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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

S.B. 144  
(1\_135\_2652)  
135<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 144's Bill Analysis](#)

**Version:** In House Health Provider Services

**Primary Sponsor:** Sen. Romanchuk

**Local Impact Statement Procedure Required:** No

Robert Meeker, Senior Budget Analyst, and other LBO staff

### Highlights

- The Ohio Department of Health (ODH) will experience an increase in costs regarding the bill's changes to long-term care bed supply and need and certificate of need (CON) review and approval. However, the bill's changes will likely allow for additional CON applications to be submitted and/or approved and additional fee revenue collected. Total revenue collected will depend on the number of additional applications. CON application fees are deposited in ODH's Certificate of Need Fund (Fund 4710).
- ODH could realize a reduction in the number of change of nursing home operator applications and corresponding application fee revenue. These fees are credited to ODH's General Operations Fund (Fund 4700).
- The Ohio Board of Nursing (NUR) will realize a reduction in fee revenue collected. The provision establishing set fees for medication aide certification in the Revised Code will not have an impact since these are the fees established currently in rule. However, provisions eliminating the certification of aides practicing in intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) and reducing medication aide training program fees, would reduce revenues.
- NUR will also experience an increase in information technology and administrative costs to establish and maintain an online certified medication aides registry.
- The bill makes changes to the lockable and tamper-evident container prescribing program established by H.B. 33 of the 135<sup>th</sup> General Assembly. The changes may or may not increase service expenditures, but will likely increase administrative expenses, for which the Ohio Department of Medicaid is typically reimbursed by the federal government at a rate of 50%.

- The bill removes provisions that affect the per-Medicaid-day payment rate for ICFs/IID in Peer Group 5, and requires the Ohio Department of Developmental Disabilities (ODODD) to redetermine the rate for those ICFs/IID in the group with rates exceeding the average. This would allow ODODD to make payments closer in value to the amount available.

## **Detailed Analysis**

### **Certificates of need to increase beds in a county**

Under the bill, if a county has at least 60 fewer long-term care beds than the county's bed need, the Director of Health, in considering a certificate of need (CON) to increase the number of beds in the county, will be prohibited from deeming that county as not needing additional beds due to having an occupancy rate of less than 85% (an existing limitation). In order for this exemption to apply, the bill requires that (1) the CON be for beds in a new long-term care facility or an increase of beds in an existing long-term care facility, and the beds will be licensed as nursing home beds under existing law and (2) the beds be located in category one private rooms.

The bill shortens, to every two years from every four years, the review cycle for (1) determinations of county long-term care bed supply and need and (2) CON review. Regarding the Director's consideration of CON applications, the bill does both of the following: (1) permits the Director to approve relocation of beds from a county only if the number of beds remaining in the county after the relocation will exceed the county's bed need by at least 50 beds, as opposed to 100 beds under current law and (2) eliminates a requirement that permits the Director to approve relocation of beds from a county only if the number of beds in the facility's service area after the relocation is at least equal to the state bed need rate, and eliminates related provisions specifying a facility's service area.

Regarding comparative review of CON applications, the bill eliminates a requirement that comparative review is required if two applications submitted during the same review period propose to relocate beds from the same service area and the number of beds left in the service area would be less than the state bed need rate. The bill also eliminates a requirement that for an approved CON, the long-term care facility from which beds were relocated must reduce the number of beds operated in the facility by at least 10% of the beds relocated.

Additionally, the bill creates a one-time period of acceptance and review that begins six months after the effective date of the bill for CONs that relate to the changes above.

### **Fiscal impact**

The Ohio Department of Health (ODH) will experience an increase in costs due to the shortening of the review cycle for determinations of bed supply and need and CON review. However, this may result in additional CON fee revenue or collection of fee revenue sooner than under current law. Additionally, the abovementioned approval requirement changes will likely allow for additional CON applications to be submitted and/or approved, which would also result in additional fee revenue. Total additional revenue will depend on the number of additional CON applications. CON fees are either (1) \$5,000 for a project not involving a capital expenditure or (2) \$5,000 or 1.5% of the capital expenditure proposed, whichever is greater, up to \$20,000. Fees are deposited in ODH's Certificate of Need Fund (Fund 4710). Any other impacts associated with this provision will depend on if the CON is approved, as well as the increase in the number of beds approved. Lastly, the elimination of the requirement for a long-term care facility, under an

approved CON, to reduce the number of beds operated in the facility by at least 10% of the beds relocated, may result in additional beds remaining available and thus, additional services may be provided, including services covered under state or local health plans.

## **Nursing home change of operator**

The bill removes a requirement that an application for a license to operate a nursing home following a change of operator disclose the owners that own at least 5% of a management firm or business employed to manage the nursing home. The bill also specifies that the bond required to be evidenced as part of a change of operator nursing home license application may be supplied by either the entering operator or the owner of the nursing home. Additionally, the bill removes actions undertaken by the owner of a nursing facility from the definition of a change of operator of a nursing home. The owner of a nursing home must provide written notice of specified information before a change of owner of a nursing facility occurs.

