Ohio Legislative Service Commission

Justin Pinsker

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 251 of the 129th G.A. **Date**: May 10, 2012

Status: As Reported by House Health & Aging **Sponsor**: Rep. Schuring

Local Impact Statement Procedure Required: No

Contents: To regulate the practice of Oriental medicine and to modify the laws governing the practice of acupuncture

State Fiscal Highlights

- **Implementation and enforcement.** Costs for the State Medical Board would increase due to rule promulgation and other start-up costs in the first year. Costs for administration, oversight, and enforcement, relating to the certification of Oriental medicine practitioners, would also increase. According to a spokesperson for the Board, a number of currently certified acupuncturists would likely allow their acupuncturist certification to lapse. These individuals would then apply for Oriental medicine certification. Since the fee structure for either certification would be the same, the fiscal impact on fee revenue would be negligible. Any increase in expenditures would come from Fund 5C60, Operating Expenses. Any additional revenue would be deposited into this fund.
- **Background checks.** Oriental medicine practitioners applying for initial certification or restoration of a certificate would be required to have criminal background checks performed. A portion of the fees would be deposited into the General Reimbursement Fund (Fund 1060) and a portion of the fees would be sent to the Federal Bureau of Investigation.
- **Incarceration for violations.** As a result of violations of the bill's felony prohibition, there could be a small number of additional offenders sentenced to state prison, which would increase the Department of Rehabilitation and Correction's GRF-funded incarceration expenditures. However, the number of persons who might violate the bill's prohibition in any given year appears likely to be few.
- **State court costs.** As a result of violations of the bill's prohibition, additional revenue, in the form of state court costs, may be collected locally and forwarded to the GRF, the Victims of Crime/Reparations Fund (Fund 4020), and the Indigent Defense Support Fund (Fund 5DYO). Given the expectation that there would likely be only a few cases, the additional state revenue will likely be negligible.

Local Fiscal Highlights

- **Local criminal justice system.** As a result of the criminal penalty for violating the bill's prohibitions, it is possible that costs could minimally increase for the local criminal justice system. It appears unlikely that the bill will create many new cases for county criminal justice systems to process. For misdemeanor cases, costs could minimally increase for municipal and county courts. For felony cases, costs could minimally increase for courts of common pleas. Furthermore, the bill could result in a minimal increase in local court costs and fine revenue collected by counties from offenders.
- **Sheriffs' offices.** The bill requires criminal background checks for individuals seeking certification. Some individuals may go to sheriffs' offices for these checks. As a result, these offices may experience an increase in administrative costs and also a subsequent gain in revenues.

Detailed Fiscal Analysis

State fiscal effects

The bill requires the State Medical Board to regulate the practice of Oriental medicine, which may also include the use of herbal therapy,[1] and provides for the regulation of its practitioners in generally the same manner as the current regulation of acupuncturists. The bill also creates prohibitions against uncertified practice and extends the existing acupuncturist certificate application process, supervisory period requirements, and certificate renewal process to Oriental medicine practitioners. In addition, the bill makes changes to the regulation of an acupuncturists' scope of practice, continuing education, and revocation of a certificate to practice. The bill specifies that acupuncturists may use "supplemental techniques" and defines those techniques as the use of traditional and modern Oriental therapeutics, heat therapy, acupressure and other forms of Chinese massage, and counseling. The bill expressly prohibits an acupuncturist, practicing pursuant to a certificate to practice as an acupuncturist, from using herbal therapy in the performance of acupuncture.

Fees

The bill establishes fees regarding certificates to practice Oriental medicine. The bill specifies an initial application fee of $100 and a biennial renewal fee of $100. In addition, the bill specifies a duplicate certificate fee of $35, a penalty for reinstatement of a certificate of $25, and a penalty for the restoration of a certificate of $50. Fee revenue will be deposited in the State Medical Board Operating Fund (Fund 5C60).

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[1] According to the National Certification Commission for Acupuncture and Oriental Medicine, 26 states currently regulate Chinese herbs in the scope of practice for acupuncturists.

