OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 24 of the 132nd G.A.

Status: As Enacted

Sponsor: Rep. Ginter

Local Impact Statement Procedure Required: No

Subject: To expand certain property tax exemptions, clarify motor fuel tax law, modify Medicaid payment rates for intermediate care facilities for individuals with intellectual disabilities, make an appropriation, and declare an emergency

State & Local Fiscal Highlights

	FY 2018	FY 2019	FUTURE YEARS
State Higher Education Improvement Fund (Fund 7034)			
Expenditures	- 0 -	Increase of $750,000	Potential increase up to the balance of the $750,000 appropriated
Counties, Municipalities, Townships, School Districts, and Other Local Governments			
Revenues	- 0 -	Loss up to $18,000	Loss up to $18,000 per year
Political Subdivisions in Montgomery County			
Revenues	Loss up to $52,000	Loss up to $52,000	Loss up to $52,000 per year

Note: The state or school district fiscal year is July 1 through June 30. For example, FY 2018 is July 1, 2017 – June 30, 2018. For most local governments, the fiscal year is the calendar year.

- The bill expands the current property tax exemption for veterans' organizations to include certain social welfare organizations that are exempt from the federal income tax under section 501(c)(4) of the Internal Revenue Code. The provision would reduce local property tax receipts by up to $18,000 per year for these organizations, all of which are chapters of the Disabled American Veterans.
- A provision exempting from tax the real property of an institution that is a 501(c)(3) charitable organization exempt from federal income tax, that provides housing for developmentally disabled persons, and that is funded at least in part by a county board of developmental disabilities would reduce property tax revenue to political subdivisions in Montgomery County by up to $52,000 per year.
- The bill establishes a new formula to be used to determine the Medicaid payment rates for services provided by intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). The statewide average ICF/IID rate is anticipated to increase by approximately 5% as a result of the changes. However, the funds necessary to support the new reimbursement methodology in FY 2019 are contained in the Ohio Department of Developmental Disabilities' (ODODD) budget in

Am. Sub. H.B. 49 of the 132nd General Assembly; thus, no appropriation increases are provided for ODODD in the bill.

- The bill makes a capital appropriation of $750,000 for the Boys and Girls Club of Newark for the FY 2019-FY 2020 capital biennium.
- The bill authorizes the Governor to convey land to the city of Columbus.
- The bill permits the Ohio University Heritage College of Osteopathic Medicine (OU) to partner with Cleveland State University (CSU) to allow OU to enroll CSU students. Depending on the number of students that enroll at OU under the bill, OU's State Share of Instruction (SSI) and tuition revenues as well as its expenditures may increase. Conversely, the SSI allocations for the other five medical colleges may decrease.
- The bill codifies current practice regarding an income tax deduction for medical insurance premiums.
- The bill declares an emergency so would go into immediate effect.

Detailed Fiscal Analysis

The bill expands two existing property tax exemptions, establishes a new formula to be used to determine the Medicaid payment rates for services provided by ICFs/IID, makes a capital appropriation, and makes other changes. The following sections provide brief descriptions and summary analyses of the bill's provisions.

Property tax exemption for veterans' organizations

H.B. 24 modifies an existing tax exemption for property held or occupied by a veterans' organization by extending eligibility for the exemption to the property of qualifying veterans' organizations that are exempt from the federal income tax under section 501(c)(4) of the Internal Revenue Code (IRC).

The expanded exemption requires that qualifying property of a 501(c)(4) social welfare organization meet the IRC criteria as a 501(c)(19) veterans' organization. A veterans' organization qualifies for federal income tax exemption under section 501(c)(19) if it is organized and operated as a nonprofit, at least 75% of its members are veterans and current members of the U.S. Armed Forces, and substantially all the other members of the organization are cadets, spouses, ancestors, or lineal descendants of veterans or current members of the U.S. Armed Forces.

H.B. 24 limits the scope of the expanded exemption by requiring property to be used primarily for meetings and administration of the veterans' organization or for providing nonprofit programs and supportive services to veterans or current members of the U.S. Armed Forces or their families.

Under current law, a veterans' organization's property is tax exempt if the organization qualifies for exemption from federal income tax under section 501(c)(19) or 501(c)(23) of the Internal Revenue Code and the property generates less than $36,000 in gross rental income for the tax year.

LSC staff identified 14 chapters of the Disabled American Veterans (DAV) organization that would benefit from this exemption, and consider this list likely to be complete, though it is possible there are other eligible organizations and properties. As seen in Table 1 below, enacting the bill would reduce local property tax receipts by up to $18,000 per year. Actual losses could be lower depending on the types of property tax levies in applicable taxing jurisdictions. In some cases, the revenue losses incurred by the bill would be mitigated by shifting the tax liability to other property taxpayers.

