OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 365
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 365's Bill Analysis

Version: As Reported by Senate Health, Human Services & Medicaid

Primary Sponsor: Rep. Manning

Local Impact Statement Procedure Required: No

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Highlights

- The bill could result in an increase in administrative costs and possibly a one-time loss of revenue for the Chemical Dependency Professionals Board.
- The bill may minimally increase the Department of Insurance's administrative costs related to regulating contracts between a health plan issuer, including a third-party administrator, and a 340B covered entity. Any increase in such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).
- The bill's contract requirement for terminal distributors of dangerous drugs will have no discernible ongoing effects on the State Board of Pharmacy's annual operating costs or related revenue generation.
- The bill's impacts relating to 340B contract requirements for Medicaid managed care organizations are uncertain at this time.
- The bill has no direct fiscal effect on local governments.

Detailed Analysis

Chemical Dependency Professionals Board

The bill establishes two additional sets of criteria by which an individual may qualify for a chemical dependency counselor (CDC) II license. These additional criteria will expand the number of individuals who may qualify for this type of licensure. As a result, the Chemical Dependency Professionals Board may experience an increase in applications for this license. However, both sets of criteria require, among other things, that an individual hold a valid chemical dependency counselor assistant (CDCA) certificate and meet certain other requirements. As a result, it is possible that some individuals currently licensed as a CDCA may be eligible for, and instead opt to obtain, licensure as a CDC II. There could be some initial costs

associated with making this adjustment, including rule promulgation costs and additional administrative time for processing these new applications. While the fees are the same for both license types, the costs for initial licenses are lesser than renewal licenses ($50 for initial and $150 for renewal). If someone with a current CDCA certificate applied for a CDC II license and paid the initial fee for that, it is possible that the Board could realize a one-time loss of revenue. In addition, there could be indirect impacts if additional individuals were able to obtain counseling services as a result of the bill.

Licenses issued by the Board are renewed on a biennial cycle. As of the end of FY 2019, there were 423 individuals with an active CDC II license and 3,723 active CDCA licenses. Currently, the initial fee is $50 and the renewal fee is $150 for both licenses. The revenue generated from these fees are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90).

Health plan issuers

The bill prohibits any contracts between a health plan issuer, including a third-party administrator (TPA), and a 340B covered entity[1] from including certain provisions. Third-party administrators regulated by the Superintendent of Insurance include pharmacy benefit managers (PBMs). Under the federal 340B Drug Pricing Program, established to allow "covered entities to stretch scarce federal resources as far as possible,"[2] a covered entity is allowed to purchase eligible outpatient drugs from manufacturers at discounted prices. The covered entity is also allowed to provide such discounted drugs to eligible patients, regardless of a patient's ability to pay for such drugs (e.g., insured, uninsured, etc.). For example, if the covered entity dispensed such discounted drugs to an eligible patient with commercial insurance coverage, the covered entity may be reimbursed by the patient's insurer at a higher reimbursement amount than the cost of purchasing the discounted drugs. The bill would prohibit contract provisions providing (1) prescription drug reimbursement rates below specified minimums, or (2) dispensing fees and certain other fees related to dispensing prescription drugs below specified minimums.

Fiscal effect

The bill may minimally increase the Department of Insurance's administrative costs associated with regulation of health care contracts, including third-party administrator contracts. Any increase in such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).

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[1] A 340B covered entity is an entity that meets certain criteria and is authorized to participate in the federal 340B Drug Pricing Program, which is administered by the Office of Pharmacy Affairs of the Health Resources and Services Administration (HRSA), an agency of the U.S. Department of Health and Human Services. Please see the bill analysis for a list of 340B covered entities. A TPA is any person who adjusts or settles claims on behalf of an insuring entity in connection with life, dental, health, prescription drug, or disability insurance or self-insurance programs.

[2] Source: 340B Drug Pricing Program, posted on the HRSA website at: https://www.hrsa.gov/opa/index.html.

The bill would have no direct fiscal impact on the state or local governments' health benefit plans. A Department of Administrative Services (DAS) official reported to LBO that 340B providers do not give commercial insurers and TPAs 340B pricing. Assuming that is correct there would also be no indirect fiscal effect on the state or on local governments.

Medicaid

The bill prohibits a Medicaid managed care organization (MCO), including third-party administrators, from including any of the following provisions in a contract with a 340B covered entity: a reimbursement rate for a prescription drug that is less than the national average drug acquisition rate for the drug as determined by the U.S. Centers for Medicare and Medicaid Services (CMS) or if that rate is not available, the rate that is less than the wholesale acquisition cost of the drug in federal law; a fee that is not imposed on a health care provider that is not a 340B covered entity; or a fee that exceeds a fee imposed on a health care provider that is not a 340B covered entity. Finally, the bill prohibits the MCO from discriminating against a 340B covered entity, or interfering in any other way with the ability of a Medicaid recipient to receive a prescription drug from a 340B covered entity or any 340B contracted pharmacy.

Fiscal effect

According to the Ohio Department of Medicaid (ODM), it is unable to estimate any impacts associated with the bill requirements at this time. Recently, a number of drug manufacturers have indicated that they would end certain 340B discounts. In response, the U.S. Health Resources and Services Administration (HRSA), which administers the program primarily through guidance documents rather than federal regulations, indicated that these guidance documents are unenforceable. ODM maintains that because of the uncertainty involving issues of federal enforcement and oversight, it cannot estimate the impacts relating to the bill.

Terminal distributor of dangerous drugs

The bill requires a contract between a terminal distributor of dangerous drugs and a 340B covered entity provide that the terminal distributor pay the 340B covered entity the full reimbursement amount the terminal distributor receives from the patient and the patient's health insurer, except that the terminal distributor may deduct a fee agreed upon in writing between the terminal distributor and the 340B covered entity.

A terminal distributor of dangerous drugs that fails to comply with this requirement is subject to the State Board of Pharmacy's disciplinary procedures. The disciplinary actions the Board may take include revoking, suspending, limiting, or refusing to renew the distributor's license, placing the license holder on probation, or imposing a monetary penalty or forfeiture not to exceed $1,000. Any money collected will be credited to the existing Occupational Licensing and Regulatory Fund (Fund 4K90). Distributors generally are expected to comply with the contract requirement, making any disciplinary actions by the Board infrequent. This suggests that the bill's contract requirement will have no discernible ongoing effects on the Board's annual operating costs or related revenue generation.