



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 248 of the 131st G.A.

Date: October 6, 2015

Status: As Introduced

Sponsor: Reps. Sprague and Antonio

Local Impact Statement Procedure Required: Yes

Contents: To prohibit certain health care plans and the Medicaid Program from denying coverage for opioid analgesic drugs with abuse-deterrent technology based solely on cost

State Fiscal Highlights

- The bill requires that the Medicaid Program provide coverage for all abuse-deterrent opioid analgesic drugs. Assuming 5% of opioid analgesic prescriptions would be written for abuse-deterrent formulations for Medicaid recipients, the cost could be approximately \$11.2 million to \$167.0 million per year, beginning January 1, 2017. These costs could be much higher if utilization of nonabuse-deterrent opioids exceeds 5% of total opioid analgesic prescriptions. For those enrolled in traditional Medicaid, LSC assumes the standard federal reimbursement rate of 64% would apply. For those enrolled in Group VIII (Medicaid expansion), LSC assumes the federal reimbursement rate would be 95% in calendar year (CY) 2017, 94% in CY 2018, 93% in CY 2019, and 90% in CY 2020 and thereafter.
- The bill may increase expenditures for the state self-insured health benefit plans, beginning in either FY 2017 or FY 2018, by up to \$68,000 per year or more. Benefits and claims associated with the state health benefit plans are paid from the Health Benefit Fund (Fund 8080).

Local Fiscal Highlights

- The provisions related to health insurers, including public employee benefit plans, may increase costs to local governments to provide health benefits to employees and their dependents, beginning in CY 2017. Any such increase is likely to exceed \$100,000 per year statewide in total, for counties, municipalities, townships, and school districts. However, any political subdivision that already provides the specified prescriptions would experience no cost increase.

Detailed Fiscal Analysis

Medicaid Program

The bill requires that the Medicaid Program, including Medicaid managed care organizations under contract with the Ohio Department of Medicaid (ODM), provide coverage for all abuse-deterrent opioid analgesic drugs, beginning January 1, 2017. In addition, the bill specifies that any cost-sharing requirements cannot exceed the lowest cost-sharing requirements applied to opioid analgesic drugs without abuse-deterrent properties. Finally, the bill prohibits the Medicaid Program from penalizing a prescriber for prescribing an abuse-deterrent opioid analgesic drug or not prescribing an opioid analgesic drug.

Fiscal effect

According to ODM, the Medicaid Program spent \$58.2 million in CY 2014 for drugs that could be impacted by the bill. A total of 98% of these prescriptions were for generic drugs. The average cost for a nonabuse-deterrent opioid analgesic through the fee-for-service component of Medicaid was \$0.62 per pill. However, the average cost for an abuse-deterrent opioid analgesic would be between \$3 and \$36 per pill. Assuming 5% of opioid analgesic prescriptions would be written for abuse-deterrent formulations for Medicaid recipients,¹ the cost could be approximately \$11.2 million to \$167.0 million per year, beginning in CY 2017. These costs could be much higher if utilization of nonabuse-deterrent opioids exceeds 5% of total opioid analgesic prescriptions. For those enrolled in traditional Medicaid, LSC assumes the standard federal reimbursement rate of 64% would apply. For those enrolled in Group VIII (i.e., Medicaid expansion), LSC assumes the federal reimbursement rate would be 95% in CY 2017, 94% in CY 2018, 93% in CY 2019, and 90% in CY 2020 and thereafter.

Health insurers

The bill would require health insurers that provide prescription drug coverage to provide coverage for all abuse-deterrent opioid analgesic drugs.² The bill specifies that insurers are prohibited from excluding or denying reimbursement for an abuse-deterrent opioid analgesic drug solely due to the cost of the drug. "Health insurers" in the bill include health insuring corporations (HICs), sickness and accident insurance policies for an individual or group, public employee benefit plans, and multiple employer welfare arrangements. The bill applies to policies, contracts,

¹ According to the Department of Administrative Services, for the state employee health plans, approximately 5% of all opioid analgesics prescribed in FY 2015 had an abuse-deterrent formulation.

² The bill defines an "abuse-deterrent opioid analgesic drug" as a brand or generic opioid analgesic drug product that is approved by the United States Food and Drug Administration (FDA) and that has labeling claims that indicate that the drug product is expected to result in a meaningful reduction in abuse.

agreements, or plans issued, delivered, established, or modified in Ohio on or after January 1, 2017.

