



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 293 of the 128th G.A.

Date: November 18, 2009

Status: As Introduced

Sponsor: Rep. Yates

Local Impact Statement Procedure Required: Yes

Contents: Regarding assistance for pregnancy prevention

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase related to insurance coverage requirement	Potential minimal increase related to insurance coverage requirement	Potential minimal increase related to insurance coverage requirement
General Revenue Fund – Department of Health			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase of \$68,000 to \$138,000 for duties associated with the Task Force and information requirements; Increase relating to investigations for hospital violations of the standards of care requirements	Increase of \$68,000 to \$138,000 for duties associated with the Task Force and information requirements; Increase relating to investigations for hospital violations of the standards of care requirements	Increase of \$68,000 to \$138,000 for duties associated with the Task Force and information requirements; Increase relating to investigations for hospital violations of the standards of care requirements
General Revenue Fund and Other State Funds – Attorney General			
Revenues	Potential minimal gain for recovered costs in cases where injunctive relief is granted	Potential minimal gain for recovered costs in cases where injunctive relief is granted	Potential minimal gain for recovered costs in cases where injunctive relief is granted
Expenditures	Potential increase relating to injunctions against violators of the standards of care requirements	Potential increase relating to injunctions against violators of the standards of care requirements	Potential increase relating to injunctions against violators of the standards of care requirements
Occupational Licensing and Regulatory Fund (Fund 4K90)			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill may minimally increase costs to the state of providing health benefits to employees and their dependents, due to the insurance coverage requirement.

- **State Board of Pharmacy and Attorney General.** The bill may minimally increase the Board of Pharmacy's and the Attorney General's administrative costs to oversee the requirements related to access to contraceptives. It may also increase their penalties and fines collections. Any such increases are likely to be minimal.
- **Ohio Department of Health (ODH).** The bill creates the Ohio Teen Pregnancy Prevention Task Force and specifies the duties and membership. The bill also requires ODH to create and make available on its web site information explaining emergency contraception. According to ODH, costs (salary, fringe benefits, travel, supplies, etc.) associated with these requirements would be \$68,000 to \$138,000 per year.
- **ODH and Attorney General.** The bill creates standards of care for victims of sexual assault and requires ODH to investigate associated complaints. If a violation has occurred, ODH must impose a civil penalty of not less than \$10,000 for each violation. The bill allows ODH to ask the Attorney General to bring an action for injunctive relief in cases where a previous violation has occurred. Hospitals are not licensed or certified by ODH. As a result, this requirement will increase costs for ODH. Any increase in costs associated with the Attorney General is expected to be minimal since the number of violations is expected to be few in number. The Attorney General uses a mix of GRF and other state funds for expenses of this type. There is the potential that some of these costs could be recovered if the court requires a violator to pay costs.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties, Municipalities, Townships, and School Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase, potentially in the millions	Increase, potentially in the millions	Increase, potentially in the millions
Courts of Common Pleas			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Public Hospitals			
Revenues	Potential gain	Potential gain	Potential gain
Expenditures	Potential increase	Potential increase	Potential increase

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

- The bill would increase costs to counties, municipalities, townships, and school districts statewide of providing health benefits to their employees and their dependents, due to the insurance coverage requirement.
- The bill allows an individual to file a complaint with ODH if a hospital has failed to comply with the bill's standard of care for victims. If a previous violation has occurred at a hospital, ODH may ask the Attorney General to bring an action for

injunctive relief. If injunctive relief is sought by the Attorney General's Office, courts of common pleas could experience an increase in court and administrative costs. Any increase in costs is expected to be minimal since the number of violations is expected to be few in number. Some of these costs could be recovered if the court requires a violator to pay costs.

- The bill creates standards of care for victims of sexual assault. According to the Ohio Hospital Association (OHA), it is believed that most, if not all, public hospitals currently provide the services required under these standards. If a public hospital is not currently providing these services, costs could increase. The bill does not prohibit hospitals from seeking reimbursement for the costs of services provided from the victim's health insurance or Medicaid, if applicable, and to the extent permitted by section 2907.28 of the Revised Code, which deals with payments of medical exams for victims of crimes for possible prosecution. However, it is unclear how often reimbursements would occur and if those reimbursements would cover the full costs of the services rendered.
- School districts, community schools, and STEM schools may incur costs to modify their health education curriculum to include HIV/AIDS prevention education. These costs may include the costs of training instructors or contracting with outside instructors.