Table 1. Properties of 501(c)(4) Organizations Assumed to be Eligible Under H.B. 24

County	City	DAV Chapter	Federal EIN	Parcel Number	Annual Tax
Athens	Athens	37	316077780	A027380002203	$4,024.76
Belmont	Bellaire	117	346596142	29-03486.000	$1,795.80
Champaign	Urbana	31	344473360	K48-25-00-03-19-079-00	$295.02
Clark	Springfield	13	316077783	2400300019403020	$5,910.06
Columbiana	East Liverpool	47	346596121	37-09586.000	$0
Fairfield	Lancaster	40	316077973	0546284900	$1,828.24
Hancock	Findlay	43	344461862	600000314590	$1,743.38
Jackson	Jackson	45	311090234	H140100023600	$0
Lorain	Lorain	20	346596601	0202026105003	$0
Muskingum	Zanesville	12	352458988	81-01-04-01-000	$941.02
Scioto	Wheelersburg	134	237332553	17-0863.000	$0
Stark	Alliance	50	237329551	2808113	$651.92
Trumbull	Youngstown	11	237329528	38-121560	$0
Washington	Whipple	52	465552996	140053540000	$0
				TOTAL	**$17,190.20**

Property tax exemption for housing for developmentally disabled persons

H.B. 24 would exempt from tax the qualifying real property of an institution that is a 501(c)(3) charitable organization exempt from federal income tax, the primary purpose of which is to provide housing for developmentally disabled persons, and that is funded at least in part by a county board of developmental disabilities. In order for a parcel of real property to qualify as qualifying property, it must be used to acquire, develop, or provide housing for developmentally disabled persons, be leased to such persons for housing purposes, or be leased to another charitable organization to be used for charitable purposes. The bill further states that it is remedial, intended to clarify the intent of the General Assembly, and applies not only to future tax years but also to any tax years at issue in any application for exemption or appeal of a decision on such an application.

Based on testimony last year on H.B. 49, the current main operating budget act, this provision appears to pertain to a Board of Tax Appeals decision reversing a determination that such homes are exempt from property tax, in a case involving property in Montgomery County.[1] The testimony characterized tax exemption for these properties as the long-standing status quo, and said the Ohio Association of County Boards of Developmental Disabilities was not aware of any such properties on which property taxes are being paid.

The decision referenced in the testimony is Board of Tax Appeals case no. 2016-495, entered April 11, 2017, which reversed a determination by the Tax Commissioner that Montgomery County parcel N64-01010-0014 was exempt from tax for tax years 2014 and 2015. Records on the Montgomery County Auditor's website show the parcel owned by Miami Valley In-Ovations Inc. since 2013, and exempt from tax for 2017, with tax payments of $2,304.66 for tax year 2014 and no tax payments since that year.

The Montgomery County Auditor's records list 66 properties in the county owned in the name of Miami Valley In-Ovations Inc. or Miami Valley In-Ovations. For tax year 2017, 49 are shown as exempt from tax and 17 as owing tax, a total of $51,977.76 for the year. LSC does not know how many of these properties meet the use requirements of the bill, or how much of the tax revenue from this organization would be lost by political subdivisions located in Montgomery County.

Two spokespersons for the Ohio Association of County Boards of Developmental Disabilities said in January 2018 that they do not know how many homes of this type are in Ohio. The Director said she believes only one organization of this type is paying taxes, and that otherwise this bill is codifying current practice. If this is in fact the case, no wider fiscal impact beyond the revenue loss to Montgomery County would result. But potentially the bill would preclude political subdivisions challenging the tax-exempt status of properties statewide, if any, that the Board of Tax Appeals' case would suggest could produce revenue gains, thereby resulting indirectly in revenue losses to those political jurisdictions and to other neighboring subdivisions that receive tax revenues from such parcels.

ICF/IID reimbursement methodology

The bill establishes a new formula[2] to be used to determine the Medicaid payment rates for services provided by ICFs/IID. It includes the following: adjustments to direct care, indirect care, and capital cost centers; a provision that allows ICFs/IID to be reimbursed the greater of the rate determined under the new formula and the rate determined under the current reimbursement methodology, with a few modifications,

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[1] Testimony of Dean Fadel, Board President, Ohio Association of County Boards of Developmental Disabilities, before the Senate Finance Committee on H.B. 49, June 14, 2017.

