Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 303 of the 129th G.A. **Date**: December 11, 2012

Status: As Re-Reported by Senate Rules & Reference **Sponsor**: Reps. Schuring and Carney

Local Impact Statement Procedure Required: No

Contents: Revises laws governing nurses, medication aides, dialysis technicians, and certified community health workers

State Fiscal Highlights

- Potential negligible increase or decrease in administrative costs for the Ohio Board of Nursing to implement certain provisions in the bill.
- **Ohio Department of Health (ODH).** ODH is required to establish a licensure program for pediatric respite care programs. ODH anticipates initial start-up costs to be approximately $58,400 for rule promulgation and IT costs. After these initial start-up costs, ODH anticipates that revenues generated from license and inspection fees would be sufficient to cover expenses associated with operating the program.
- **Attorney General.** The bill requires background checks on applicants (those who would provide direct care to patients) for employment with a pediatric respite care program. The Attorney General's Office performs background checks. Thus, the office may experience an increase in administrative costs and also a subsequent gain in revenues relating to additional background checks.

Local Fiscal Highlights

- **Sheriffs' offices.** The bill requires criminal background checks for applicants (those who would provide direct care to patients) for employment with a pediatric respite care program. Some applicants 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.
- **County courts of common pleas.** The bill specifies that ODH must petition the court of common pleas in the appropriate county for an order enjoining a person or agency from conducting unlicensed activities relating to pediatric respite care licensure. As a result, it is possible that county courts of common pleas could experience an increase in court costs. Any increase in costs should be minimal since the number of violators is expected to be small. Additionally, the court would likely require violators to pay for court costs and/or fines.

Detailed Fiscal Analysis

Ohio Board of Nursing

The bill modifies laws administered by the Ohio Board of Nursing, including laws governing Board procedures, the professionals the Board regulates (nurses, dialysis technicians, medication aides, and community health workers), disciplinary actions, criminal records checks, the Board's chemical dependency monitoring program, and advance practice nurse (APN) externships.[1] The bill restructures some of the Board's current laws, without changing the substance of those laws and eliminates obsolete laws. The bill conforms some existing law to current practice and to federal requirements. The bill eliminates obsolete fees that are no longer collected and slightly modifies a few of the fees currently charged by the Board. The bill makes technical and conforming changes to other Ohio statutes made necessary by the bill's modifications to the laws administered by the Board.

The Board of Nursing does not expect any significant fiscal impact from the bill. The Board does not expect the bill to result in any significant change in staff levels, disciplinary costs, administrative processes, or the number of licenses or certificates issued. The Board estimates that the slight fee modifications will only affect small populations and, therefore, will not have a significant impact on fee revenues. While it is possible that some of the provisions may result in a negligible increase in administrative costs, it is also possible that other provisions may result in a decrease in administrative costs. Any increase in administrative costs will be absorbed within the Board's existing resources.

Nurse Education Grant Program

The bill extends the repeal date of the Nurse Education Grant Program from December 31, 2013 to December 31, 2023. The bill maintains the current funding mechanism for the program, which is $10 from each biennial renewal fee the Board collects.

An amount equal to $10 of each renewal fee is transferred quarterly by the Director of Budget and Management from the Occupational Licensing and Regulatory Fund (Fund 4K90), which is used to collect the license fees for the Board of Nursing and 26 other boards, to the Nurse Education Grant Program Fund (Fund 5AC0). About $2.4 million was transferred from Fund 4K90 to Fund 5AC0 over the FY 2011-FY 2012 biennium. Under current law, these transfers would end by December next year, which

[1] The bill increases the extension period for an APN externship from one year to two years and also reduces the number of requirements certain advanced practice registered nurses with prescriptive authority need to fulfill to obtain a certificate to prescribe without completing an externship.

would result in a higher balance in Fund 4K90 of about $2.4 million over each biennium going forward. Fund 4K90 is a general operating fund for 27 boards in the state.

