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Office of Research and Drafting

Legislative Budget Office

H.B. 24
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Rep. White

Local Impact Statement Procedure Required: Yes

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Highlights

- Requiring health benefit plans to provide coverage for biomarker testing under the bill's specified circumstances may increase costs to the state to provide health benefits to employees and their dependents. The state pays for such testing currently in some circumstances, but LBO is unsure if it pays for the testing in all circumstances required by the bill. The state's costs to provide such benefits are paid from the Health Benefit Fund (Fund 8080), which receives funding through state employee payroll deductions and state agency contributions that are paid from the GRF and various other state funds.
- The required coverage is likely to increase costs of providing health benefits to employees and their dependents for at least some counties, municipalities, townships, and school districts statewide. The magnitude of the fiscal impact is uncertain due to lack of information on the number of local government employers that will be affected by the requirement. Any local government that already provides the required coverage would experience no effect on costs.
- Requiring Medicaid coverage for biomarker testing under specified circumstances is likely to increase costs to the Ohio Department of Medicaid (ODM). The extent of this increase will depend on what tests may already be covered by ODM, and how many Medicaid recipients receive tests newly covered because of the legislation.

Detailed Analysis

Health insurance and Medicaid coverage

The bill requires health benefit plans and Ohio's Medicaid Program to provide coverage for biomarker testing for the following purposes beginning on the effective date of the bill: (1) diagnosis, (2) treatment and appropriate management of a disease or condition, or

(3) ongoing monitoring of a disease or condition, when the test is supported by certain medical and scientific evidence as specified under the bill. The bill defines "biomarker testing" as the analysis of tissue, blood, or another biospecimen for the presence of a biomarker (a term also defined in the bill), and includes, but is not limited to, single-analyte tests, multiplex panel tests, protein expression, and whole exome, genome, and transcriptome sequencing. "Health benefit plans" subject to the requirement are defined in section 3922.01 of the Revised Code, and include sickness and accident insurers, health insuring corporations, nonfederal government health plans, and specified other types of plans.

The bill requires a health plan issuer to provide the coverage in a manner that limits disruptions in care, including the need for multiple biopsies or biospecimen samples. The bill also imposes certain requirements on the handling of appeals of a biomarker testing coverage determination.

The bill includes a provision that exempts its requirements from health insurance mandate restrictions in continuing law.[1]

Fiscal effect – insurance provisions

The bill's requirements may increase costs of the state and are likely to increase costs of at least some local governments' employee health benefit plans, thereby increasing costs to provide health benefits to employees and their dependents. According to a Department of Administrative Services (DAS) official, the state plans' costs of providing coverage for biomarker tests was approximately $665,000 during the past five years, or an average of about $133,000 per year. The official also noted that those costs included biomarker tests that are considered experimental. LBO staff are unsure if the coverage is provided in all circumstances required by the bill, and has submitted a follow-up question to DAS to determine that.

The state provides a self-insured health benefits plan in which the state pays all benefit costs directly while contracting with private insurers to administer the benefits.[2] The state's costs to provide health benefits to employees and their dependents 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.

LBO staff could not determine the magnitude of the fiscal impact of the required coverage on local governments due to lack of information on the details related to such plans, including the cost and the number of tests that may be utilized by covered persons under such plans. If

[1] 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.

[2] According to Health Insurance 2022: The Cost of Health Insurance in Ohio's Public Sector (PDF), prepared by the State Employment Relations Board, approximately 78% of public sector employers in Ohio, including the state, self-insured their health benefit plans.

some local government plans already provide the required coverage, the bill would not affect their costs. However, based on the approach below, LBO staff believe the estimated costs associated with the required coverage on local governments could amount to as much as $2 million per year or more statewide. The actual costs could be lower or significantly higher than this amount, depending on the cost of such tests and the number of tests that may be utilized by covered persons under local governments' employee health benefit plans per year.