[2] H.B. 49 required the Ohio Department of Developmental Disabilities (ODODD) to finalize recommendations for a new reimbursement formula for ICFs/IID no sooner than July 1, 2018 and no later than January 1, 2019. ODODD was required to work in collaboration with the following entities to finalize these recommendations: (1) the Ohio Association of County Boards, (2) the Ohio Health Care Association, (3) the Ohio Provider Resource Association, (4) The Values and Faith Alliance, and (5) the Academy of Senior Health Services.

until July 1, 2021; a change from three peer groups to five peer groups; and a change in the instrument used to determine resident assessments. Additionally, beginning July 1, 2020, the bill establishes 13 quality indicators to be used in determining an ICF/IID's quality incentive payment.

Overall impact

ODODD contracted with the Public Consulting Group (PCG) in the fall of 2015 to develop a new reimbursement methodology. The organization studied a variety of factors including direct care, indirect care, and capital costs, as well as average bed days at ICFs/IID, for approximately 400 ICFs/IID. This number does not include about 20 ICFs/IID that are currently in peer group 3[3] and 20 new ICFs/IID for which a cost report was not available. The new methodology will result in an additional $25.8 million in FY 2019 and in subsequent fiscal years for ICF/IID services. As a result, the statewide average ICF/IID rate is anticipated to increase by approximately 5%. The funds to support the new methodology in FY 2019 are included in ODODD's budget in H.B. 49; thus, no appropriation increases are provided for ODODD in the bill. Table 2 below shows the differences between the new and the current methodologies for cost centers that are modified under the new methodology.

Table 2. Difference Between Current and New Reimbursement Methodology

	New Methodology	Current Methodology	Variance
Direct care	$356,186,284	$342,298,230	$13,888,054
Indirect care	$120,494,933	$108,646,504	$11,848,428
Capital	$35,057,098	$34,996,000	$61,098
		SUM OF VARIANCE	**$25,797,581**

Another way to look at the impact of the change in methodology is to consider the per Medicaid day payment rate or the per diem paid to ICFs/IID. Table 3 below shows the statewide average ICF/IID rate from 2010 to 2018, as well as the projected rate for 2019.

Table 3. Per Diem Rate, 2010-2019

Fiscal Year	Statewide Average ICF/IID Rate
2010	$278.15
2011	$278.15
2012	$282.59
2013	$282.92

[3] Peer group 3 (peer group 5 under new methodology) consists of ICFs/IID that (1) were first certified after July 1, 2014, (2) have a Medicaid-certified capacity of six or fewer, (3) have a contract with ODODD for 15 years and the contract allows ODODD to approve all admissions and discharges, and finally, (4) have residents that were admitted directly from a state developmental center or are at risk of being admitted to such a center.

Table 3. Per Diem Rate, 2010-2019	
Fiscal Year	**Statewide Average ICF/IID Rate**
2014	$282.84
2015	$282.77
2016	$283.32
2017	$290.10
2018	$290.10
2019*	$305.00

*Projected

Major ICF/IID changes

Peer groups

Under the current system there are three peer groups. ICFs/IID are grouped into one of these three categories depending on the number of beds a facility has. Under the new system, there will be five peer groups. An individual ICF/IID's costs vary according to the size of a facility. Having additional peer groups could more adequately account for differences in costs. Table 4 below shows the current and new peer groups. In order for an ICF/IID to be included in peer group 3 under the current grouping or peer group 5 under the new, a facility must meet certain criteria (e.g. residents were admitted directly from a state developmental center or are at risk of being admitted to such a center and have a contract with ODODD for 15 years). This group only includes about 20 ICFs/IID.

Table 4. Peer Group Reclassification		
Number of Beds	**Current Peer Group**	**New Peer Group**
17 or more	1	1
9 to 16	1	2
8	2	3
4 to 7	2	4
6	3	5

Capital costs

The current method for reimbursing capital costs is based on historical cost and considers depreciation, interest expense, and lease payments. The new method will use the fair rental value (FRV) as the basis. Specifically, the bill provides for an ICF/IID's rate for capital costs to equal the sum of its nonextensive renovation rate and the lesser of (1) the sum of its FRV rate, equipment rate, and secondary building rate and (2) a limit to be determined by ODODD. The FRV method considers the real economic value rather than the financial accounting value and incentivizes providers to maintain facilities. ODODD will need to collect data and make system changes to switch to an FRV system.

Direct care costs and resident assessments

The bill provides for an ICF/IID's rate for the direct care costs component of the new formula to be an amount determined using cost per case-mix units and case-mix scores and for the rate to be adjusted by an estimated inflation rate. In addition, the bill permits the resident assessment instrument used in determining residents' case-mix scores under the new formula to be different from the resident assessment instrument used under the current formula.