The Nurse Education Grant Program provides grants to Ohio nurse education programs that have partnerships with health care facilities, community health agencies, or other education programs to establish support partnerships that will increase the enrollment capacity of the programs. The program began in January 2004. For the current grant period (September 1, 2011 to August 31, 2013), the Board of Nursing awarded 15 grants totaling $2.5 million to nursing education programs. Grants may be awarded to schools and education centers for pre-licensure programs for licensed practical nurses and registered nurses as well as for post-graduate programs.

Nursing facilities' Medicaid rates

The bill continues an adjustment that Am. Sub. H.B. 153 (the biennial budget act) made to nursing facilities' Medicaid payments rates for fiscal year (FY) 2013 and a rate established for nursing facility services provided to low resource utilization residents during that fiscal year.

Payment rates for skilled nursing facility services under the Integrated Care Delivery System

The bill requires a managed care organization (MCO) to pay a skilled nursing facility the current Medicare fee-for-service rate for skilled nursing facility provided to an individual who is eligible for Medicare and Medicaid (a dual eligible individual) and participating in the Integrated Care Delivery System (ICDS) if (1) the MCO is responsible for the payment under a contract that the MCO, Medical Assistance Director, and United States Secretary of Health and Human Services jointly enter into under the ICDS, (2) the U.S. Secretary agrees to the payment rate as part of the contract, (3) the MCO receives a federal capitation payment that is an actuarially sufficient amount for the costs that the MCO incurs in paying the rate, (4) no state funds are used for any part of the costs that the MCO incurs in paying the rate, and the ICDS provides for dual eligible individuals to receive the services as part of the ICDS.

According to a spokesperson for the Department of Job and Family Services, the provision does not have a fiscal impact to the state because the provision codifies the Department's plan for the ICDS.

Intermediate care facilities

The bill permits the Ohio Department of Developmental Disabilities (ODODD) or a third-party contractor to conduct assessments of all residents in Intermediate Care Facilities (ICFs) for the first quarter of calendar year 2013. Current law requires ICF providers, rather than ODODD, to conduct the resident assessments each quarter. Resident assessments are used in determining ICFs' case-mix scores which are a factor in calculating their Medicaid rates for direct care costs. The bill requires ODODD to use the data obtained from the resident assessments to determine each ICF's case-mix score for the first quarter of calendar year 2013.

The bill provides for ICFs' case-mix scores (based on the resident assessments ODODD conducts or contracts with another entity to conduct) to be used to calculate the individual and peer group maximum cost per case-mix units when determining the Medicaid rates for FY 2014. Under current law, ICFs' average case-mix scores for the four quarters of calendar year 2012 are to be used to calculate the cost per case-mix units when determining fiscal year 2014 Medicaid rates for direct care costs. The bill also specifies that an ICF's average case-mix score for calendar year 2013 be factored in determining its FY 2015 Medicaid rate for direct care costs.

According to a spokesperson for ODODD, four existing staff members would conduct the evaluations. Any additional costs for the evaluations would be absorbed within the agency's current budget. The case-mix scores could impact the rates paid to ICFs in FY 2014 and FY 2015. ODODD does not expect a change to the aggregate payments to ICFs. Payments to individual providers may be affected, though the bill limits any reduction that may occur to provider rates in FY 2014 to no less than 90% of its June 30, 2013, rate for direct care costs.

There are about 420 ICFs in the state that provide services to about 5,800 individuals with developmental disabilities. In FY 2012, Medicaid payments to such facilities totaled $565.7 million. Payments in that year were made by the Ohio Department of Job and Family Services. In FY 2013, payments are made by ODODD from GRF line item 322407, Medicaid State Match, and from federally funded line item 322653, ICF/IID – Federal.

Methadone clinics

As a requirement for methadone treatment licensure, the bill specifies that an alcohol and drug addiction program offering such treatment cannot maintain the treatment within a 500-foot radius of a public or private school, licensed day-care center, or other child-serving agency. The bill permits the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to waive the requirement if it receives from each public or private school, licensed day-care center, or other child-serving agency within a 500-foot radius of the entity, a letter of support for the location that ODADAS finds to be satisfactory. The bill prohibits ODADAS from considering proximity of a public or private school, licensed day-care center, or other child-serving agency when determining whether to renew, withdraw, or revoke a license to maintain methadone treatment. The bill includes an emergency clause that makes this provision effective immediately if signed by the Governor. ODADAS has stated that this provision will have no fiscal effect.

