OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 470 of the 131st G.A. **Date**: December 7, 2016

Status: As Re-referred to Senate Rules & Reference **Sponsor**: Rep. Schuring

Local Impact Statement Procedure Required: No

Contents: Provides for insurance coverage of autism services, requires the licensure of palliative care facilities, and provides for the designation of a lay person to provide aftercare to a hospital inpatient

State Fiscal Highlights

- The Ohio Department of Health (ODH) is required to establish a licensure program for palliative care facilities. ODH will likely have initial start-up costs related to the program, as well as ongoing regulatory costs. However, revenues generated from license and inspection fees could partially offset ongoing program costs.
- ODH is permitted to adopt rules as necessary to implement the lay caregiver provisions in the bill. ODH may incur a minimal increase in administrative costs if it decides to adopt rules.
- The Attorney General's Office may realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
- The Department of Rehabilitation and Correction could realize an increase in incarceration costs for any violations pertaining to the assisting suicide provision.
- The directors of Aging and Health are to develop recommendations regarding the establishment of standards and procedures for the operation of memory care units in this state and to report these recommendations to the General Assembly. As such, ODH and the Department of Aging will realize an increase in administrative costs.

Local Fiscal Highlights

- The autism coverage requirements of the bill may increase costs to counties, municipalities, townships, and school districts of providing health benefits to employees and their beneficiaries. LSC staff could not determine the precise magnitude of the fiscal impact due to lack of information on the number of individuals who have been diagnosed with an autism spectrum disorder (ASD) under their health benefit plans. Very rough estimates suggest that the statewide cost for political subdivisions could be in the range of several millions; LSC economists cannot rule out a statewide cost exceeding $10 million. Any political

subdivision that already provides the required benefit would experience no cost increase.

- County sheriff's offices could realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks.
- A court of common pleas could experience an increase in court costs if ODH petitions the court for an order enjoining a facility from conducting unlicensed activities. Any increase in costs should be minimal since the number of violators is expected to be small. Additionally, the court would likely require violators to pay for court costs and/or fines.
- Local government-owned hospitals may realize a minimal increase in administrative costs to record and document certain information regarding lay caregiver provisions required under the bill and to possibly make modifications to discharge procedures.
- Local courts could realize an increase in court costs for any violations pertaining to the assisting suicide provision.

Detailed Fiscal Analysis

Coverage for autism services

The bill requires any insurance plan issued by a health insurer that provides basic health care services to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder (ASD). The bill also prohibits an insurer from terminating an individual's coverage, or from refusing to renew coverage to an individual, solely because the individual is diagnosed with or has received treatment for an ASD. The bill's requirements apply to health insuring corporations, sickness and accident insurers, and multiple employer welfare arrangements.[1]

The bill specifies the minimum coverage for the following benefits for enrollees under the age of 14: (1) for speech and language therapy or occupational therapy that is performed by a licensed therapist, 20 visits per year for each service, (2) for clinical therapeutic intervention for enrollees under the age of 14 that is provided by or under the supervision of a professional who is licensed, certified, or registered by an appropriate agency of this state to perform such services in accordance with a health treatment plan, 20 hours per week, and (3) for mental or behavioral health outpatient services for enrollees under the age of 14 that are performed by a licensed psychologist, psychiatrist, or physician providing consultation, assessment, development, or oversight of treatment plans, 30 visits per year. The bill also specifies that the required ASD coverage must not be subject to dollar limits, deductibles, or coinsurance

[1] The bill does not apply to nongrandfathered plans in the individual and small group markets or to Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

provisions that are less favorable to an enrollee than the dollar limits, deductibles, or coinsurance provisions that apply to substantially all medical and surgical benefits under the policy, contract, or agreement.

The bill provides that a policy, contract, or agreement must stipulate that the required ASD coverage be contingent upon both of the following: (a) the covered individual receiving prior authorization for the services in question, and (b) the services in question being prescribed or ordered by either a developmental pediatrician or a psychologist trained in autism. The bill allows an insurer to review a treatment plan for an enrollee who is receiving ASD treatment, except for inpatient services, annually unless the insurer and the enrollee's treating physician or psychologist agree that a more frequent review is necessary. The bill specifies that insurers must cover the cost of obtaining any review or treatment plan.

Under current law, no mandated health benefits legislation enacted by the General Assembly may be applied to sickness and accident or other health benefits policies, contracts, 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. The bill includes provisions that exempt its requirements from this restriction.

Fiscal effect

The bill would have no impact on the state's self-insured health benefit plan because the plan currently provides ASD coverage due to the Executive Order signed by the Governor in December 2012.[2] All health insurance plans offered through the federal Exchange also provide coverage related to autism as the result of an Executive Order.