The bill provides that any prior authorization requirements or utilization review measures contained in a policy, contract, or agreement for opioid analgesic drugs, and any coverage denials made related to those requirements or measures, must not require treatment failure of nonabuse-deterrent opioid analgesic drugs in order to access abuse-deterrent opioid analgesic drugs. The bill prohibits a policy or plan from increasing its prescription cost-sharing requirements in order to achieve compliance with the requirements under this bill. The bill specifies that any cost-sharing requirements for abuse-deterrent opioid analgesic drugs must not exceed the lowest cost-sharing requirements applied to opioid analgesic drugs without abuse-deterrent properties.

The bill also specifies that the Superintendent of Insurance is not required to determine the impact of the mandated health benefits under this bill. Under existing law, no mandated health benefits legislation enacted by the General Assembly may be applied to sickness and accident insurers or other health benefits policies, plans, or other arrangements until the Superintendent of Insurance determines that the provision can be applied fully and equally in all respects to employee benefit plans subject to regulation by the federal Employee Retirement Income Security Act of 1974 (ERISA) and employee benefit plans established or modified by the state or any political subdivision of the state.

Fiscal effect

According to a document entitled *Timeline of Selected FDA Activities and Significant Events Addressing Opioid Misuse and Abuse*, published on the U.S. FDA website,³ there are four prescription drugs (Oxycontin, Embeda, Hysingla ER, and Targiniq ER) that are currently approved by the FDA and labeled as having abuse-deterrent properties. According to a Department of Administrative Services official, the state's self-insured health benefit plans are currently providing coverage for the first three drugs while the fourth is not yet available on the market. However, the restrictions that the bill would place on cost-sharing could increase costs to the state's plans. The costs are paid from the Health Benefit Fund (Fund 8080). Fund 8080 receives funding through state employee payroll deductions and state agency contributions toward their employees' health benefits, which come out of the GRF and various other state funds.⁴ In FY 2015, actual expenditures from Fund 8080 were \$632.3 million.

³ The U.S. FDA website is located at www.fda.gov, visited October 5, 2015.

⁴ Currently, full-time state employees pay 15% of the premium cost, while state agencies pay the remaining amount.

Currently, the state plans impose copayments of \$25 for Oxycontin and Embeda and \$50 for Hysingla ER.⁵ The state plan's spending related to opioid drugs in FY 2015 was about \$2.2 million, for a total of 62,437 prescriptions. Of the total spending, approximately \$461,000 was for 948 prescriptions for Oxycontin, Embeda, and Hysingla ER. In contrast, the lowest drug copayment for a 30-day supply of generic opioid drug without abuse-deterrent properties is \$10.⁶ Assuming the state's plans would have to lower the copayments for the three drugs to \$10 and the incentive to utilize generic nonabuse-deterrent opioids is eliminated, the estimated costs to the state's plans would range between \$14,500 and \$68,000 per year. Any actual increase would depend on the number and type of opioids utilized by members of the state plans and the amounts of rebates and discounts associated with such drugs that the plans would receive.

The requirements under this bill could increase costs to local governments to provide health benefits to employees and their dependents. Any such increase is likely to exceed \$100,000 per year statewide in total, for all counties, municipalities, townships, and school districts. However, any political subdivision that already provides the specified prescriptions, and complies with the bill's restrictions on cost sharing, would experience no cost increase. LSC staff is not able to estimate the bill's fiscal impact on local governments due to data limitations on specific prescription benefits provided by local governments' health benefits plans. Based on the Ohio Public Employees Retirement System Comprehensive Annual Financial Report 2014, in 2014 there were 181,079 local government employees compared to 65,398 people employed by the state. Based on the ratio of local governments' employees to state employees, the information related to the state health benefit plans above, and the likelihood that at least some local health plans do not currently provide coverage for the abuse-deterrent versions of these drugs, LSC staff consider it likely that the costs to local governments would exceed \$100,000 per year statewide.

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⁵ Based on the state plans' prescription data in FY 2015, the total cost (amounts paid by members and plans) for the three drugs were: Oxycontin – between \$142.15 and \$2,567.07, Embeda – between \$171.34 and \$801.85, and Hysingla ER - \$368.89. LSC staff do not have information related to discounts or rebates associated with these three drugs.

⁶ Based on the state plans' prescription data in FY 2015, the average costs paid by a member for an opioids prescription (with or without abuse-deterrent properties) ranged between \$2.39 and \$50.