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FISCAL IMPACT STATEMENT

LS 6884
BILL NUMBER: HB 1172

NOTE PREPARED: Feb 22, 2008
BILL AMENDED: Feb 21, 2008

SUBJECT: Various Professions and Occupations.

FIRST AUTHOR: Rep. Welch
FIRST SPONSOR: Sen. Mishler

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

Emergency Volunteer Act- The bill codifies the uniform emergency volunteer health practitioners act to provide a procedure for recognizing other states' licenses for health practitioners who volunteer to provide assistance during an emergency requiring significant health care assistance.

Umbilical Cord Bank- The bill requires the Office of the Secretary of Family and Social Services to form a nonprofit corporation to establish and operate an umbilical cord blood bank. The bill requires the nonprofit corporation to establish an umbilical cord blood donation initiative to promote public awareness concerning the medical benefits of umbilical cord blood.

Medicaid Provisions- The bill adds a provision requiring an amendment to the State Medicaid Plan to provide coverage for medically necessary umbilical cord transplants under the state Medicaid program.

Home Health Agency Employee Criminal History Checks- The bill requires beginning July 1, 2008, and until June 30, 2009, a home health agency and a personal services agency to obtain an employee's limited criminal history not more than three business days after the date that an employee begins to provide services.

Resuscitation in Nursing Homes- The bill establishes criteria when a nursing home is not required to provide cardiopulmonary resuscitation or other intervention on a patient who has died.

Acupuncture- The bill removes the physician referral requirements to receive acupuncture and specifies training and testing requirements.

Dental Assistants & Hygienists- The bill amends the places a dental hygienist may practice under direct supervision, prescriptive supervision, and without supervision of a dentist. The bill establishes requirements for a dental hygienist to administer local dental anesthesia. The bill requires a dental assistant to work under the direct supervision of a dentist. The bill specifies certain procedures that may and may not be delegated to a dental assistant.

Mental Health Counselors- The bill exempts licensed mental health counselors from the licensed hypnotist requirements.

Interstate Nurses Compact- The bill establishes the interstate nurse licensure compact beginning July 1, 2009. The bill allows the State Board of Nursing to issue a registered nurse's license to certain applicants. The bill requires specified examination and registration fees collected by the board to be used for the rehabilitation of impaired registered nurses and impaired licensed practical nurses.

Optometrist Referrals- The bill allows an optometrist to refer patients to an occupational therapist.

Marriage and Family Therapist Associates- The bill establishes licensing and continuing education requirements for marriage and family therapist associates.

Repealers & Changes- The bill also makes conforming changes. The bill repeals a provision that abolishes and transfers the rights, powers, and duties of the State Board of examination and registration of nurses.

Effective Date: Upon passage; July 1, 2008.

Explanation of State Expenditures: (Revised) *Home Health Agency Employee Criminal History Checks*- The Indiana State Police Department (SPD) would experience an indeterminable change in workload as a result of this provision. This provision would be effective from July 1, 2008, until June 30, 2009, only. In addition, the SPD would be required to report to the Legislative Council and the Health Finance Commission on changes made by the federal government in criminal background check procedures by October 1, 2008.

Interstate Nurse Licensure Compact- The Director or designee of the Professional Licensing Agency (PLA) would be the state's nurse licensure compact administrator. The administrator would be required to provide data sets of investigations, identifying information, licensure data, and some alternative program participation information to other member states. The state may experience additional expenditures related to the investigation and adjudication of complaints against out-of-state nurses practicing in Indiana as well as Indiana nurses practicing in other states.

(Revised) *Emergency Volunteer Act*- The Uniform Emergency Volunteer Health Practitioners Act is intended to provide a consistent methodology for state emergency management agencies to register health care practitioners in advance of or during an emergency to facilitate the flow of volunteer health care personnel from other states into disaster areas. The bill allows the Department of Homeland Security, as the state emergency management agency, to adopt rules to establish or recognize other conforming volunteer health practitioner registration systems. The bill does not require the Department to establish a registry. Conforming registration systems must accept applications for registration of volunteer health practitioners before or during an emergency. The registries are required to include confirmable information about the licensure and good standing of the applicants that is accessible by authorized personnel. The Professional Licensing Agency currently reports that licensure status of individuals in the professions regulated by the agency can be confirmed on the PLA website or by calling a toll-free phone line.