Detailed Fiscal Analysis

H.B. 293 makes the following changes to the law regarding assistance for pregnancy prevention:

Insurance coverage of contraceptives

The bill requires health insurers, including public employee health benefit plans, to provide coverage for prescription contraceptive drugs or devices that have been approved by the U.S. Food and Drug Administration (FDA) if they provide coverage for other prescription drugs and devices. The bill also requires them to provide any related outpatient services associated with the contraceptive drugs or devices. The bill indicates that the requirements are subject to the same terms and conditions, including any copayment, deductible, and coinsurance, to the extent that other prescription drugs and devices covered by the health benefit plan are subject to those requirements.

The bill specifies that the Department of Insurance is not required to conduct an analysis of the impact of the required coverage under this bill. Currently, no mandated health benefits legislation enacted by the General Assembly may be applied to any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits until the Superintendent of Insurance determines that the provision can be applied fully and equally in all respects to employee benefit plans subject to regulation by the federal Employee Retirement Income Security Act of 1974 (ERISA) and employee benefit plans established or modified by the state or any political subdivision of the state, or by any agency or instrumentality of the state or any political subdivision of the state.

The bill would have minimal fiscal effect on the state self insured health benefit plans. The state health benefit plans currently provide coverage for FDA-approved prescription contraceptive drugs and devices and related outpatient services, but not for emergency contraceptive prescriptions. Due to lack of specific details in the bill, LSC staff assumed an emergency contraceptive prescription (e.g., Plan B prescription for women under 17 years old) must be covered under the bill's requirements related to insurance coverage of contraceptives. According to an FDA news release dated April 22, 2009, a consumer under the age of 17 years must get a prescription from a doctor or clinic before he or she can purchase an emergency contraceptive drug. A consumer aged 17 or older may purchase such drugs without a prescription. LSC staff believe any increase in costs for the state health benefit plans is likely to be less than \$3,600 per year. The estimate is calculated based on information and assumptions below.

Currently, the costs of a 30-day supply of contraceptive pills range between \$10 and \$50 while the costs of emergency drugs range between \$35 and \$60. According to teen pregnancies data from *The Alan Guttmacher Institute*, 9,600 Ohio girls between age 15 and 17 were pregnant in 2000. In addition, based on data from the Annual Social and Economic Supplement of the Current Population Survey (CPS), from the U.S.

Census Bureau, approximately 65.2% of Ohioans received their health insurance coverage through their employer in 2007. According to data on overall employment of Ohioans reported by the U.S. Bureau of Labor Statistics (BLS) for May 2008, 1.4% of the Ohio nonfarm workforce was employed by state government, 4.9% were employed by local governments (excluding educational institutions), and 5.6% were employed in local governments (educational institutions). Assuming two-thirds of the 9,600 pregnant girls aged between 15 and 17 years old were either 15 or 16 and about 65.2% of the girls received insurance coverage through their parent's employer, thus about 4,194 of the pregnant girls had insurance coverage. Using this figure and the percentage of Ohio nonfarm workforce employed by state government, approximately 59 of the pregnant girls may have been covered by the state health benefit plan. The estimated costs to the state plans to comply with the bill's insurance requirements would be up to \$3,600 per year.

In addition, the bill could increase insurance premiums of local governments' health benefit plans, if they do not currently provide coverage for all FDA-approved prescription contraceptive drugs or devices and related outpatient services under their plans. Any increase in insurance premiums would increase costs to local governments to provide health benefits to employees and their dependents. According to data from the Ohio Public Employees Retirement System, there were 63,863 female members aged between 15 and 44 years working for local government employers as of December 31, 2007. Using the 63,863 figure and estimated costs of contraceptive pills above, the estimated fiscal impact to local governments could be up to \$38.3 million per year, if all of these employees were utilizing contraceptive pills. Although the estimated figure does not account for local government employees having female dependents, LSC staff consider it an upper bound. The fiscal impact to each local government may vary, depending on the number of its employees who utilized contraceptive drugs or devices and whether the health plan of that government already provides the required benefits.

