



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: S.B. 229 of the 132nd G.A.

Status: As Enacted

Sponsor: Sen. Eklund

Local Impact Statement Procedure Required: No

Subject: State Board of Pharmacy and regulation of controlled substances

State & Local Fiscal Highlights

- The bill is expected to have a minimal at most annual effect on the workload and related revenue-generating activities of the State Board of Pharmacy.
- The Office of the Attorney General will likely incur a minimal at most annual increase in administrative costs and gain in revenue to perform required background checks.
- Violations of the bill's general prohibition against pharmacy interns dispensing drugs are expected to be relatively infrequent, which suggests that there will be little, if any, discernible ongoing annual effect on the revenues and expenditures of county and municipal criminal justice systems with jurisdiction over such violations.
- Certain units of state and local government will expend additional time and effort to comply with the bill's Public Records Law exclusion related to various types of information concerning a State Board of Pharmacy employee and criminal conviction reporting requirements. The annual cost of such compliance is expected to be minimal, and handled utilizing existing staff and appropriated resources.
- Boards of health that allow employees to use a board credit card could realize a minimal increase in administrative costs, which include developing a written policy regarding card usage.
- Local courts may realize an increase in costs related to cases of misuse of credit cards; however, these costs may be partially offset by fines or court costs imposed on offenders. Total costs would depend on the number of violations, but would likely be minimal.

Detailed Fiscal Analysis

Controlled substance schedules

The bill removes the current controlled substance schedules from the Revised Code and requires the State Board of Pharmacy (hereinafter the Board) to adopt rules incorporating the five schedules of controlled substances under the federal drug abuse control law. When the federal schedules change, the Board is required to incorporate those changes into its next update. The Board may also add additional substances to the schedule following certain guidelines. The bill adapts other Revised Code provisions to conform to the above change including the prohibitions against rape and sexual imposition, and steroid warning posting requirements for middle schools, high schools, state-operated colleges and universities, and privately owned athletic facilities.

Rule adoption will likely create additional work for the Board, but the additional workload is not expected to create a need for additional staffing or appropriated resources. The change should, therefore, not lead to additional expenses for the Board.

Under current law, the Governor may adopt emergency rules and amendments at the request of an agency. The emergency rule becomes invalid at the end of the 120th day. The bill specifies that such an emergency rule or amendment adding a controlled substance to a controlled substance schedule becomes invalid at the end of the 180th day. The Board may adopt a nonemergency rule which mirrors the emergency rule following standard procedures, but may not use emergency rule procedures to continue emergency rules.

Pharmacy interns

The bill prohibits pharmacy interns from dispensing drugs with exceptions for naloxone and when the Governor declares an emergency. A first-time violation of this prohibition is a third degree misdemeanor, the penalty for which is a fine of up to \$500, a potential jail stay of up to 60 days, or both. Subsequent violations are a second degree misdemeanor, the penalty for which is a fine of up to \$750, a potential jail stay of up to 90 days, or both.

Presumably, once the bill's prohibition is enacted, pharmacy interns generally will comply with the prohibition and violations will be relatively infrequent. This suggests that there will be little, if any, discernible ongoing annual effect on the revenues and expenditures of county and municipal criminal justice systems.

Office-based opioid treatment facility licensure exemptions

Regarding office-based opioid treatment facilities, the bill: (1) exempts certain facilities from licensure by the Board, and (2) specifies conditions for licensure exemption for facilities licensed or certified by the Ohio Department of Mental Health and Addiction Services. These provisions are not expected to have any discernible ongoing effect on the workload and related revenue-generating activities of either the Board or the Department.

Employment at office-based opioid treatment facilities

The bill: (1) requires that each person seeking employment with a licensed office-based opioid treatment facility submit to a criminal records check, (2) narrows the disqualification from employment at a licensed office-based opioid treatment facility under current law, and (3) authorizes the Board to waive the disqualification under certain circumstances.

The bill includes those seeking employment at an office-based opioid treatment facility and other individuals licensed by the Board¹ to the pool of those individuals required to seek a criminal background check, which will increase both the workload for those administering the check and the fees collected. The state and Federal Bureau of Investigation (FBI) background checks are \$22 and \$24, respectively. The \$22 state background check fee and \$2 of the \$24 FBI background check fee are credited to the Attorney General's General Reimbursement Fund (Fund 1060). The remaining \$22 of the FBI background check fee is sent to the FBI.

The provisions to narrow the terms for employment disqualification and to allow the Board to waive those terms under certain circumstances are not expected to have a fiscal effect on the state or any of its political subdivisions.

Public records exclusion

The bill excludes from the Public Records Law various residential, familial, and other personal information about Board employees as well as medical directors or members of a cooperating physician advisory board of an emergency medical service organization.² It is uncertain whether a given state or local government agency will experience an increase in workload related to ensuring that exempted information is not disclosed, as the volume of requests for these records varies by office. Presumably, any increase in administrative work, including additional time and effort to comply with the exemption, will be minimal and handled utilizing existing staff and resources.