According to a spokesperson for the State Medical Board, as a result of the bill, individuals currently holding a certificate to practice acupuncture who meet the newly established requirements for Oriental medicine would essentially let their acupuncturist certification lapse and then apply for an Oriental medicine certificate. According to the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), 37 individuals in Ohio currently hold either a certification in Oriental medicine or a certification in acupuncture and Chinese herbology, which could qualify them, in part, to apply for a certificate to practice Oriental medicine. Since the proposed fee structure for Oriental medicine practitioners is the same as that of acupuncturists, the fiscal impact on fee revenue would likely be negligible.

Rule making, administration, oversight, and enforcement

The bill grants the Board rule-making authority to regulate Oriental medicine practitioners. Costs for the Board would increase due to rule promulgation and other start-up costs in the first year. Costs for administration, oversight, and enforcement would also increase after the program got up and running. Any expenditures will come from the State Medical Board Operating Fund (Fund 5C60).

The bill also repeals a provision requiring the Secretary of the Board to receive necessary expenses incurred in the performance of official duties. According to the Board, all Board members are paid and the removal of this provision codifies existing practice. Thus, there will be no fiscal effect.

Continuing education

The bill establishes continuing education requirements for Oriental medicine practitioners and applies the same requirements to acupuncturists. The State Medical Board would likely experience a minimal increase in costs to ensure compliance with the new continuing education requirements.

Background checks

The bill would require that Oriental medicine practitioners applying for initial certification or restoration of a certificate submit to criminal background checks. The cost of the background check would be paid by the applicant. The Attorney General's Bureau of Criminal Identification and Investigation charges $22 to perform a state criminal records check and an additional $24 to obtain information from the FBI to perform a federal criminal records check. The $22 state-only background check fee and $2 of the $24 FBI background check fee are deposited into the General Reimbursement Fund (Fund 1060) used by the Attorney General. The remaining $22 of the FBI background check fee is sent to the FBI.

Disciplinary action, investigation, etc.

The bill authorizes the State Medical Board to take disciplinary action against an Oriental medicine practitioner in the same manner, and for the same reasons, as the Board is currently authorized to take action against an acupuncturist. The number of

cases that the Board would investigate or take disciplinary action would likely be few. Therefore, any increase in costs related to disciplinary action or investigation would likely be minimal.

Prohibition against uncertified practice

The bill prohibits a person from practicing Oriental medicine without holding a valid certificate to practice issued by the State Medical Board. Under the bill, whoever violates this prohibition is subject to criminal penalties. On a first offense the person is guilty of a misdemeanor of the first degree, on each subsequent offense a felony of the fourth degree. Although most violations for practicing without a valid certificate are likely to be handled administratively, there could be a small number of additional offenders sentenced to state prison for the felony offense. If a practitioner is charged with a felony, costs would increase for county courts of common pleas. In addition, Department of Rehabilitation and Correction's GRF-funded incarceration costs would increase if a practitioner is convicted and sentenced to state prison. However, the magnitude of any such increase would likely be minimal because felony cases would likely be rare.

Additional revenue, in the form of state court costs, may be collected locally and forwarded for deposit in the state treasury. The state court costs for a felony offense total $45, of which the GRF receives $15 and the Victims of Crime/Reparations Fund (Fund 4020) receives $30. The state court costs for a misdemeanor offense total $29, of which $20 goes to the Indigent Defense Support Fund (Fund 5DYO) and $9 goes to Fund 4020. Given the expectation that there would likely be few new cases in which individuals would be charged with violating the bill's prohibitions, the additional state revenue will likely be negligible.

Local fiscal effect

Prohibition against uncertified practice

For first offense misdemeanor penalties, it is possible that county or municipal court costs and county jail costs could increase. Any increase in a county's criminal justice system expenditures is likely to be no more than minimal because such violations would likely be rare. Furthermore, the bill could result in an increase in court cost and fine revenue collected by counties from offenders. The amount of additional court cost and fine revenue that counties would collect is likely to be no more than minimal as misdemeanor cases would likely be rare.

Background checks

Authorized providers of background checks may include local county sheriffs' offices or certain approved deputy registrars contracting with the Ohio Bureau of Motor Vehicles. As a result, some of these entities may realize an increase in administrative expenses and a subsequent gain in revenue as a result of the bill.