As of the end of January 2018, there were approximately 5,400 residents in ICFs/IID. Currently, individuals are assessed using an Individual Assessment Form (IAF), which is filled out by the ICF/IID provider, and includes questions that can automatically place an individual in a higher acuity level. Individuals are currently assessed every three months. Under the new methodology, ODODD will use the Ohio Developmental Disabilities Profile (ODDP)[4] to assess residents. ODODD will conduct all initial assessments of current residents. After this initial assessment, updates will be completed when an individual experiences a significant change in his or her condition. The bill requires each ICF/IID to submit to ODODD no later than 15 days after the end of each calendar quarter, revised assessment data for each resident for whom there are changes in assessment. An ICF/IID must submit an attestation for each resident for whom there are no such changes. Under the ODDP, an individual's response to questions are cumulatively scored, which ODODD believes will ensure less fluctuation in scoring. As a result of this change, ODODD will experience an increase in administrative costs to conduct assessments. ODODD maintains that existing staff will be utilized to conduct assessments.

Quality incentives

Beginning in FY 2021, ODODD will implement a per Medicaid day quality incentive payment for each ICF/IID that earns at least one point for the appropriate fiscal year. An ICF/IID will receive at least one point for each of the 13 quality indicators met. The payment an ICF/IID will receive will be based on the relative weight point value for the fiscal year and the number of points awarded. Quality indicators are specified by the bill and include the creation and promotion of diverse opportunities for residents to participate in the community, offering opportunities for off-site day programming activities, and identifying and placing all residents 18 years of age or older who have an interest in employment on the path to community employment. This quality incentive payment will replace a direct support provider payment (DSPP), which is a per diem rate add-on that is based on each provider's direct care costs. This add-on was included beginning in FY 2017 and will continue to be included until the end of FY 2020. Beginning in FY 2021, approximately $10 million to $11 million that was previously used for DSPP will instead be used for the quality incentive payments.

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[4] The ODDP is also currently used when determining acuity levels/assessments for individuals on ODODD's Medicaid Waiver programs.

Pilot program

ODODD is permitted to establish a pilot program that does both of the following: requires ICFs/IID to submit data regarding their ability to meet proposed quality indicators during the last six months of calendar year 2018; and provides for ICFs/IID that submit the data to receive an incentive payment during FY 2020. This provision is permissive, so any costs will depend on whether the program is implemented and any program specifications established by ODODD.

Current methodology with modifications effective for three years

Until July 1, 2021, ODODD will operate two reimbursement methodologies – the current reimbursement with modifications and the new reimbursement. An ICF/IID provider will receive payment under whichever method results in a higher payment. Based on the study conducted by PCG, 84 ICFs/IID are expected to receive payment under the current reimbursement methodology and the remaining 309 ICFs/IID are expected to receive payment under the new reimbursement methodology. On July 1, 2021, all ICFs/IID will be paid under the new reimbursement methodology.

Capital appropriation

H.B. 24 appropriates $750,000 for the Higher Education Improvement Fund (Fund 7034) line item C36924, Boys and Girls Club of Newark. The appropriations made in the bill are for the biennium ending June 30, 2020, and they are in addition to any other appropriations made for the FY 2019-FY 2020 capital biennium.

OSU – city of Columbus land conveyance

The bill authorizes the Governor to execute one or more deeds conveying a parcel of state-owned land located in Perry Township in Franklin County to the city of Columbus. This property is under the jurisdiction of the Ohio State University (OSU) and is located near the OSU Airport in the northwest area of Columbus. If the city of Columbus and OSU do not have a purchase agreement by July 31, 2018, then after that date the property may be sold to one or more buyers, either as a single tract or multiple tracts. The bill requires consideration for the conveyance to be at a price and any terms and conditions acceptable to the OSU Board of Trustees. Net proceeds of the sale must be deposited into OSU accounts for purposes to be determined by its Board of Trustees. Under the bill, authorization to convey the property expires five years after the provision's effective date.

