OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 365
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsor: Rep. Manning

Local Impact Statement Procedure Required: No

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Highlights

- Based on research of the Department of Rehabilitation and Correction (DRC), it is estimated that, within five years of the bill's effective date, DRC's GRF-funded incarceration costs will have increased by between $1.7 million and $5.8 million annually. The magnitude of that annual cost increase is dependent upon the number of offenders sentenced under the bill's penalty enhancements.
- County criminal justice systems should be able to utilize existing staffing levels and appropriated funds to absorb any additional work created by penalty-enhanced felony drug trafficking cases.
- The bill could result in an increase in administrative costs and possibly a one-time loss of revenue for the Chemical Dependency Professionals Board.
- The bill may minimally increase the Department of Insurance's administrative costs related to regulating contracts between a health plan issuer, including a third-party administrator, and a 340B covered entity. Any increase in such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).
- The bill's contract requirement for terminal distributors of dangerous drugs will have no discernible ongoing effects on the State Board of Pharmacy's annual operating costs or related revenue generation.
- The bill's impacts relating to 340B contract requirements for Medicaid managed care organizations are uncertain at this time.
- The bill requires the Department of Mental Health and Addiction Services, in consultation with the Chemical Dependency Professionals Board, to study specified issues and develop recommendations. This may increase administrative costs for both entities.

Detailed Analysis

Drug trafficking near addiction services provider's facilities

The bill enhances the penalties for drug trafficking offenses when committed on the premises of, or within 1,000 feet of, a substance addiction services provider's facility as defined by the bill when the offender recklessly disregards whether the offense is being committed within that vicinity. Offenses with enhanced penalties include trafficking in cocaine, L.S.D., heroin, hashish, Schedule I and II controlled substances (excluding marijuana), controlled substance analogs, and fentanyl-related compounds.

Felony drug trafficking offenses

The bill enhances penalties for felony-level offenses of aggravated trafficking and trafficking, each with sentencing variations based on the type and amount of the controlled substances involved. Table 1 below shows the number of offenders committed annually to prison for felony trafficking in drugs, as reported by the Department of Rehabilitation and Correction (DRC) for FYs 2014-2018. On average, 9.5% of the commitments in each year were for drug trafficking with potentially elevated penalties under the bill. The subset of violations committed within the specified distance from a substance addiction services provider is not information tracked in DRC's inmate databases.

Table 1. Number of Prison Commitments for Felony Drug Trafficking Offenses, FYs 2014-2018

Offense	2014	2015	2016	2017	2018
Trafficking in Drugs	1,971	1,824	1,948	1,792	1,719
Total Commitments	**20,120**	**19,755**	**20,109**	**19,340**	**18,249**

The principal fiscal effect of these penalty enhancements is likely to be a steady increase over a period of several years in the amount of GRF funding that DRC expends annually on institutional operations. The magnitude of that annual increase will be dependent upon the number of offenders committing certain drug trafficking offenses in the vicinity of a substance addiction services provider. In effect, by extending prison stays beyond what the amount of time served otherwise would have been under current law, the bill will trigger a "stacking effect." This term refers to the increase in the prison population that occurs as certain offenders currently serving time stay in prison longer while the number of new offenders entering the prison system does not decrease. This "stacking" process will stabilize when the number of offenders who begin serving their additional time as part of the penalty enhancements in the bill is about the same as the number leaving prison after serving their additional time.

Additionally, some number of offenders may be sentenced to prison under the bill that otherwise may have been sanctioned locally at county expense. As an example, trafficking in cocaine in an amount greater than or equal to 10 grams but less than 20 grams is a third degree felony under current law and according to sentencing guidelines there is a presumption of

prison time. Under the bill, this offense elevates to a second degree felony with a mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years. On average, a second degree felony drug offender will serve about 1.6 years longer than a third degree felony drug offender.

Table 2 below shows the average time served by all drug offenders released from prison in calendar year (CY) 2016, as reported by DRC. The average time served for all felony drug offenders was 1.6 years.

