

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **Am. Sub. H.B. 125** DATE: **October 23, 2007**

STATUS: **As Passed by the House** SPONSOR: **Rep. Huffman**

LOCAL IMPACT STATEMENT REQUIRED: **No — Offsetting savings**

CONTENTS: **Would establish certain uniform contract provisions between health care providers and third party payers, establish standardized credentialing, require third party payers to provide health care providers specified information about enrollees, and create a Joint Legislative Study Commission on Most Favored Nation Clauses in Health Care Contracts**

## State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal increase	Minimal increase	Minimal increase
<b>Other State Funds</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
<b>Department of Insurance Operating Fund (Fund 554)</b>			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential increase up to \$130,000 or more	Potential increase up to \$130,000 or more

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- The provision that requires the Department of Job and Family Services to allow managed care plans that provide services to Medicaid enrollees to use medical providers to render care upon completion of the plan's credentialing process would require the Department to change administrative processes. This change in administrative processes would increase costs minimally to the state, with the increase paid from the GRF.
- The prohibition against third party payers selling or renting out the rights to a participating medical provider's services may reduce revenue to some health insurers. Any affected insurers may attempt to recoup the lost revenue, possibly by increasing premiums. That has the potential to increase the costs to the state of providing health benefits to employees. Any such increase is expected to be minimal. About half of any such increase would be paid by the GRF, with the remainder being paid by other state funds.



- The Department of Insurance is required to adopt rules implementing the bill. A Department official reports that the Department may need to hire an attorney to review contracts affected by the bill. This may increase departmental costs, paid from Fund 554, by up to \$130,000 or more.
- The market conduct examinations of insurers regarding compliance with the provisions of the bill may increase departmental expenditures to conduct such examinations and increase revenue to Fund 554. The revenue may result from assessments or fines authorized by the bill.

### ***Local Fiscal Highlights***

<b>LOCAL GOVERNMENT</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FUTURE YEARS</b>
<b>Counties, municipalities, townships, school districts</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
<b>Counties, municipalities</b>			
Revenues	Potential loss	Potential loss	Potential loss
Expenditures	Potential decrease	Potential decrease	Potential decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The prohibition against third party payers selling or renting out the rights to a participating medical provider's services may reduce revenue to some health insurers. Any affected insurers may attempt to recoup the lost revenue, possibly by increasing premiums. That has the potential to increase the costs to political subdivisions of providing health benefits to employees. Any such increase is expected to be minimal.
- The provision requiring mandatory arbitration of contract disputes related to the bill's provisions may reduce caseload in county courts of common pleas and in municipal courts. This would reduce both administrative costs to the courts and fee revenue that accompanies the filing of cases.

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## ***Detailed Fiscal Analysis***

H.B. 125 would establish several provisions in the Revised Code governing contracts between health care providers and third party payers (who would typically be health insurance corporations or sickness and accident insurers). Most of the provisions govern the contents of such contracts, required accompanying documents, and the process of credentialing a medical provider. Some of these provisions may affect the relative bargaining power of one of the parties to a contract, but LSC is not aware of any research that would reliably allow prediction of the outcomes of negotiations between the parties before and after the changes to relative bargaining power, and the consequent effect on premiums.

The bill has six provisions that may have predictable fiscal effects. First, the bill prohibits third party payers from selling, renting, or giving away their rights to a participating medical provider's services except under specified conditions. Second, the bill establishes a mandatory arbitration procedure for contract disputes related to the provisions of the bill. Third, the bill requires the Superintendent of Insurance to adopt rules necessary for implementation of the bill's provisions, and to produce forms to be used by insurers statewide to credential medical providers. Fourth, the bill authorizes the Department of Insurance to conduct market conduct examinations of insurers to ensure compliance with the provisions of the bill, and authorizes the Department to assess the insurers that are examined for the costs of the examination. The amount assessed, as well as any fines that may result from the examination, are to be deposited into the Department of Insurance Operating Fund. Fifth, the bill requires the Department of Job and Family Services (JFS) to allow managed care plans that provide services to Medicaid enrollees to use medical providers to render care upon completion of the managed care plan's credentialing process.