The bill also specifies that a nursing facility that undergoes a change of owner on July 1, 2023, or later is ineligible to receive a quality incentive payment until the earlier of the January 1 or July 1 that is six months after the effective date of the change of owner if, within one year of the change, there is a material increase in lease payments or other financial obligations of the operator to the owner. Lastly, the bill requires, not later than one year after the bill's effective date, that the identity of the operator holding a license to operate a nursing facility and the person holding the Medicaid provider agreement for the facility be the same person.

### **Fiscal impact**

The removal of actions undertaken by the owner of a nursing facility from the definition of a change of operator of a nursing home could reduce the number of such applications and corresponding application fee revenue. Fees collected from change of operator license applications are credited to ODH's General Operations Fund (Fund 4700). It is also possible that quality incentive payments may be delayed under the circumstances specified in the bill.

## **Medication aides**

The bill limits the certification of medication aides to those practicing in nursing homes and residential care facilities by eliminating current law provisions governing the certification of aides practicing in intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). The bill also eliminates the requirement that application and renewal fee amounts be established in rule and instead sets the amounts as follows: \$50 for an initial application, \$50 for a renewal, and \$100 for a late renewal. The bill also requires the completion of eight contact hours of continuing education as a condition of renewal and requires the Ohio Board of Nursing (NUR) to maintain an online certified medication aides registry. The bill also revises the law governing the approval of medication aide training programs, including by establishing a \$50 application fee and reducing, from 70 to 36, the number of hours of instruction that an approved program must provide. The bill authorizes a medication aide to administer prescription medications to residents of nursing homes and residential care facilities, but only pursuant to the supervision of a registered nurse (RN) or licensed practical nurse (LPN), rather than the nurse's delegation, as under current law. For as-needed medications, the bill eliminates the requirement that a nursing assessment of the patient be completed before the medication is administered, and also authorizes a medication aide to administer those medications regardless of whether the supervising nurse is present at the facility. The bill also eliminates the existing law prohibition on

a medication aide administering schedule II controlled substances. The bill also authorizes a medication aide to administer insulin by injection if using an insulin pen device with a dosage indicator, but otherwise maintains the current law prohibition on aides administering medications by injection. Finally, the bill eliminates provisions requiring certain rules governing the certification and regulation of medication aides to be adopted and instead permits NUR to adopt rules.

### **Fiscal impact**

The bill's provision eliminating current law provisions governing the certification of aides practicing in ICFs/IID could reduce fee revenue, assuming these individuals currently receive and renew certificates. The bill's provisions establishing medication aide initial, renewal, and late application fee amounts in the Revised Code rather than in rule should have no current fiscal impact, as the current fees established in rule are the same as those established by the bill. However, the bill establishes a \$50 application fee for medication aide training programs; current rule applies an application fee of \$1,000 for approval to operate a program or \$500 to reapprove programs. Thus, there will be a loss of revenue to NUR regarding the approval of these training programs. If any government entity applies to provide a training program, the entity will see a reduction in initial application fees. Additionally, NUR will experience an increase in information technology and administrative costs to establish and maintain the online certified medication aides registry. Lastly, it is possible that county nursing homes may experience a minimal increase in costs to adjust policies regarding medication aide supervision and delegation.

### **Competency evaluation programs, training, and certified nurse aides**

The bill prohibits ODH rules from requiring a training and competency evaluation instructor to have experience in a nursing home so long as the program coordinator supervising the program is an RN with two years of nursing experience, including at least one year providing services in a nursing home or ICF/IID. The bill also eliminates existing authority for ODH to approve competency evaluation programs, but retains ODH's authority to conduct such programs. The bill also authorizes training and competency evaluation programs to also conduct competency evaluations. The bill establishes an alternative condition that an individual may satisfy to be eligible for employment as a nurse aide in a long-term care facility and establishes an additional ground upon which an individual is to be included in ODH's nurse aide registry. The bill also specifies that individuals on ODH's nurse aide registry are to be referred to as certified nurse aides (CNAs), and that only individuals on the registry are permitted to use the designation.

### **Fiscal impact**

ODH may experience a minimal increase in costs related to the expansion of the nurse aide registry, depending on the number of CNAs that may be added to the registry. ODH may also realize a decrease in administrative costs related to the approval of competency evaluation programs.

### **Nursing home quality improvement projects and conditional employment**

Regarding existing law that requires nursing homes to participate in at least one quality improvement project every two years, the bill requires priority to be given to projects that assist

with workforce and authorizes nursing homes to consider projects on an Ohio Department of Aging-developed list, instead of requiring the project to come from the list.

The bill extends to 60 days, from 30 days, the amount of time that a home or adult daycare program may conditionally employ an applicant while the applicant's criminal records check results are pending. These provisions are not anticipated to have a direct fiscal impact.

### **Medicaid reimbursement for dispensing drugs in lockable containers or tamper-evident containers**

The bill amends H.B. 33 of the 135<sup>th</sup> General Assembly to add a number of additional requirements and rules to the lockable and tamper-evident container prescribing program established by H.B. 33. Within 30 days of the bill's effective date, the Ohio Department of Medicaid (ODM) must add suitable lockable and tamper-evident containers to the Medicaid Program's over-the-counter products list, establish pharmacy reimbursement fees for these products, and instruct the state Medicaid Program's single pharmacy benefit manager to take enumerated actions regarding the program.