Community behavioral health workers

The bill expands the list of persons who receive qualified immunity from civil liability for providing health care services on a volunteer basis, subject to certain limitations, to include professional clinical counselors, professional counselors, social workers, independent social workers, marriage and family therapists, independent

marriage and family therapists, psychologists, independent chemical dependency counselors, chemical dependency counselors III, chemical dependency counselors II, and chemical dependency counselors I. There may be a reduction in litigation costs for any public healthcare entities that employ these professions, including, but not limited to public hospitals, state psychiatric hospitals, and local health departments.

Pediatric Respite Care Licensing Program

The bill requires the Ohio Department of Health (ODH) to regulate pediatric respite care programs through a licensing process that is similar to ODH's existing hospice care licensing program. The bill outlines the services that may be provided by a program, as well as the required components of a program. The bill also discusses the licensure process and specifies that a license fee cannot exceed $600 unless approved by the Controlling Board. Additionally, the maximum fee that may be approved by the Controlling Board is $900. A license is valid for three years and renewal licenses may be obtained. ODH is required to inspect pediatric respite care program facilities and services as necessary to meet the requirements of the bill and rules adopted under it. An inspection fee cannot exceed $1,750 unless approved by the Controlling Board and no approved fee can exceed $2,625. The bill requires the Director of Health to adopt rules that provide for pediatric respite care licensure.

According to ODH, initial start-up costs for the pediatric respite care program would be approximately $58,400 for rule promulgation and IT costs. These duties would be carried out by existing staff. The total costs for operating a pediatric respite care program would depend on the number of facilities seeking licensure. However, after initial start-up costs, ODH anticipates that revenues generated from license and inspection fees would be sufficient to cover expenses associated with operating the program. ODH currently licenses 131 hospice facilities. According to ODH, 0.32 full-time equivalent staff are devoted to the hospice licensing program. In FY 2011, the program collected $58,200 in revenues.

Background checks

The bill provides that pediatric respite care programs are to be subject to the same requirements as hospice care programs. Therefore, applicants (those who would provide direct care to patients) for employment with a pediatric respite care program will be subject to criminal background checks. As a result, the Attorney General's Bureau of Criminal Identification and Investigation, which performs state-only background checks and if requested or required, administers FBI background checks, could experience an increase in administrative expenses if these entities do not currently require background checks. However, the fee would likely cover any expenses. The base fees of the state-only and FBI background checks are $22 and $24, respectively. 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). The remaining $22 of the FBI background check fee is sent to the FBI.

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.

Unlicensed activity prohibitions

The bill prohibits a person or public agency from doing any of the following without a license: (1) holding itself out as providing a pediatric respite care program, (2) providing a pediatric respite care program, and (3) using the term "pediatric respite care program" or any term containing "pediatric respite care" to describe or refer to a health program facility, or agency. The bill does provide for a list of persons and facilities that are not subject to the prohibitions against unlicensed pediatric respite care activities. The bill specifies that ODH must petition the court of common pleas in the appropriate county for an order enjoining that person or agency from conducting unlicensed activities. As a result, it is possible that county courts of common pleas could experience an increase in court costs. Any increase in costs should be minimal since the number of violators is expected to be small. Additionally, the court would likely require violators to pay for court costs and/or fines.

Emergency clause and delayed effective dates

The bill includes an emergency clause which makes the bill's provisions effective immediately if signed by the Governor. However, the bill exempts certain provisions from the emergency clause, resulting in those provisions becoming effective 90 days after the bill's effective date. The measures that will become effective *immediately* include the provisions pertaining to:

- Methadone treatment programs;
- Schedule II controlled substance instruction for certain certificate to prescribe APN applicants; and
- Assessments and Medicaid payment rates to ICFs.

All other provisions will become effective 90 days after the initial effective date. In addition, certain provisions related to Medicaid rates to nursing facilities have a delayed effective date of July 1, 2013.

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