Access to contraceptives in pharmacies

The bill requires a pharmacy that stocks and dispenses FDA-approved contraceptive drugs or devices to ensure that a contraceptive is provided to a customer without delay, if a customer of a pharmacy requests a contraceptive that is in stock. The bill also provides procedures that must be taken by a pharmacy if a customer requests a contraceptive that is not in stock. The bill specifies that a pharmacy may refuse to provide a contraceptive drug or device to a customer under certain circumstances. The bill requires a pharmacy to ensure that any customer requesting a contraceptive drug or device is not subjected to any intimidation, harassment, or interference from its employees or contractors.

Any complaint related to the requirements associated with access to contraceptives in pharmacies must be filed with the State Board of Pharmacy. The Board is required to investigate a complaint and determine if a violation has occurred by not later than 30 days after receiving the complaint. If a violation occurred, it must

impose a fine of not more than \$5,000 for each violation. The bill also allows the Board to take disciplinary actions toward a pharmacist or pharmacy intern that fails to comply with the requirements associated with access to contraceptives in pharmacies. Such actions may include a monetary penalty or forfeiture as specified in the Revised Code for a similar offense or \$500 if there is no designated fine. The bill specifies that a person who has been injured by such violation can bring a civil action in court. The bill also allows the Attorney General to commence a civil action in a court of competent jurisdiction to compel compliance if it has cause to believe that a person or group of persons has been or may be injured by such violation.

The bill may increase the State Board of Pharmacy's and the Attorney General's administrative costs to oversee the requirements related to access to contraceptives. The bill may also increase their penalties and fines collections if a pharmacy or its employees or contractors, or a pharmacist or a pharmacist intern violates such requirements. Any increase in their administrative costs and their penalties and fines collections would depend on compliance with the requirements. LSC staff expect that any such increases are likely to be minimal.

Ohio Teen Pregnancy Prevention Task Force and other requirements

The bill creates the Ohio Teen Pregnancy Prevention Task Force. The Task Force is to, among other things, advise the Governor and General Assembly on the strategies to prevent teen pregnancy and monitor and evaluate the strategies, as well as identifying barriers to their implementation. Additionally, the Task Force is to collect and maintain information regarding successful teen pregnancy prevention programs and explore the establishment of a program within the Ohio Department of Health (ODH) that would award grants to public and private entities to establish or expand teen pregnancy prevention programs. By December 1st of each year, the Task Force is required to submit a report to the Governor and General Assembly that summarizes its findings and recommendations for changes to the laws regarding teen pregnancy. The bill specifies what the initial report and subsequent reports are to contain. The bill also specifies the membership of the Task Force. The Task Force members are to serve without compensation, but may be reimbursed for actual and necessary expenses.

The bill also requires ODH to create and make available on its web site information explaining emergency contraception.

According to ODH, a Human Services Program Consultant would research and develop the informational materials and collaborate with educational and other health care professionals, as well as helping with the tasks associated with the Task Force. ODH estimates that the salary and fringe benefits for this position would be \$42,893 to \$89,217 per fiscal year. The salary range is dependent on the number of hours needed to carry out the requirements of the bill. ODH estimates between 1,000 hours to 2,080 hours would be needed. Additionally, ODH estimates travel, supplies, and miscellaneous expenditures related to the program and Task Force to be \$2,500 to \$4,000 per fiscal year.

ODH has stated that a Program Analyst III would be responsible for publishing information on ODH's web site. The costs associated with a Program Analyst III position for 500 to 1,000 hours would be \$22,635 to \$45,270 per fiscal year.

Standard of care for victims of sexual offenses

The bill establishes a standard of care regarding the services to be provided to victims of sexual assault. The bill specifies that a hospital must provide a victim with medically and factually accurate, unbiased, and clear and concise written and oral information about emergency contraception. The hospital is required to offer the victim emergency contraception and provide the contraception if the victim accepts the offer. Additionally, the hospital must provide the victim with an assessment of the victim's risk of contracting a sexually transmitted disease (STD). The bill specifies that the hospital is to offer treatment for STDs and provide the treatment after the counseling. The bill also specifies that the hospital must provide the victim with counseling on the physical and mental health benefits of seeking follow-up care before the victim leaves the hospital.

The bill specifies that the hospital is to provide these services regardless of the victim's ability to pay. However, the hospital is not prohibited from seeking reimbursement for the costs of services provided from the victim's health insurance or Medicaid, if applicable. The hospital continues to be subject to the existing prohibition on billing a victim or the victim's insurer for costs incurred in performing an examination for the purpose of gathering physical evidence for possible prosecution. Payments for these types of examinations are made by the Attorney General.

