



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 366 of the 130th G.A.

Date: June 4, 2014

Status: As Enacted

Sponsor: Rep. Sprague

Local Impact Statement Procedure Required: Yes

Contents: To require hospice care programs to establish procedures to prevent diversion of controlled substances that contain opioids

State Fiscal Highlights

- **Ohio Department of Health (ODH).** ODH will experience an increase in costs as a result of the requirement that hospice care programs establish procedures to prevent diversion of controlled substances that contain opioids. These costs will include the hiring of a Non Long-Term Care Facilities Surveyor and additional survey costs, as well as rule promulgation and information technology costs primarily in the first year of implementation. The cost for these is anticipated to be approximately \$226,426 in the first year and \$176,200 in each subsequent year. There could also be costs to ODH to review, as part of the license renewal application, written evidence that a hospice program is in compliance with the bill's requirements. If ODH finds that a program is not in compliance, fine revenue might be collected.

Local Fiscal Highlights

- **Government-owned hospices.** Government-owned hospices could experience an increase in costs relating to the bill's requirements to establish procedures to prevent diversion of controlled substances that contain opioids.
- **Local law enforcement.** Local law enforcement could experience an increase in costs to investigate reports from hospice concerning the quantity and type of controlled substances containing opioids that are included in the patient's interdisciplinary plan of care and that are not relinquished to a hospice program. There would also be costs to dispose of these substances.
 - **Municipal courts.** Municipal courts could experience an increase in court costs if individuals fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care after receiving a written request from a hospice program to do so. Any court costs could be offset, or partially offset, by any fine revenues collected.

Detailed Fiscal Analysis

The bill requires each hospice care program, licensed by the Ohio Department of Health (ODH) and that provides hospice care and services in a hospice patient's home, to establish a written policy that establishes procedures for preventing the diversion of controlled substances containing opioids that are prescribed for a patient. The policy is to include procedures for the disposal of any such drugs prescribed to a hospice patient as part of the patient's interdisciplinary plan of care that are relinquished to the program after a hospice patient's death or that otherwise are no longer needed by a hospice patient. The policy is to require the disposal be documented by a program employee and conducted in any of the following manners: (1) performed by a program employee and witnessed by the patient or patient's family member, (2) performed by the patient or patient's family member and witnessed by a program employee, or (3) performed by a program employee and witnessed by another program employee.

The bill requires the Director of Health to adopt rules that do the following: establish procedures a hospice care program must follow while investigating a sign of suspected diversion of controlled substances containing opioids, and establish requirements for reporting to a local law enforcement agency the results of an investigation of suspected diversion.

The bill requires, as part of a hospice patient's interdisciplinary plan of care, each hospice program that provides hospice care and services in the patient's home, to do the following: (1) before providing hospice care and services, distribute a copy of the written procedures to the patient and patient's family and discuss the policies with them, (2) assess the patient, patient's family, and care environment for any risk factors associated with diversion, (3) maintain records of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan of care, including accurate counts of the numbers dispensed and used, (4) monitor the use and consumption of controlled substances containing opioids prescribed to the patient and included in the patient's interdisciplinary plan of care, including prescription refills, for signs of diversion, (5) investigate any sign of suspected diversion in accordance with rule, (6) report the results of an investigation of suspected diversion to local law enforcement with jurisdiction in accordance with rule, (7) before providing hospice care and services, inform the patient and the patient's family that the program will dispose of any controlled substances containing opioids that are no longer needed by the patient and were included in the patient's interdisciplinary plan of care, (8) after a patient's death, or when no longer needed by the patient, request, in writing, that the patient's family relinquish to the program for disposal any remaining controlled substances containing opioids that were included in the patient's interdisciplinary plan of care, and (9) report to law enforcement with jurisdiction the quantity and type of controlled substances containing opioids that were included in the patient's

interdisciplinary plan of care and that were not relinquished to the program. The bill specifies that if certain provisions are complied with, the program, its employees, officers, or directors, or a prescriber of controlled substances containing opioids that were included in the patient's interdisciplinary plan of care are not liable in damages to any person or government entity in a civil action unless the action or omission constitutes willful or wanton misconduct.

The bill specifies that no person who receives a written request shall fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care. The bill requires law enforcement with jurisdiction, following a report, to investigate and dispose of the substances containing opioids. Additionally, the bill specifies that any person who fails to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care after receiving a written request from a hospice program, is guilty of a minor misdemeanor.

The bill requires the hospice program, if the program provides hospice care and services in a hospice patient's home, to submit written evidence that the program is in compliance with the bill's requirements as part of the license renewal application required every three years. This is required not later than one year after the effective date of the bill. If after review of this written evidence, ODH determines that the program is not in compliance with the bill's requirement, ODH may suspend a hospice care program's license for not more than six months and may also impose a fine not to exceed \$20,000. The bill also requires, not later than one year after the bill's effective date, the ODH Director to adopt rules establishing and procedures for the submission and review of the written evidence required for license renewal.

Fiscal effect

Department of Health

Hospices are licensed by ODH and ODH charges a fee for activities relating to hospice regulation. The initial hospice license fee is \$600, while fees are \$1,625 for a licensing inspection, \$850 for a complaint inspection, and \$350 for a follow-up inspection.

As a result of the bill, there would be additional duties related to the survey process. According to ODH, an additional day would be necessary to complete the survey process relating to the bill's requirements. ODH estimates that the additional survey costs would be approximately \$232,635 over the three-year renewal cycle (\$77,545 per year). ODH would also need to hire a Non Long-Term Care Facilities Surveyor at a cost of \$98,655 per year (including fringe benefits). Lastly, ODH maintains that there would be rule development and information technology costs of approximately \$50,226 in the first year of implementation. There could also be costs to ODH to review, as part of the license renewal application, written evidence that a

hospice program is in compliance with the bill's requirements. If ODH finds that a program is not in compliance, fine revenue might be collected.

Department of Medicaid

According to the Ohio Department of Medicaid (ODM), there should be no direct impact on the Medicaid Program as a result of the bill. ODM states that the rates for hospice care are set at the federal level.

Government-owned hospices

The Midwest Care Alliance, which represents hospices, stated that hospices already have some procedures in place to prevent controlled substance diversion. However, hospices might experience an increase in administrative costs as a result of the bill. The increase would depend on how the requirements were actually implemented and on what diversion measures are currently in place in hospice programs. In addition, there could be an increase in costs to investigate suspected diversion of drugs if hospice care programs do not already do so. According to the Alliance most hospice care programs in Ohio are nonprofit entities. However, some hospices are operated by local governments.

Local law enforcement

Local law enforcement could experience an increase in costs to investigate reports from hospice programs concerning the quantity and type of controlled substances containing opioids not relinquished to the hospice program. There would also be costs to dispose of these substances.

Municipal courts

Municipal courts could experience an increase in court costs if individuals fail to relinquish controlled substances containing opioids that were included in a patient's interdisciplinary plan of care after receiving a written request from a hospice program to do so. Any court costs could be offset, or partially offset, by any fine revenues collected.