Lawful prescriptions, 14-day prescription deadline, and record retention

Regarding prescriptions, the bill: (1) specifies that the authority to possess a controlled substance through a prescription applies only if the prescription is for a legitimate medical purpose, is not altered or forged, and was not obtained through deception or theft, (2) establishes additional exemptions to the existing law that generally

¹ Other individuals include: (1) manufacturers of dangerous drugs, (2) outsourcing facilities, (3) third-party logistics providers, (4) repackagers of dangerous drugs, (5) wholesale distributors of dangerous drugs, (6) pharmacy technician trainees, (7) registered pharmacy technicians, and (8) certified pharmacy technicians.

² The same type of information concerning peace officers, parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, community-based correctional facility employees, youth services employees, firefighters, emergency medical technicians, Bureau of Criminal Identification and Investigation investigators, and federal law enforcement officers, as well as their spouses, former spouses, and children, is currently excluded from the Public Records Law.

prohibits an opioid analgesic from being dispensed if the drug is to be used on an outpatient basis and more than 14 days have elapsed since the prescription was issued, and (3) allows for the prescribing and dispensing of schedule II controlled substances via electronic prescriptions in addition to written prescriptions as under current law. Additionally, the bill extends from three to five years the period for which certain records concerning the sale, receipt, administration, dispensation, or usage of controlled substances must be retained. The fiscal effect of these provisions on the state and its political subdivisions is expected to be minimal at most annually.

Licensing

The Board is required to adopt rules with respect to the licensing of a manufacturer of dangerous drugs, outsourcing facility, third-party logistics provider, repackager of dangerous drugs, or wholesale distributor of dangerous drugs which define who may serve as a responsible person on the license, specify who is required to submit background checks, and specify any other requirements or qualifications that an applicant must meet to receive a license. The bill also permits the Board to adopt rules regarding applications by emergency medical service organization satellites for a terminal distributor of dangerous drugs license. These rule-making and enforcement duties are not expected to create any discernible ongoing costs for the Board.

Drug take-back program

The bill revises certain requirements established under current law which requires the Board to establish and administer a program under which drugs are collected from the community for the purpose of destruction or disposal, including defining entities that may participate in the program, limiting the type of information required to be included in a report by the Board concerning the program, and requiring the Board to make information about the program available on its website. These changes and additional duties are not expected to create any discernible ongoing costs for the Board.

Conviction reporting

The bill generally requires a prosecutor to report a conviction of a violation of the Controlled Substances Law or Drug Offenses Law to the Board for any of the following: (1) outsourcing facilities, (2) third-party logistics providers, (3) repackagers of dangerous drugs, (4) pharmacy technician trainees, (5) registered pharmacy technicians, and (6) certified pharmacy technicians. The bill also requires a court to report certain convictions of the Drug Offenses Law to regulatory or licensing boards and agencies by adding pharmacy technician trainees, registered pharmacy technicians, and certified pharmacy technicians to the definition of a "professionally licensed person." Under current law, both courts and prosecutors report convictions to regulatory or licensing boards and agencies, including the State Board of Pharmacy, for other licensed persons. Any increase in administrative work, including additional time and effort to comply with these additional reporting requirements, is likely to be minimal and handled utilizing existing staff and resources.

Use of credit cards by boards of health

The bill permits a board of health to authorize an officer or employee to use a credit card held by the board and specifies that a board of health must adopt a written policy regarding the use of the credit cards. The bill also specifies what the written policy must include. The bill specifies that the use of a credit card account for expenses beyond those authorized by the board of health constitutes misuse of a credit card account. The bill also specifies that a card user who knowingly misuses a card may be guilty of a criminal offense.

The bill would allow employees to use a board of health credit card rather than personal finances to pay for certain expenses included in a board's credit card policy. According to the Association of Ohio Health Commissioners, employees of local boards of health are currently reimbursed for these expenses. As a result, there should be no additional costs incurred as a result of the bill since boards would pay credit card statements instead of reimbursing employees for costs. However, there could be some administrative costs relating to developing the required usage policy, among other things.

Local courts may realize an increase in court costs related to cases of misuse of funds; however, these costs may be partially offset by fines or court costs imposed on any offenders. There could also be local incarceration costs. Any court or incarceration costs would depend on the number of violations, but would likely be minimal.

Criminal records checks of Medicaid provider's employees

The bill generally permitted a Medicaid provider to employ a person that the provider would otherwise be prohibited from employing or continuing to employ because of a database review or criminal records check requirement. However, H.B. 420 of the 132nd General Assembly limited this provision as follows: to Medicaid providers of behavioral health services, to behavioral health professionals who hold or are seeking licenses, and to employees who are certified or seeking certification as peer recovery supporters. The bill specifies that a provider that chooses to employ such a person cannot submit any Medicaid claims for any services that person provides. Thus, there will be no fiscal impact to Medicaid.