

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 676 - HB 1264

March 27, 2013

SUMMARY OF BILL: Requires the Board of Pharmacy and any appropriate occupation or professional licensing board, which may legally dispense controlled substances, on or before October 1, 2013, to promulgate rules that:

- create standards of care for all prescribers and dispensers of controlled substances for treatment of chronic pain, including adoption of protocols for diagnosis and treatment;
- establish restrictions on prescriptions of controlled substances in regards to quantities and combinations, as appropriate;
- establish protocols for notification of law enforcement when abuse of controlled substances or violation of laws regarding prescribing, dispensing or possessing controlled substances is suspected, within the limitations of state and federal privacy laws and regulations; and
- develop standards for analyzing data in the controlled substances database to identify patterns of prescription drug prescribing and dispensing that raise a reasonable likelihood of improper or illegal prescribing, dispensing, or diversion in consultation with the Tennessee Bureau of Investigation (TBI).

Requires any person applying to hold the right to dispense controlled substances to annually complete at least eight hours of annual pain management training, which must include medicine addiction education, guidelines for prescribing, risk management tools, and other pertinent information for the safe prescribing and dispensing of narcotics. Authorizes dispensation of any Schedule II or III controlled substance in emergency situations by oral prescription by a practitioner and reduced promptly to writing and filing by the dispensing pharmacy. Creates various provisions to effectuate this emergency dispensation. Requires any patient, who is prescribed a Schedule II or III controlled substance for a period greater than 30 days, to undergo urine drug testing upon initial assessment and no less than once every 30 days. Requires the Board of Pharmacy to promulgate rules and regulations to effectuate this.

Broadens the definition of a “pain management clinic” to mean any privately owned clinic, facility, or office which advertises for any type of pain management services, or employs a practitioner who is primarily engaged in the treatment of pain. Requires patients of a pain management clinic to have current and valid government issued identification; be referred to the clinic from a primary care physician or other licensed physician treating the patient for the conditions underlying the patient’s chronic pain; and submit to urine drug screening in accordance with a written drug screening policy and compliance plan. Requires patient records to include current MRI, X-ray, CT scan or other diagnostic testing to demonstrate a basis for prescribing of a controlled substance.

SB 676 - HB 1264 (CORRECTED)

ESTIMATED FISCAL IMPACT:

On March 11, 2013, a fiscal note was issued stating a fiscal impact as follows:

Increase State Expenditures - \$59,779,800

Increase Federal Expenditures - \$113,495,000

Based on additional information received from the Department of Finance and Administration's Division of Benefits Administration, this impact was in error. The fiscal impact is:

(CORRECTED)

**Increase State Expenditures - \$45,996,700/FY13-14
\$61,328,900/FY14-15 and Subsequent Years**

**Increase Federal Expenditures - \$85,121,300/FY13-14
\$113,495,000/FY14-15 and Subsequent Years**

**Increase Local Expenditures - \$68,600/FY13-14*
\$91,500/FY14-15 and Subsequent Years**

Assumptions:

- Requiring any patient, who is prescribed Schedule II or III controlled substances for a period greater than 30 days, to submit to urine drug testing upon initial assessment and at least every 30 days will increase expenditures to the TennCare program.
- In FY11-12, there were 131,232 enrollees with 30 days or more of continuous prescription coverage with a Schedule II or III controlled substance.
- Any patient requiring urine drug testing would need to be drug tested at least 12 times per year.
- There will be approximately 1,574,784 drug tests conducted on these patients annually (131,232 patients x 12 times per year).
- A urine drug screen costs approximately \$113.89.
- Current law requires approximately 186,598 tests to be conducted annually, at a total cost of \$21,251,646(186,598 x \$113.89).
- This bill would require an additional 1,388,186 tests be conducted (1,574,784 – 186,598), at a total increase in TennCare expenditures of \$158,100,504 (1,388,186 x \$113.89).
- The proposed bill requires pain management clinic patient records to include current MRI, X-ray, CT scan or other diagnostic testing to demonstrate a basis for the prescription of a controlled substance. This will result in increase expenditures to the TennCare program by necessitating additional diagnostic testing.
- It is assumed that at least one additional diagnostic test will be performed annually on any enrollee who is prescribed a drug containing a Schedule II or III controlled substance.

