



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 83 of the 129th G.A.

Date: February 15, 2012

Status: As Passed by the House

Sponsor: Sens. Oelslager and Tavares

Local Impact Statement Procedure Required: No

Contents: Modifies the authority of certain advance practice nurses to prescribe schedule II controlled substances

State Fiscal Highlights

- **Committee on Prescriptive Governance.** The bill requires the Committee on Prescriptive Governance to include provisions in its prescriptive authority recommendations that apply specifically to the authority of advance practice nurses (APNs) to prescribe schedule II controlled substances. The Board of Nursing anticipates scheduling one or two additional committee meetings for this purpose, which would cost the Board about \$750 per meeting.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Background

Under current law, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner (advance practice nurse or APN) is authorized to prescribe certain drugs and therapeutic devices if the APN has a certificate to prescribe issued by the Ohio Board of Nursing. To obtain a certificate to prescribe, an APN must demonstrate evidence of successfully completing instruction in advanced pharmacology, pay a fee, and provide other information required by the Board.

Existing law currently restricts an APN's ability to prescribe by specifying that (1) an APN is prohibited from prescribing a drug or therapeutic device that is not in the formulary established in rules adopted by the Board, (2) the prescriptive authority cannot exceed the prescriptive authority of an APN's collaborating physician or podiatrist, and (3) an APN may prescribe a schedule II controlled substance in collaboration with a physician (but not a podiatrist) only if (a) the patient receiving the substance is in terminal condition, (b) the APN's collaborating physician initially prescribed the substance to the patient, and (c) the amount prescribed does not exceed that necessary for the patient's use in a single 24-hour period.

APN's authority regarding schedule II controlled substances

The bill maintains the existing restrictions on an APN from personally furnishing a schedule II controlled substance to a patient, but removes the restrictions if the APN issues the prescription to a patient from any of the following locations:

- Hospitals registered with the Department of Health;
- Entities owned or controlled by a hospital;
- Health care facilities operated by the Department of Mental Health (DMH) or the Department of Developmental Disabilities;
- Nursing homes licensed by DMH;
- County homes or district homes that participate in Medicare or Medicaid;
- Hospice care programs;
- Community mental health agencies;
- Ambulatory surgical facilities;
- Freestanding birthing centers;
- Federally qualified health centers (FQHC);
- FQHC look-alikes;
- Health care offices or facilities operated by the board of health of a city or general health district; and

- Sites where a business entity operates a medical practice under certain specified conditions.

The bill prohibits an APN from prescribing a schedule II controlled substance to a patient in a convenience care clinic, even if the clinic is owned or operated by a health care entity listed above where the restrictions do not apply.

The bill authorizes current APN licensees with a certificate to prescribe to begin prescribing schedule II controlled substances at the specified locations beginning on the bill's effective date, which is, if signed by the Governor, 90 days after the bill is signed.

Committee on Prescriptive Governance

The bill requires that the Committee on Prescriptive Governance, when developing recommendations regarding the authority of APNs to prescribe drugs and therapeutic devices, include provisions that apply specifically to the authority of APNs to prescribe schedule II controlled substances. The Committee on Prescriptive Governance is comprised of ten members who serve without compensation, but receive payment from the Board of Nursing for their actual and necessary expenses incurred in the performance of their official duties. The Board anticipates scheduling one or two additional meetings for the Committee to develop recommendations regarding the authority to prescribe drugs before APNs begin prescribing. The Board pays approximately \$75 in expenses (mileage and parking) per committee member per meeting. Two additional meetings would cost the Board about \$1,500 (2 meetings x 10 members x \$75 per member).

Adopting rules

The Board of Nursing must adopt any necessary rules to implement the authority to prescribe schedule II controlled substances pursuant to a certificate to prescribe in conformity with the recommendations submitted by the Committee on Prescriptive Governance. The bill requires that any rules adopted by the Board to establish criteria for the components of standard care arrangements include components that apply to the authority of APNs to prescribe schedule II controlled substances.¹ Costs to adopt rules will be absorbed within the Board's existing resources.

Advanced pharmacology instruction (new applicants and current licensees)

The bill requires new certificate applicants to complete, rather than obtain, a course of study in advanced pharmacology within three years of filing an application. The course of study must include at least 45 contact hours in pharmacology and related topics, of which at least 36 (instead of 30) must be contact hours of advanced pharmacology training. Additionally, the bill requires that the course of study in pharmacology and related topics include training in schedule II controlled substances. Instruction pertaining to prescribing schedule II controlled substances must include

¹ Under current law, APNs may enter into standard care arrangements with physicians and podiatrists.

certain topics such as guidelines for pain management therapies, fiscal and ethical implications, state and federal laws, and substance abuse prevention. The bill repeals the advanced pharmacology instruction exemption for APNs grandfathered from the advanced pharmacology instruction requirement.

The bill requires current APN licensees to successfully complete at least six contact hours of training pertaining to schedule II controlled substances as part of their renewal of their certificate to prescribe in order to continue to prescribe schedule II controlled substances.

These provisions for both new applicants and current licensees will minimally increase the administrative duties of the Board of Nursing. The Board's current certification practices will likely continue with regard to verifying if an APN has completed the training requirements. Any increase in administrative duties would result from the Board having to verify that the additional and appropriate course of study has been completed and will be absorbed within the Board's existing resources.

Disciplinary action

The bill allows the Board of Nursing to take disciplinary action against licensed nurses or those holding a certificate of authority or a dialysis technician certificate who self-administer or take into the body any schedule I controlled substance. Currently, the Board may take disciplinary action against any nurse who self-administers or takes into the body any "dangerous drug," as defined in section 4729.01 of the Revised Code. The provision could increase Board costs to take disciplinary action. In addition, there could be a gain in revenues if the Board chooses to impose fines. According to the Board, any cost increase or revenue gain under this provision would be negligible.

Liability protection for pharmacists

The bill states that pharmacists who fill prescriptions for schedule II substances issued by APNs under the bill are in no way liable in any manner including liability for damages in any civil action, prosecution in any criminal proceeding, or disciplinary action by the State Board of Pharmacy. This provision would limit the liability of the state for pharmacists working at state agencies. In FY 2011, there were 36 pharmacists working for the state: Department of Mental Health (31), Department of Rehabilitation and Correction (3), and Department of Veterans Services (2).²

² Data from the State of Ohio Payroll Projection System.