In the case of local governments, it is not clear that the bill would apply to local governments that self-insure their health plans,[3] since public employee benefit plans are not specifically required to provide the coverage. However, the bill would increase insurance premiums of some local governments' health benefit plans when they are provided by an insurance policy or an HIC. Any increase in insurance premiums would increase costs to local governments to provide health benefits to employees and their dependents. In addition, even if some of the treatments or therapies for ASD may already be fully or partially covered in some local governments' benefit plans, their future premium rates may also increase to reflect an increased level of utilization for

[2] There is the potential for a future fiscal effect, though, in the case that the Executive Order was repealed under a new Governor.

[3] According to the 2015 Report on the Cost of Health Insurance in Ohio's Public Sector, prepared by the State Employment Relations Board, approximately 70% of local public employers self-insured their health benefit plans in 2014.

those treatments, therapies, or visits that are not captured in their current rates. Some local governments may currently offer health plans that are fully compliant with the bill, and for those governments there would be no fiscal effect, just as with the state. LSC staff is unable to estimate the magnitude of the bill's fiscal impact on local governments statewide with any precision due to lack of information on the number of individuals who have been diagnosed with an ASD and the specific benefits offered under their employee health benefit plans.

Background information

The number of Ohioans who have been diagnosed with an ASD is undetermined. However, according to nationwide data from a Centers for Disease Control (CDC) report,[4] one in every 68 children aged eight years was diagnosed with autism in 2010. Based on 2014 estimated Ohio population published by the U.S. Census Bureau,[5] there were 1,715,337 Ohioans under the age of 12 in 2014. Assuming the CDC ratio, approximately 25,226 Ohioans aged 12 years or less in 2014 may have been diagnosed with autism.

In 2014, approximately 59.7% of Ohioans received their health insurance coverage through an employer, based on data derived from the Annual Social and Economic Supplement of the Current Population Survey (CPS), published by the U.S. Census Bureau. In addition, according to U.S. Bureau of Labor Statistics (BLS) annual average nonagricultural employment data for Ohio in 2014, 1.1% of the Ohio nonfarm workforce was employed by state government, 4.4% was employed by local government, and 5.2% was employed in local government education. Based on the 25,226 estimate above, and the 59.7% Census Bureau estimate, approximately 15,060 children diagnosed with autism are covered by an employer-provided health plan. The number of such children that are covered by the state health plan is estimated to be approximately 166, the number that are covered by a health plan sponsored by a county, municipality, or township is estimated to be approximately 663, and the number covered by a school district-sponsored health plan is estimated to be approximately 783.

The overall cost of the bill would depend not only on the number of children eligible for the coverage, but also on the cost of treating each child. Presumably most basic medical care is already provided by the vast majority of health plans. The major new cost from the bill is likely due to the minimum required coverage for clinical therapeutic intervention.

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[4] Source: Autism and Developmental Disabilities Monitoring Network Surveillance Year 2010, CDC's Autism and Developmental Disabilities Monitoring (ADDM) Network, March 28, 2014.

[5] Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2014, published by U.S. Census Bureau, Population Division, June 2015.

According to the CDC's website, *Autism Spectrum Disorder (ASD) Data & Statistics*,[6] the estimated costs for treating a child with ASD is about $17,000 more per year compared to a child without ASD. Assuming all of the children estimated to have been diagnosed with autism and covered under local governments' health benefit plans above utilized ASD-related treatments, the estimated total costs to local governments to provide autism coverage could be about $24.6 million per year statewide in total. The estimated costs for school districts could be about $13.3 million per year. The estimated costs to counties, municipalities, and townships could be about $11.3 million per year. To the extent that the benefits are already being provided under current plans, the actual costs would be lower than these estimates. Furthermore, if the local governments that self-insure their health benefit plans are not affected by the bill's requirements, the costs would likely be well below these estimates. The actual costs would depend on the number of children who may have been diagnosed with an ASD and the type of ASD treatments that may be used for such children.

The above estimates are based on children under age 12. Some published research has concluded that intensive autism treatment at young ages, with some studies defining this as up to age 12, may be helpful to improve the health and well-being of the study participants in the long term.

