

# Fiscal Note & Local Impact Statement

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

Ohio Legislative Service Commission  
77 South High Street, 9<sup>th</sup> Floor, Columbus, OH 43215-6136 ♦ Phone: (614) 466-3615  
♦ Internet Web Site: <http://www.lsc.state.oh.us/>

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BILL: **Sub. S.B. 114 (LSC 127 0823-1)** DATE: **April 16, 2008**  
STATUS: **In Senate Health, Human Services, and Aging** SPONSOR: **Sen. Coughlin**  
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**  
CONTENTS: **Epilepsy drugs**

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## State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
<b>General Revenue Fund (GRF)</b>	
Revenues	(1) Potential annual gain in federal Medicaid reimbursement for prescription drug costs; (2) Potential negligible gain in locally collected state court costs
Expenditures	(1) Potential annual increase for prescription drug costs; (2) Up to approximately \$462,000 in estimated annual costs to process additional prior authorization requests
<b>Victims of Crime/Reparations Fund (Fund 402)</b>	
Revenues	Potential negligible gain in locally collected state court costs
Expenditures	- 0 -
<b>Occupational Licensing and Regulatory Fund (Fund 4K9)</b>	
Revenues	- 0 -
Expenditures	No readily discernible fiscal effect

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Job and Family Services prescription drug costs.** The Ohio Medicaid program could experience an increase in expenditures resulting from brand name substitution of certain drugs used to treat epilepsy. If brand name substitution of certain drugs used to treat epilepsy increases significantly, this increase in expenditures could be in the millions of dollars annually. Such an increase in prescription drug expenditures would result in an annual gain in federal Medicaid reimbursement also in the millions of dollars. The federal government reimburses the Ohio Medicaid program approximately 60 cents for every one dollar spent. Federal Medicaid reimbursement is deposited into the GRF.
- **Job and Family Services administrative costs.** Based on data provided by the Ohio Department of Job and Family Services, the Medicaid program may experience an increase in costs associated with processing additional prior authorization requests, estimated at approximately \$462,000 a year. There could also be a similar increase in these associated costs for managed care plans, but of an unknown magnitude.
- **Court cost revenues.** Assuming that violations of the bill's drug substitution prohibition will be relatively infrequent, then it seems unlikely that the state's potential gain in annual court cost revenues deposited to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402) would exceed negligible. For the purposes of this fiscal analysis, a "negligible" amount of revenue means an estimated gain of less than \$1,000 for each of the aforementioned state funds per year.



- **State Board of Pharmacy.** Based on a conversation with staff of the State Board of Pharmacy, incorporating the bill's provision into the Board's ongoing day-to-day business will be relatively easy and generate no readily discernible impact on operating costs. The Board's day-to-day business is supported almost entirely by moneys appropriated from Fund 4K9, the occupational licensing and regulatory board fund that receives fees and other assessments collected by certain independent professional and occupational state licensing boards and in turn finances the annual operating expenses of those state boards.

### *Local Fiscal Highlights*

<b>LOCAL GOVERNMENT</b>	<b>FY 2008 – FUTURE YEARS</b>
<b>Counties and Municipalities</b>	
Revenues	Potential gain in court costs and fines, likely to be minimal at most annually
Expenditures	Potential, at most minimal, annual increase to process and resolve minor misdemeanors

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

- **Local criminal justice revenues and expenditures.** As of this writing, it appears that the issuance of a minor misdemeanor citation for violating the bill's provision relative to the selection of generically equivalent drugs for epilepsy will be relatively infrequent. Assuming that were true, to the degree that any county or municipality is noticeably affected by violations of the bill's drug substitution prohibition, such a jurisdiction seems unlikely to incur additional operating costs, or generate additional court cost and fine revenues, in excess of minimal. For the purposes of this fiscal analysis, "minimal" means a potential expenditure increase and related revenue gain estimated at no more than \$5,000 for any affected county or municipality per year.

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## *Detailed Fiscal Analysis*

### Overview

The bill prohibits a pharmacist from interchanging a drug for epilepsy or seizures without notifying the health professional who prescribed the drug and receiving the written consent of the prescriber and the patient. The bill defines "interchange" as the substitution of a generically equivalent drug for the prescribed drug, or substitution of a different drug for the drug prescribed. The bill specifies that the interchange of a drug includes any of the following actions:

- Substitution of a generic brand of the drug for the brand prescribed;
- Substitution of one generic brand of the drug for another generic brand;
- Substitution of one formulation of the drug for another;
- Substitution of one therapeutic drug treatment for another.