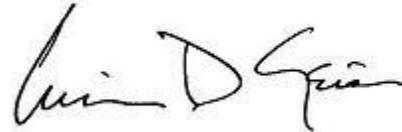
- A diagnostic test will cost on average \$115.63.
- Diagnostic testing for 131,232 patients will result in increased TennCare expenditures of \$15,174,356 ($131,232 \times \115.63).
- The total increase to TennCare for urine drug testing and diagnostic testing is \$173,274,860 ($\$158,100,504 + \$15,174,356$).
- This increase in TennCare expenditures of \$173,274,860, approximately \$59,779,827 will be state funds at a rate of 34.5 percent and approximately \$113,495,033 will be federal funds at a 65.5 percent match rate.
- According to the Department of Finance and Administration's Division of Benefits Administration, this bill will have a significant impact due to the cost of conducting drug testing. The Division estimates this cost to be approximately
- The Department of Finance and Administration's Division of Benefits Administration contracts with a PBM for pharmacy management services.
- In FY11-12, the Division's current PBM recouped approximately \$900,000. Benefits Administration estimates that approximately 21 percent is due to erroneous claims submissions and will not be recoupable resulting in an increase in expenditures in FY13-14 of \$189,000 ($\$900,000 \times 21$ percent).
- According to the Department of Finance and Administration, Benefits Administration, the State Employee, Local Education, and Local Government health plans will incur increases in expenditures across three plans.
- The total number of individuals per month which will need to submit to drug testing is 21,774. The average cost per drug test \$10.
- The total increase in expenditures is estimated to be \$2,612,880 ($21,774 \times \10×12 months).
- This amount is applied to the three plans as follows:
 - State Employee Health Plan is \$1,410,955 ($\$2,612,880 \times 0.54$);
 - Local Education Plan is \$1,019,023 ($\$2,612,880 \times 0.39$);
 - Local Government Plan is \$182,902 ($\$2,612,880 \times 0.07$).
- The state covers 80 percent of the employees' health costs in the State Employee Health Plan resulting in an increase in state expenditures of at least \$1,128,764 ($\$1,410,955 \times 0.80$).
- The state portion of the Local Education Plan is 45 percent for Local Education instructional staff which is approximately 75 percent of LEA employees and 30 percent for support staff which is approximately 25 percent of LEA staff. The increase in state expenditures is estimated to be at least \$420,347 [$(\$1,019,023 \times 0.75 \times 0.45) + (\$1,019,023 \times 0.25 \times 0.30)$].
- Each local government that opts into the state sponsored health plan is responsible for paying a percentage of the costs which is determined by the local government. It is assumed that local governments will cover at least 50 percent of the cost resulting in an increase in local expenditures which exceeds \$91,451 ($\$182,902 \times 50\%$).
- According to the Department of Health, any necessary rule-making required by the Board of Pharmacy can be handled during regularly scheduled meetings and within existing resources.
- Any consultation necessary between the Department of Health and the TBI will result in no significant fiscal impact to either the Department or Bureau.

- This bill has an effective date of October 1, 2013, which will result in 75 percent of annual expenditures being realized in FY13-14.
- In FY 13-14, there will be an increase in state expenditures of \$45,996,704 $[(\$59,779,827 + \$1,128,764 + \$420,347) \times 0.75]$, an increase in federal expenditures of \$85,121,275 $(\$113,495,033 \times 0.75)$, and an increase in local expenditures of \$68,588 $(\$91,451 \times 0.75)$.
- In FY 14 -15 and subsequent years, there will be an increase in state expenditures of \$61,328,938 $(\$59,779,827 + \$1,128,764 + \$420,347)$, an increase in federal expenditures of \$133,495,033, and an increase in local expenditures of \$91,451.
- Pursuant to Tenn. Code Ann. §4-3-1011, all regulatory boards are required to be self-supporting over a two-year period. The Board of Pharmacy had closing balances of \$553,901 in FY10-11, \$85,208.93 in FY11-12, and a closing reserve balance of \$929,406.74 on June 30, 2012.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/jdb