According to Biomarker Test for Molecularly Targeted Therapies,[3] "biomarker tests have many different uses in clinical practice including disease screening tests (e.g., prostate-specific antigen), diagnostic tests (e.g., pathologic or histologic assessment of a tissue biopsy), treatment and post treatment monitoring tests (detection of treatment complications or subsequent disease advancement), and prognostic tests for estimating risk or time to clinical outcomes (e.g., aggressive cancers have a poorer prognosis than more indolent cancers). In addition, biomarker tests are used to predict patient response to specific treatments." According to the Ohio Annual Cancer Report 2022, published by the Ohio Department of Health in March 2022, in 2019, a total of 70,363 new incidents of various types of cancer cases were diagnosed and reported among all Ohioans or at an age-adjusted rate of 468.0 per 100,000 Ohio population. Using the age-adjusted rate and the estimated Ohio population in 2023, approximately 54,704 Ohioans could be newly diagnosed with cancer this year.

According to the National Cancer Institute website, "The cost of biomarker testing varies widely depending on the type of test you get, the type of cancer you have, and your insurance plan." The National Conference of State Legislatures (NCSL) has published a report[4] that includes the statement that "the average price for a biomarker test is $1,700."

The cost of the bill's requirements would depend on the number of individuals covered by a government-sponsored health benefits plan who might need such a test. Based on data from the 2019 American Community Survey (ACS), published by the U.S. Census Bureau, approximately 59.1% of Ohioans received health insurance coverage through their employer. Assuming this percentage applies to the estimated 54,704 individuals who may be diagnosed with cancer above, approximately 32,331 of such individuals also received health insurance coverage through their employer. Based on estimates from the U.S. Bureau of Labor Statistics (BLS), 1.4% of the Ohio nonfarm workforce was employed by state government (not including those employed by an educational institution), 4.1% were employed by local government (not including those employed by an educational institution or a local government hospital), and 5.1% were employed in local government education. Applying those BLS percentages to the 32,331 figure estimated above, roughly 451 such individuals may be covered by the state health benefit plans, 1,321 by a local government health benefit plan, and 1,660 by a school district health benefit plan. Assuming these individuals utilized one biomarker test per plan year and the $1,700 price per test cited by NCSL above, the estimated costs to school districts could be roughly $2.8 million per year, and the cost to other local governments could be roughly $2.2 million per year. The cost to the state

[3] National Academies of Sciences, Engineering, and Medicine. 2016. *Biomarker tests for molecularly targeted therapies: Key to unlocking precision medicine*. Washington, DC: The National Academies Press. doi: 10.17226/21860.

[4] Biomarkers and Advancements in Cancer Care, published on the National Conference of State Legislatures (NCSL) website.

would be estimated to be roughly $767,000 per year based on this estimation approach, but as noted above some such tests are currently covered under the state's plans.

These numbers are illustrative, rather than actual estimates. LBO economists are uncertain about the number of tests an eligible patient might need in a year, and there is significant uncertainty about the number of such patients covered by a government-sponsored health plan. In addition, cancer patients are likely not the only type of patient that could qualify for testing. These sources of uncertainty mean that costs could be lower or significantly higher than these illustrative numbers.

Fiscal effect – Medicaid provisions

The bill will likely increase costs for the Ohio Department of Medicaid (ODM) to the extent that the coverage requirements for biomarker testing require additional coverages beyond what ODM currently already covers for Medicaid recipients. Currently, all medically necessary services are covered by Medicaid, including biomarker testing. Federal law also requires Medicaid to cover all drugs approved by the U.S. Food and Drug Administration. However, Medicaid is exempted by federal Early and Periodic Screening, Diagnostic, and Treatment guidelines from covering experimental or investigational treatments or services. For any biomarker testing which is classified as a medically necessary procedure, the testing would already be covered by ODM and the legislation would not have a fiscal impact. For testing which is not currently covered by Medicaid but would be covered because of the bill, ODM would incur increases in costs to provide coverage of these tests. In general, ODM will receive reimbursement from the federal government for about 64% of the costs for allowable services approved by the U.S. Centers for Medicare and Medicaid Services.

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