The bill further specifies that within 90 days of the bill's effective date, ODM must start reimbursing pharmacists under the lockable and tamper-evident prescribing program, apply for any required federal waiver, notify pharmacies of the new pharmacy benefit, and take any additional action to follow the requirements of the legislation.

Finally, the bill sets the reimbursement formula for the supplemental payment under the program, and requires ODM to publish an annual report for the General Assembly, Board of Pharmacy, Department of Mental Health and Addiction Services, and the Joint Medicaid Oversight Committee.

As H.B. 33 already established the lockable and tamper-evident container prescribing program, the changes made by the bill may or may not lead to increased service costs for the Department. This would depend on the extent to which the specific reimbursement requirements set in the bill increase service costs to the Department over those costs the Department would incur to comply with the original lockable and tamper-evident prescribing program established in previous legislation. If these changes to the program increase service costs, the expense would be a shared state and federal expense. In general, the federal government reimburses approximately 63% of Medicaid service costs.

Meeting the various deadlines and reporting standards set by the bill will likely increase administrative expenses for the Department. Administrative expenses are typically reimbursed by the federal government at a 50% rate.

### **Immunizations**

The bill's immunization provisions have no direct fiscal effect on the state or local subdivisions. The bill effectively broadens the list of professionals who may administer certain immunizations and lowers the age of those who may receive them. It allows a pharmacist, pharmacy intern, or pharmacy technician (certified or registered) to administer a vaccine for any

disease to any person who is five or older.<sup>1</sup> Under current law, only licensed pharmacists and pharmacy interns are permitted to administer a vaccine to: (1) a person between the ages of seven and 13 for influenza, COVID-19, and any other disease pursuant to a prescription and (2) a person over 13 for any disease.

When administering a vaccine to a person under 18, the bill also requires the pharmacist, pharmacy intern, or pharmacy technician to inform the individual's parent or legal guardian of the importance of well child visits with a pediatrician or other primary care provider, and to refer patients when appropriate.

The State Board of Pharmacy is required to adopt and update rules on the administration of immunizations to accommodate the expansion of the authority for pharmacists, pharmacy interns, and pharmacy technicians under the bill. The Board does not expect these provisions to create any discernible additional rulemaking, licensing, or regulatory costs.

## **Adult Day Care**

The bill reappropriates all remaining funds from Dedicated Purpose Fund appropriation line item (ALI) 042628, Adult Day Care, at the end of FY 2023 and FY 2024, respectively, to the successive fiscal year and requires the Director of Budget and Management to administer all grants to adult daycare providers no later than December 31, 2024. The funding source for ALI 042628 is the Coronavirus State Fiscal Recovery Fund, which was authorized by the American Rescue Plan Act. These federal funds must be obligated by December 31, 2024, and spent by December 31, 2026.

As of this writing, 99.7% of the original \$8 million appropriation has already been expended. Therefore, nearly \$23,000 would be reappropriated to FY 2025 under the bill, if no other spending occurs from ALI 042628 in June 2024.

## **ICF/IID Peer Group 5 payment rate**

The bill eliminates provisions of existing law that prohibit the per-Medicaid-day payment rate for ICFs/IID in Peer Group 5 from exceeding the average total per-Medicaid-day payment rate for development centers that was in effect on July 1, 2023. The bill also eliminates provisions of existing law that establish fixed amounts for the capital, direct-care costs, indirect-care costs, and other protected costs components for the per-Medicaid-day payment rate for new ICFs/IID in Peer Group 5.

The bill requires ODODD to redetermine the per-Medicaid-day payment rate for ICFs/IID in Peer Group 5 that on July 1, 2023, exceeded the average total rate for development centers that was in effect on that date. These changes will allow ODODD to make payments to ICFs/IID closer in value to the amount available for such purposes.

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<sup>1</sup> The bill authorizes a certified pharmacy technician or registered pharmacy technician to administer such immunizations, but under the direct supervision of a pharmacist and if certain training requirements are met.

## Synopsis of Fiscal Effect Changes

The substitute bill adds provisions dealing with (1) certificate of need (CON) and change of nursing home operator application changes, which are both administered by the Ohio Department of Health, (2) reimbursement for dispensing drugs in lockable containers or tamper-evident containers by the Department of Medicaid, and (3) the provider-payment rate formula used by the Ohio Department of Developmental Disabilities (ODODD) when determining payments to intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in Peer Group 5. These provisions were not in the As Passed by the Senate version of the bill. Moreover, the substitute bill reappropriates remaining amounts from Dedicated Purpose Fund appropriation line item 042628, Adult Day Care. Thus, any impacts discussed above are new to the substitute bill. The substitute bill also includes provisions regarding nursing home quality improvement projects and extending the time that a home or adult daycare program can conditionally employ an applicant while awaiting the applicant's background check results. These provisions have no fiscal impact and were not in the As Passed by the Senate version.