an emergency clause and provides the provisions of law that expire on January 1, 2015, to remain in effect.

When current law expires, a nursing facility would no longer be statutorily authorized to exclude any of its parts from its Medicaid provider agreement. Furthermore, a nursing facility would be unable to refuse to admit an individual who is or may become a Medicaid recipient unless at least 80% of its Medicaid-certified beds are occupied. This could increase the number of potential facilities available to an individual who is or may become a Medicaid recipient. Therefore, the bill might affect in which nursing facility these individuals end up receiving care. As a result, state and federal Medicaid costs could increase or decrease depending on the amount of the Medicaid payments made to the facility that ends up providing the care.

Reinstatement of radiologic licenses

The bill permits a license to practice as a general x-ray machine operator, radiographer, radiation therapy technologist, or nuclear medicine technologist to be reinstated if it has lapsed or otherwise become inactive. The bill requires the Ohio Department of Health (ODH) to prescribe and provide an application form and to establish rules that specify a reinstatement fee that does not exceed the cost incurred in reinstating the license.

The bill specifies that an applicant must continue to meet the conditions for receiving an initial license, but provides that the length of time that has elapsed since the required examination was passed is not a consideration in determining whether the applicant is eligible for reinstatement. The bill also specifies that the applicant must complete the continuing education requirements for reinstatement, which also shall be established in rules by ODH. Additionally, the bill specifies that an individual may apply for reinstatement, even if the individual had applied prior to the effective date of the bill for a new license and the application was denied.

ODH may experience an increase in administrative costs to adopt rules regarding license reinstatement, to prescribe and provide an application form, and to review applications for reinstatement. However, the bill allows ODH to establish a reinstatement fee, which would help to offset these costs. These provisions are declared an emergency by the bill; thus, any related costs may begin to incur immediately after the bill's passage.

Lyme disease testing

The bill eliminates requirements regarding patient notice of the limits of Lyme disease testing when a dentist, advanced practice registered nurse, physician assistant, or physician orders a test for the presence of Lyme disease in a patient. These health care professionals are currently required to obtain a signature from the patient or patient's representative indicating receipt of the written notice, which is to be kept in the patient's record. Public hospitals and public clinics that employ these professionals

and conduct Lyme disease testing may experience a minimal decrease in administrative and printing costs as a result of this elimination.

Semiannual report for controlled substances containing opioids

The bill requires the Ohio State Board of Pharmacy, if a drug database is established and maintained,[1] to submit a semiannual report to various state agencies and legislative bodies and to make the report available on the Board's website. The bill also requires the report to provide an aggregate of the information submitted to the Board regarding prescriptions for controlled substances containing opioids, including the number of prescribers who issued prescriptions, the number of patients to whom controlled substances were dispensed, the average quantity, and the average daily morphine equivalent dose of the controlled substances dispensed per prescription. The Board would experience an increase in costs to develop the required report and make the report available on its website.

Various changes related to Ohio Automated Rx Reporting System

The bill modifies a current law provision that requires the State Board of Pharmacy to monitor whether applicants for renewal of their identification cards have been granted access to the Board's drug database known as the Ohio Automated Rx Reporting System (OARRS). The bill excludes pharmacy interns from the requirement to have access to OARRS as a condition of renewal, and thereby applies the requirement only to pharmacists. Further, the bill specifies that the requirement to have access to OARRS applies only to pharmacists who dispense or plan to dispense controlled substances in Ohio. The bill specifies that if the pharmacist applying for renewal certifies to the Board that the applicant has been granted access to OARRS and the Board finds through an audit or other means that the applicant has not been granted access, the Board may take disciplinary action. The bill also modifies a provision of existing law that imposes criminal penalties and permits the Board to restrict further access to OARRS if a person who receives OARRS information subsequently releases that information. Under the bill, these sanctions do not apply in the following circumstances: (1) when a prescriber or pharmacist provides the information to a patient or patient's personal representative or (2) when a prescriber or pharmacist includes the information in a patient's medical record.

The State Board of Pharmacy may experience a minimal increase in costs to investigate and take disciplinary action if it discovers that a pharmacist has not been granted access to OARRS after the pharmacist has certified that he or she has been granted access as part of the identification card renewal application process. Additionally, the Board may realize a minimal decrease in administrative or monitoring costs since pharmacy interns are excluded from the requirement to have OARRS access.

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[1] The Ohio State Board of Pharmacy has established and maintained a drug database. The drug database is the Ohio Automated Rx Reporting System or OARRS.

The bill provides an exemption for licensees (dentists, nurses, optometrists, physician assistants, and physicians) seeking registration who prescribe or personally furnish opioid analgesics or benzodiazepines from having to certify to their respective boards whether the licensee has been granted access to the State Board of Pharmacy's OARRS if the licensees practice in another state. The bill allows, rather than requires, the State Dental Board, the boards of Nursing and Pharmacy, and the State Medical Board, to adopt rules that establish standards and procedures to be followed regarding the review of patient information available through OARRS. This may result in a negligible decrease in costs related to the adoption of rules for these boards.

Parental consent for minor relating to opioid analgesic

The bill excludes emergency facilities from having to obtain parental consent when providing treatment to a minor with an opioid analgesic. Public hospitals may experience a decrease in administrative costs related to this exemption. However, there is currently an exemption for treatment associated with or incident to a medical emergency, so any decrease is expected to be minimal.

Controlled substances offenses

The bill includes within the offense of "corrupting another with drugs" a prohibition against knowingly furnishing or administering, or inducing or causing a pregnant woman to use, a controlled substance. Under the bill, a violation is a felony of the first, second, or third degree depending upon the type of drug.

As a result of the bill's criminal prohibition, there could be a small number of additional offenders/juveniles sentenced to a state prison/juvenile correctional facility each year, or sentenced to a longer stay than might otherwise have been the case under current law. Either outcome may result in a no more than minimal annual increase in the institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.

The bill's criminal penalty enhancement may result in minimal additional costs for a county criminal justice system to process and adjudicate certain felony cases. This is because: (1) it appears likely to create a relatively small number of new felony cases to be prosecuted and adjudicated, and (2) it may involve circumstances where an individual can already be charged with one or more drug offense violations.

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