A violation of this prohibition would be a minor misdemeanor.<sup>1</sup>

Subject to certain conditions being met, existing law generally permits a pharmacist filling a prescription for a brand name drug to select a generically equivalent drug. Pharmacists are currently prohibited from making such substitutions if the prescription includes a notation of "Dispense as Written" or "DAW." Based on a conversation with staff of the State Board of Pharmacy, it appears that citing a pharmacist for violating existing law relative to the matter of drug substitutions is extremely rare. It is also the case that the Board has never been required to take disciplinary action against a pharmacist for violating the conditions permitting drug substitutions. As of this writing, the available information suggests to LSC fiscal staff that pharmacists will comply with the bill's provision relative to the selection of generically equivalent drugs for epilepsy and that noncompliance will be relatively infrequent.

### Local fiscal effects

#### County and municipal revenues and expenditures

As noted, LSC fiscal staff assumes for the purposes of this fiscal analysis that the issuance of a minor misdemeanor citation for violating the bill's provision relative to the selection of generically equivalent drugs for epilepsy will be relatively infrequent. Assuming that were true, to the degree that any county or municipality is noticeably affected by violations of the bill's drug substitution prohibition, such a jurisdiction seems unlikely to incur additional operating costs, or generate additional court cost and fine revenues, in excess of minimal. For

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<sup>1</sup> Subject to certain exceptions, a law enforcement officer issues a citation instead of arresting a person for the commission of a minor misdemeanor. In lieu of appearing at the time and place stated in the citation, the person may, within seven days after the date of issuance of the citation, sign a guilty plea and a waiver of trial provision of the citation, and pay the total amount of fines and costs. Each court is required to establish a fine schedule that lists the fine for each misdemeanor; the fine may be up to, but cannot exceed, \$150 in the case of a minor misdemeanor.

the purposes of this fiscal analysis, "minimal" means a potential expenditure increase and related revenue gain estimated at no more than \$5,000 for any affected county or municipality per year.

### **State fiscal effects**

#### **Department of Job and Family Services – pharmaceutical costs**

According to the Ohio Department of Job and Family Services (ODJFS), the bill could increase costs to Ohio's Medicaid program. Under current Medicaid rules, most brand name medications associated with the treatment of epilepsy that have a generic equivalent available require prior authorization. While the bill does not require that such prescriptions be filled with brand name medications in lieu of generic equivalents, there could be an increase in the number of "prior authorization" requests made by Medicaid recipients (those diagnosed with epilepsy). ODJFS is uncertain as to the cost increase for managed care plans but estimates that these additional requests will increase the administrative costs of fee for service by \$462,000 per year.<sup>2</sup>

In addition, while the bill does not mandate that pharmacies substitute brand names for their generic equivalents, it is possible, for a variety of reasons,<sup>3</sup> that some number of prescriptions will be filled with brand name medications that previously had been filled utilizing those brands' generic equivalents. In studying the potential costs to the Medicaid program, ODJFS estimated an annual increase in costs of \$28.9 million assuming a 50% increase in the substitution rate.

#### **Court cost revenues**

As noted, additional individuals may be cited for, and either plead guilty to or be convicted of, a minor misdemeanor related to violations of the bill's drug substitution provision. Such an outcome creates the possibility that the state may gain locally collected court cost revenue that would, pursuant to current law, be deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). For a misdemeanor offense, including a minor misdemeanor, the state court cost totals \$24, with \$15 of that amount being credited to the GRF and the remaining \$9 being credited to Fund 402. Assuming that such violations will be relatively infrequent, then it seems unlikely that the state's potential gain in annual court cost revenues would exceed negligible. For the purposes of this fiscal analysis, a "negligible" amount of revenue means an estimated gain of less than \$1,000 for each of the aforementioned state funds per year.

#### **State Board of Pharmacy**

To the degree that the bill affects state expenditures, it will most likely be in the licensing and regulatory activities performed by the State Board of Pharmacy. That said, based on a conversation with staff of the State Board of Pharmacy, incorporating the bill's provision into the Board's ongoing day-to-day business would be relatively easy and generate no readily discernible impact on operating costs.

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<sup>2</sup> ODJFS estimates that there could be an additional 38,500 prior authorization requests per year.

<sup>3</sup> Such reasons include, but are not limited to, a physician's willingness to write a prescription with Dispense as Written (DAW) and to approve such substitutions when requested to do so by a pharmacist and/or the perseverance of a patient in requesting prior authorization for brand name medications.

The Board's day-to-day business is supported almost entirely by moneys appropriated from Fund 4K9, the occupational licensing and regulatory board fund that receives fees and other assessments collected by certain independent professional and occupational state licensing boards and in turn finances the annual operating expenses of those state boards. The fund's revenues consist of license fees and other assessments collected by those boards, as well as various fines and forfeitures collected by the State Board of Pharmacy.

*LSC fiscal staff: Jamie L. Doskocil, Senior Budget Analyst  
Ivy Chen, Senior Economist*

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