Table 2. Average Time Served, CY 2016

Drug Offense Level	Average Time Served in Years
Felony 1	5.65
Felony 2	3.49
Felony 3	1.84
Felony 4	1.14
Felony 5	0.69
All drug offenses	**1.62**

Generally, the bill elevates drug trafficking offenses by one degree, which using the time-served data, suggests the following potential outcomes:

- Elevating an offense from a fifth degree felony (0.69 years average time served) to a fourth degree felony (1.14 years average time served) increases the average time served by 5.4 months.
- Elevating an offense from a fourth degree felony (1.14 years average time served) to a third degree felony (1.84 years average time served) increases the average time served by 8.4 months.
- Elevating an offense from a third degree felony (1.84 years average time served) to a second degree felony (3.49 years average time served) increases the average time served by 19.8 months.
- Elevating an offense from a second degree felony (3.49 years average time served) to a first degree felony (5.65 years average time served) increases the average time served by 25.9 months.

Under the bill, the average time served for the lowest level offenders increases by approximately 5.4 months, or 164 days, and the average time served for those moving from a second to a first degree felony increases by 25.9 months, or 788 days. The increases in time served could potentially cost the state between $13,730 ($83.72 average daily cost x 164 days) and $65,971 ($83.72 average daily cost x 788 days) per inmate for the increased length of stay based on average time served.

Based on its research into selected inmate files, DRC expects the bill to create the need for between 109 and 380 additional beds annually overall, with half of that increase realized within the first five years following its effective date. The annual cost of these additional beds five years following enactment would be between $1.7 million (55 beds x $83.72 average daily cost x 365 days) and $5.8 million (190 beds x $83.72 average daily cost x 365 days).

The bill will not generate new felony drug cases, but may require county criminal justice systems to expend additional time and effort on such cases. This is because the penalty enhancements may prolong the adjudication of certain matters, as the prison sanction and "recklessly disregards" conduct standard are more problematic for the defense and prosecution, respectively. County criminal justice systems should be able to absorb any associated costs utilizing existing staffing levels and appropriated funds.

Chemical Dependency Professionals Board

The bill establishes two additional sets of criteria by which an individual may qualify for a chemical dependency counselor (CDC) II license. These additional criteria will expand the number of individuals who may qualify for this type of licensure. As a result, the Chemical Dependency Professionals Board may experience an increase in applications for this license. However, both sets of criteria require, among other things, that an individual hold a valid chemical dependency counselor assistant (CDCA) certificate and meet certain other requirements. As a result, it is possible that some individuals currently licensed as a CDCA may be eligible for, and instead opt to obtain, licensure as a CDC II. There could be some initial costs associated with making this adjustment, including rule promulgation costs and additional administrative time for processing these new applications. While the fees are the same for both license types, the costs for initial licenses are lesser than renewal licenses ($50 for initial and $150 for renewal). If someone with a current CDCA certificate applied for a CDC II license and paid the initial fee for that, it is possible that the Board could realize a one-time loss of revenue. In addition, there could be indirect impacts if additional individuals were able to obtain counseling services as a result of the bill.

Licenses issued by the Board are renewed on a biennial cycle. As of the end of FY 2019, there were 423 individuals with an active CDC II license and 3,723 active CDCA licenses. Currently, the initial fee is $50 and the renewal fee is $150 for both licenses. The revenue generated from these fees are deposited into the Occupational Licensing and Regulatory Fund (Fund 4K90).

The bill also eliminates the current law authority of the following to supervise the practice of prevention services by individuals who hold prevention specialist assistant certificates and registered applicant certificates: independent chemical dependency counselor-clinical supervisors, independent chemical dependency counselors, and chemical dependency counselors III.

Finally, the bill requires, not later than June 1, 2021, the Department of Mental Health and Addiction Services, in consultation with the Chemical Dependency Professionals Board, to study levels of care that must be offered by a program providing chemical dependency practicum experience and develop recommendations regarding whether additional levels of care should be authorized through rule. This may increase administrative costs for both.