The sixth such provision creates the Joint Legislative Study Commission on Most Favored Nation Clauses in Health Care Contracts. The Commission is to have 15 members, including the Superintendent of Insurance, 4 legislators, and 10 members chosen jointly by the Speaker of the House and the Senate President that represent interested parties according to criteria set in the bill. The Commission is to study the issue of the use of these clauses<sup>1</sup> in health care contracts during a two-year moratorium on the use of such clauses and issue a report to the General Assembly on its findings and recommendations. After issuing its final report the Commission is to cease to exist. The bill would require the Department of Insurance to provide office space and staff support for the work of the Commission. The bill does not provide for compensation or reimbursement of travel expenses for members of the Commission.

### **Fiscal effects**

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<sup>1</sup> The term "most favored nation clause" is defined by the bill. The bill lists four different types of such a clause. One type, for example, is a clause that prohibits the medical provider from contracting with another insurer at a lower rate. A second type is a clause that would require the provider to accept a lower reimbursement rate if that provider does charge another insurer a lower rate.

The provision prohibiting third party payers from selling the rights to the services of medical providers on its network would eliminate one potential source of revenue for health insurers. Insurers who are affected by this provision may respond by reducing costs or by increasing revenues from another source in an attempt to maintain profits. LSC fiscal staff has no information as of this writing regarding how widespread this practice is and how large the amounts of money involved may be. It is possible that this provision could result in an increase in premiums, thus increasing the costs for the state and for political subdivisions to provide health benefits for workers. It has been assumed that this potential source of revenue is minimal, since it is clearly not a primary line of business for the firms affected. Furthermore, the bill's prohibition is qualified rather than absolute. If it should emerge with further study that the revenue amounts involved are more than minimal, and that qualifications to the prohibition have a relatively minor impact, the local impact determination may be changed.

The provision regarding mandatory arbitration for contract disputes related to the bill's provisions may reduce caseload that would otherwise go to county or municipal courts. This would reduce costs related to processing cases and revenue from fees that accompany filing of cases.

The provision requiring the Superintendent of Insurance to adopt rules to implement the bill may increase administrative costs that would be paid by the Department of Insurance Operating Fund (Fund 554). A Department of Insurance (ODI) official reports that the Department expects that it would need to hire an Attorney 5 in order to review contracts affected by the bill's provisions. The salary range for such a position is between \$76,250 and \$99,973. Allowing for fringe benefits, the increase in costs to the Department could be up to \$130,000 or more. Market conduct examinations authorized by the bill may also increase expenditures from Fund 554, but the costs of any such examinations are paid for by the authorization to assess the cost against the insurer examined, thus raising an equivalent amount of revenue to Fund 554. Since the revenue from any fines that are levied as a result of an examination is also deposited into Fund 554, the increase in revenue to the fund may exceed the increase in expenditures.

An ODI official reports that the provision requiring ODI to provide office space and staff support to the Joint Legislative Study Commission on Most Favored Nation Clauses in Health Care Contracts is not expected to create a significant increase in costs to the Department. The two-year moratorium on the use of most favored nation clauses in contracts, like some of the other provisions governing contracts, may affect the relative bargaining power of the parties to a contract. As noted above, LSC is not aware of any research that would reliably allow prediction of the outcomes of negotiations between the parties before and after the changes to relative bargaining power, and the consequent effect on premiums charged by health insuring corporations.<sup>2</sup>

According to a JFS official, the provision that requires JFS to allow managed care plans to use providers upon completion of the plan's credentialing process would require JFS to make a minor change in its administrative process in dealing with managed care companies. This would increase costs to the state minimally, with the increase in costs being paid from the GRF.

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<sup>2</sup> However, members who would like more information about such clauses may wish to consult a Federal Trade Commission publication dated July 2004 entitled *Improving Health Care: A Dose of Competition*. The publication is available at the FTC web site at the web address [www.ftc.gov/bc/healthcare/research/healthcarehearingreports](http://www.ftc.gov/bc/healthcare/research/healthcarehearingreports).

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