Medical student partnership

Current law authorizes the Northeast Ohio Medical University (NEOMED) to partner with Cleveland State University (CSU) to establish the NEOMED Academic Campus at CSU. The partnership enables 50% or more of NEOMED's medical curriculum to be based at CSU, local hospitals, and community and neighborhood-based primary clinics in Cleveland. CSU students enrolled at NEOMED under the partnership count toward NEOMED's full-time equivalent (FTE) students for the purposes of the "Medical II" set-aside in the State Share of Instruction (SSI) formula.[5] This set-aside, amounting to $97.6 million in both FY 2018 and FY 2019, is allocated to Ohio's six medical colleges in proportion to their share of the statewide total of each institution's three-year average Medical II FTEs.[6]

The bill allows the Ohio University Heritage College of Osteopathic Medicine (OU) to become a member of the partnership and authorizes OU to admit and enroll a portion of the CSU students provided for under NEOMED's existing arrangement with CSU (the College of Osteopathic Medicine operates a campus located in Cleveland). As a result, OU's revenues and expenditures may increase, depending on the number of students that enroll at OU under the partnership. For instance, OU may gain tuition revenue from the students enrolling at the institution but its expenditures may increase to educate them. According to OU's website, in-state tuition and fees for full-time medical students were $35,584 in FY 2017. In addition, OU may be credited additional FTEs in the Medical II set-aside formula due to the bill, which may increase its proportion of the total Medical II set-aside allocation. Conversely, the proportion distributed to the other five medical colleges may decrease.

Taxation of medical insurance premiums

The bill codifies an income tax deduction for eligible subsidized health insurance premiums. A subsidized health plan is one in which an entity (such as an employer) pays a portion of an individual's premiums for health insurance coverage. Examples include employer-sponsored plans, Medicare, and insurance purchased with the help of a subsidy on an exchange.

Continuing law allows a tax deduction for (a) the premiums an individual pays for an unsubsidized health insurance plan (i.e., a plan for which the individual pays the entire cost) and (b) other "medical care" expenses, provided those expenses exceed 7.5% of the individual's Ohio adjusted gross income (AGI). Generally, "medical care" expenses would include amounts paid for subsidized health insurance, but current law specifically excludes subsidized health insurance premiums from the deduction.

Before tax year (TY) 2017, Ohio income tax returns and instructions were not in accord with this law, and consequently, taxpayers were able to claim a deduction for certain subsidized health insurance premiums (if such premiums, combined with the taxpayer's other medical care expenses, were greater than 7.5% of the taxpayer's AGI). Beginning in TY 2017, the Department of Taxation amended the tax return instructions to accord with current law, thereby disallowing the deduction.

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[5] SSI is the state's primary means to distribute operating subsidies to state institutions of higher education.

[6] The six medical colleges are: the Boonshoft School of Medicine at Wright State University, Northeast Ohio Medical University, Ohio State University College of Medicine, Ohio University Heritage College of Osteopathic Medicine, University of Cincinnati's College of Medicine, and University of Toledo's College of Medicine and Life Sciences.

The bill reverses this action by codifying the deduction for eligible subsidized insurance premiums, for TY 2017 and thereafter.[7] As this provision codifies prior practice, it would have no fiscal effect.

Motor fuel tax

H.B. 24 modifies definitions used in administering the motor fuel tax. The existing definition of "terminal" would lose its reference to a "terminal control number" assigned by the Internal Revenue Service, and the definition would no longer include specificity pertaining to motor fuel "removed at a rack." The current definition of "terminal operator" is replaced by "consumer," which refers to "a buyer of motor fuel for purposes other than resale in any form."

The bill also adds specificity to the definition of "aviation fuel dealer," and modifies a prohibition in current law against such dealers purchasing fuel for consumption in Ohio without first being registered by the Tax Commissioner, prohibiting them rather from purchasing fuel for resale in Ohio without being licensed by the Commissioner. The bill also authorizes the Tax Commissioner to revoke the license of an aviation fuel dealer that files a false monthly report.

The changes are of a corrective nature, generally modifying (or reversing) changes made by the transportation budget act (H.B. 26 of the 132nd General Assembly). The change in definition of "aviation fuel dealer" affects only reporting obligations, not motor fuel tax revenue, as motor fuel used to operate aircraft is exempt from the tax under section 5735.05(A)(7) of the Revised Code.

Emergency clause

The bill declares an emergency, so would go into effect upon passage and the Governor's action.

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[7] R.C. 5747.01(A)(11) and Section 14 (emergency clause). The deduction is available for any premiums that are also eligible to be claimed as an itemized medical expense deduction on a taxpayer's federal tax return. Only premiums that are paid with after-tax money are eligible for the federal deduction; consequently, the Ohio deduction is not available for premiums that are paid by making a pre-tax reduction in the taxpayer's salary (as is done with many employer-sponsored plans). *See* Internal Revenue Service, Publication 502, "Medical and Dental Expenses" (2017), at https://www.irs.gov/pub/irs-pdf/p502.pdf.