The bill allows an individual to file a complaint with ODH if the hospital has failed to comply with the bill's standard of care for victims. ODH is required to investigate the complaint in a timely manner. If a violation has occurred, ODH must impose a civil penalty of not less than \$10,000 for each violation. If a previous violation has occurred at a hospital, ODH may ask the Attorney General to bring an action for injunctive relief.

Currently, hospitals may be accredited by the Joint Commission or the American Osteopathic Association. Hospitals are required to register with ODH annually. However, hospitals are not licensed by ODH and are not under ODH's jurisdiction for survey and certification. Instead, hospitals are surveyed and certified by the appropriate accrediting organization. The bill requires ODH to investigate complaints relating to the standards of care for victims of sexual assault. Since ODH does not certify or survey hospitals, this provision would increase costs for ODH. ODH does investigate some complaints involving hospitals when directed by The Centers for Medicare and Medicaid Services (CMS). Since the bill's requirement is complaint-driven, it is possible that ODH could accomplish the requirements of the bill without creating an additional presence in the hospital. However, ODH would incur additional costs due to this provision.

According to the Ohio Hospital Association (OHA), it is believed that most, if not all, public hospitals currently provide these services. OHA has stated that these services are provided at a sometimes considerable cost. If a public hospital is not currently providing these services, costs could increase. The bill does not prohibit hospitals from seeking reimbursement for the costs of services provided from the victim's health insurance or Medicaid, if applicable, and to the extent permitted by section 2907.28 of the Revised Code, which deals with payments of medical exams for victims of crimes for possible prosecution. It is unclear how often reimbursements would occur and if those reimbursements would cover the full costs of the services rendered.

The Attorney General's Office would experience an increase in costs if injunctive relief is sought against a hospital violating the provisions of the bill. Injunctive relief would be sought after all other avenues requesting compliance had been exhausted. Any increase in costs is expected to be minimal since the number of violations is expected to be few in number. The Attorney General uses a mix of GRF and other state funds for expenses of this type. Some of these costs could be recovered if the court requires a violator to pay costs. If injunctive relief is sought by the Attorney General's Office, courts of common pleas could experience an increase in court and administrative costs. Any increase in costs is expected to be minimal since the number of violations is expected to be few in number. Some of these costs could be recovered if the court requires a violator to pay costs.

HIV/AIDS prevention education

The bill modifies curriculum requirements for school districts by changing the requirement that the curriculum include venereal disease education with an emphasis on abstinence to a requirement that the curriculum include sexually transmitted infection prevention education, and specifically HIV/AIDS prevention education. In addition, the bill requires that school districts, community schools, and STEM schools provide age appropriate HIV/AIDS prevention education to students at least once in grades 7 through 9 and again in grades 10 through 12. The bill stipulates several requirements regarding this education, including that the instructors be trained in the appropriate courses and that the school district or school provide periodic in-service training for instructors to learn new developments in the scientific understanding of sexual health and HIV/AIDS.

The cost to schools of these provisions will vary depending on whether they are offering this type of education currently and whether they are able to adapt existing free or low-cost resources to develop the required curriculum and in-service training. The U.S. Centers for Disease Control and Prevention offer free resources on HIV/AIDS prevention, although their current resources targeting youth focus on abstinence and may not meet the requirements of the bill. Local departments of health may also be willing to partner with schools in providing training and other resources. In addition to

government agencies, many national and local nonprofit organizations may also serve as low-cost resources for schools.

The Cleveland Metropolitan School District in Cuyahoga County offers a program called "Responsible Sexual Behavior Curriculum Delivery," which likely exceeds the requirements of the bill, but provides one example of the costs of a related program in a large urban school district. Cleveland's program provides comprehensive health education regarding sexually transmitted diseases, teen pregnancy prevention, and related areas to all students in kindergarten through 12th grade. Among this program's several initiatives is one that offers HIV/AIDS education in grades 7 through 12. The program is a partnership between the school district, the city, the county board of health, and several charitable foundations. Last school year the program operated at just under \$500,000 from grant funding. The \$500,000 provided funds for three program staff, outside consultants, and program evaluation.

Cleveland's program likely provides an upper limit on the cost of the bill to a school district. The cost to most school districts will be much less as districts should be able to meet the bill's requirements through a less extensive program. In addition, districts such as Cleveland that may already be meeting the bill's requirements will have no additional costs as a result of the bill.