Palliative care facility regulation

The bill requires the Ohio Department of Health (ODH) to regulate palliative care facilities through a licensing process that is similar to ODH's licensure of hospice care programs and pediatric respite care programs. The bill provides for the regulation of palliative care facilities by creating licensing procedures, requiring inspections, authorizing disciplinary actions, and requiring the Director of Health to adopt necessary rules. The bill requires every person or public agency that proposes to operate a palliative care facility to apply to ODH for a license by submitting the form prescribed by ODH and the license fee established in rules. The fee cannot exceed $600; however, with Controlling Board approval, the Director of Health may establish a fee that is up to 50% higher. A license is valid for three years and may be renewed in the same manner as applying for the initial license. The renewal fee restrictions are the same. The bill also requires ODH to conduct inspections as necessary, including before licensure and at least every three years thereafter, to determine whether palliative care facilities and services meet the requirements of the bill and the rules to be adopted under it. The Director of Health must establish an inspection fee in rules, which cannot exceed $1,750. However, with Controlling Board approval, the Director may establish a fee that is up to 50% higher. ODH will have initial start-up costs related to the program, as well as ongoing regulatory costs. However, revenues generated from license and inspection

[6] CDC website at www.cdc.gov, visited January 8, 2016. (The estimate is derived from: Lavelle TA1, Weinstein MC, Newhouse JP, Munir K, Kuhlthau KA, Prosser LA., ***Economic burden of childhood autism spectrum disorders***, Pediatrics, March 2014.)

fees could partially offset program costs. The costs associated with regulating the program, as well as the amount of revenue generated, will depend on the number of facilities seeking licensure. LSC does not have an estimate regarding this number.

In addition to the application form and license and inspection fees, the Director of Health must adopt other rules related to the licensure of palliative care facilities and criminal background check requirements for applicants for employment with palliative care facilities. ODH may experience a minimal increase in administrative costs to adopt rules. The Attorney General's Office may realize a minimal increase in administrative costs and a subsequent minimal gain in revenue for required background checks. Background checks may also be obtained by county sheriff's offices.

The bill prohibits, with certain exceptions, a person or public agency from doing any of the following without a license: (1) holding itself out as operating a palliative care facility, or (2) operating a palliative care facility. The bill requires ODH to petition the court of common pleas of the county in which the prohibited activity is taking place for an order enjoining that person or public agency from conducting those activities without a license. Any person or public agency may request ODH to petition the court, and ODH must do so if it determines that a violation occurred. The bill specifies that the court has jurisdiction to grant injunctive relief upon a showing that the person or public agency named in the petition is conducting those activities without a license. As a result, it is possible that county courts of common pleas could experience an increase in court costs. Any increase in costs should be minimal since the number of violators is expected to be small. Additionally, the court would likely require violators to pay for court costs and/or fines.

Palliative care by inpatient hospice facilities and units

The bill also, notwithstanding any provision specifying that a hospice care program may provide care and services only to hospice patients, permits a licensed hospice care program that operates an inpatient facility or unit to provide palliative care to any patient. This provision would likely just broaden the settings in which palliative care could be provided.

Lay caregiver option

The bill requires hospitals to offer a patient who is at least 55 years of age, or a patient's guardian, an opportunity to designate a lay caregiver for the patient before the patient's discharge. If a patient or guardian makes a lay caregiver designation, the hospital is required under the bill to record certain information about the lay caregiver in the patient's medical record and request consent to disclose the patient's medical information to the lay caregiver. The bill also requires hospitals to create a discharge plan and arrange for the lay caregiver to participate in a review of the discharge plan with the patient or patient's guardian, if the discharging health care professional has determined that the lay caregiver's participation would be appropriate. The bill specifies that, in accordance with state and federal law and if appropriate, the hospital shall arrange for an interpreter to be present during the instruction given during a

review of a discharge plan. The hospital is to also arrange for an employee to provide a live demonstration of each task described in a discharge plan if the discharging health care professional determines it to be appropriate. The hospital is also required to document information concerning the instruction provided in the patient's medical record. State and local government-owned hospitals may realize a minimal increase in administrative costs to record and document information required under the bill and to possibly make modifications to discharge procedures.

The bill specifies that a discharging health care professional shall not be subject to criminal prosecution or professional disciplinary action, or be liable in a tort action or other civil action, for an event or occurrence that allegedly arises out of the professional's determination that a patient's lay caregiver should or should not participate in the review of the patient's discharge plan.

Finally, the Ohio Department of Health (ODH) is permitted to adopt rules as necessary to implement the provisions of the bill. ODH may incur a minimal increase in administrative costs if it decides to adopt rules under the bill.

Assisted suicide

The bill generally prohibits a person from knowingly causing another to commit or attempt to commit suicide by either providing the physical means to do so or participating in a physical act by which the person commits or attempts to commit suicide. Whoever violates this prohibition is guilty of assisting suicide, a third degree felony. The penalty includes a prison term. Local courts could realize an increase in court costs and the Department of Rehabilitation and Correction could realize an increase in incarceration costs for any violations.

Memory care units

The directors of Aging and Health shall jointly develop recommendations regarding the establishment of standards and procedures for the operation of memory care units in this state. The directors are required to submit the recommendations to the General Assembly no later than six months after the effective date of the section.