Health plan issuers

The bill prohibits any contracts between a health plan issuer, including a third-party administrator (TPA), and a 340B covered entity[1] from including certain provisions. Third-party administrators regulated by the Superintendent of Insurance include pharmacy benefit managers (PBMs). Under the federal 340B Drug Pricing Program, established to allow "covered entities to stretch scarce federal resources as far as possible,"[2] a covered entity is allowed to purchase eligible outpatient drugs from manufacturers at discounted prices. The covered entity is also allowed to provide such discounted drugs to eligible patients, regardless of a patient's ability to pay for such drugs (e.g., insured, uninsured, etc.). For example, if the covered entity dispensed such discounted drugs to an eligible patient with commercial insurance coverage, the covered entity may be reimbursed by the patient's insurer at a higher reimbursement amount than the cost of purchasing the discounted drugs. The bill would prohibit contract provisions providing (1) prescription drug reimbursement rates below specified minimums, or (2) dispensing fees and certain other fees related to dispensing prescription drugs below specified minimums.

Fiscal effect

The bill may minimally increase the Department of Insurance's administrative costs associated with regulation of health care contracts, including third-party administrator contracts. Any increase in such costs would be paid from the Department of Insurance Operating Fund (Fund 5540).

The bill would have no direct fiscal impact on the state or local governments' health benefit plans. A Department of Administrative Services (DAS) official reported to LBO that 340B providers do not give commercial insurers and TPAs 340B pricing. Assuming that is correct there would also be no indirect fiscal effect on the state or on local governments.

Medicaid

The bill prohibits a Medicaid managed care organization (MCO), including third-party administrators, from including any of the following provisions in a contract with a 340B covered entity: a reimbursement rate for a prescription drug that is less than the national average drug acquisition rate for the drug as determined by the U.S. Centers for Medicare and Medicaid Services (CMS) or if that rate is not available, the rate that is less than the wholesale acquisition cost of the drug in federal law; a fee that is not imposed on a health care provider that is not a 340B covered entity; or a fee that exceeds a fee imposed on a health care provider that is not a 340B covered entity. Finally, the bill prohibits the MCO from discriminating against a 340B

[1] A 340B covered entity is an entity that meets certain criteria and is authorized to participate in the federal 340B Drug Pricing Program, which is administered by the Office of Pharmacy Affairs of the Health Resources and Services Administration (HRSA), an agency of the U.S. Department of Health and Human Services. Please see the bill analysis for a list of 340B covered entities. A TPA is any person who adjusts or settles claims on behalf of an insuring entity in connection with life, dental, health, prescription drug, or disability insurance or self-insurance programs.

[2] Source: 340B Drug Pricing Program, posted on the HRSA website at: https://www.hrsa.gov/opa/index.html.

covered entity, or interfering in any other way with the ability of a Medicaid recipient to receive a prescription drug from a 340B covered entity or any 340B contracted pharmacy.

Fiscal effect

According to the Ohio Department of Medicaid (ODM), it is unable to estimate any impacts associated with the bill requirements at this time. Recently, a number of drug manufacturers have indicated that they would end certain 340B discounts. In response, the U.S. Health Resources and Services Administration (HRSA), which administers the program primarily through guidance documents rather than federal regulations, indicated that these guidance documents are unenforceable. ODM maintains that because of the uncertainty involving issues of federal enforcement and oversight, it cannot estimate the impacts relating to the bill.

Terminal distributor of dangerous drugs

The bill requires a contract between a terminal distributor of dangerous drugs and a 340B covered entity provide that the terminal distributor pay the 340B covered entity the full reimbursement amount the terminal distributor receives from the patient and the patient's health insurer, except that the terminal distributor may deduct a fee agreed upon in writing between the terminal distributor and the 340B covered entity.

A terminal distributor of dangerous drugs that fails to comply with this requirement is subject to the State Board of Pharmacy's disciplinary procedures. The disciplinary actions the Board may take include revoking, suspending, limiting, or refusing to renew the distributor's license, placing the license holder on probation, or imposing a monetary penalty or forfeiture not to exceed $1,000. Any money collected will be credited to the existing Occupational Licensing and Regulatory Fund (Fund 4K90). Distributors generally are expected to comply with the contract requirement, making any disciplinary actions by the Board infrequent. This suggests that the bill's contract requirement will have no discernible ongoing effects on the Board's annual operating costs or related revenue generation.