The bill provides that the Department of Homeland Security may limit, restrict, or regulate the duration of practice by volunteer practitioners, the types of practitioners who may practice, the geographical areas in which they may practice, and other matters necessary to coordinate the provision of health care services during an emergency. The bill specifies that the scope of practice of licensed professionals is the same as the state in which the emergency is declared with certain exceptions. The bill also specifies that the State Emergency Management Agency may modify or restrict the health services that volunteer practitioners may provide.

The Department of Homeland Security would be required to adopt rules to implement the bill. The Professional Licensing Agency may need to amend rules to provide for clarification of the various Boards' jurisdiction for source state or host state volunteer health practitioners in emergencies. Rule promulgation and adoption activities are considered to be achievable within the current level of resources available to the agencies.

The Department of Homeland Security had General Fund reversions of $2,578,105 for FY 2007.

(Revised) *Medicaid Provisions*; *Umbilical Cord Blood Transplants*- The bill would require the Office of Medicaid Policy and Planning (OMPP) to apply to the U.S. Department of Health and Human Services for a State Plan amendment to provide coverage for medically necessary umbilical cord blood transplants and other related procedures if the office approves a prior authorization request. The State Plan currently allows for bone marrow transplants; it does not specify the source of the transplanted tissue. The Standards for Coverage of Organ Transplant Services in the State Plan state that Medicaid reimbursement is not available for services or technologies considered to be experimental. Prior authorization requests for transplant services are reviewed on a case-by-case basis for medical necessity. If cord blood transplants are considered to be experimental, this provision could result in increased cost to the program.

The Medicaid program is jointly funded by the state and federal governments. The state share of program expenditures is approximately 38%. Medicaid medical services are matched by the federal match rate (FMAP) in Indiana at approximately 62%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

(Revised) *Umbilical Cord Bank*- The cost of the public umbilical cord blood bank will depend on appropriations made by the General Assembly, the amount of private donations available to subsidize the public cord blood bank, the amount of revenue to be realized from sales, and subsequent administrative actions taken by FSSA to form the nonprofit corporation and any subsequent actions by the board of directors to administer the program. Approximately $1.06 M is estimated to be required for direct collection, testing, and banking costs necessary for the public umbilical cord blood bank to reach the minimum size required to apply for federal grant funds. This estimate does not include administrative, marketing, or training costs required by the bill that would depend on administrative actions. The availability of federal grant funds is on a competitive basis.

<u>*Background Information on Umbilical Cord Banks*</u>: *Umbilical Cord Bank*: As a point of reference, the National Marrow Donor Program has estimated that 5 to 7 years and approximately $10 M to $16 M is necessary to develop and annually store sufficient units in a cord blood bank for the bank to reach a break-even point on an annual cash flow basis. Additionally, the Texas Cord Blood Bank established in 2004 has received state appropriations of $6.2 M and was awarded $1.66 M in federal funds in the 2007 round of competitive federal grants.

The bill requires FSSA to form a nonprofit corporation to provide for the operation of a public umbilical cord blood bank. The board of directors is to consist of 10 members: the Commissioner of Health, the Secretary of FSSA, the Secretary of Commerce, the Director of the Office of Minority Health and six individuals with specific professional credentials to be appointed by the Governor. The board is required to appoint an advisory board to be responsible for reviewing applications for the purchase of postnatal donations determined to be ineligible for transplant use. The bill also authorizes the board to contract for the management and administrative operations of the public umbilical cord blood bank and requires the acquisition of adequate liability insurance. The bill would also allow the board without the approval of the Attorney General and subject to the approval of the State Budget Agency to employ legal counsel, technical experts, and other officers, agents, or employees necessary to operate an umbilical cord blood bank. The cost of this provision would depend on appropriations, other financial resources that would be available, and administrative actions of the board.

The bill requires the nonprofit corporation to educate health care professionals about the procedures necessary to collect and maintain postnatal donations following the birth of an infant. The corporation is required to develop procedures concerning patient informed consent and privacy. The corporation is required to establish a public awareness initiative to promote (1) the importance of donating to a public cord blood bank and (2) the opportunity to make postnatal donations on the birth of an infant. The public awareness campaign must include the distribution of written materials containing specified information to specified persons and licensed facilities.

The bill requires the nonprofit corporation to develop a process for physicians, nurse midwives, and participating hospitals or birthing centers to inform eligible candidates of the opportunity to make postnatal donations to the public umbilical cord blood bank. The bill specifies that a patient may not be charged for the collection, storage, or donation to the public umbilical cord blood bank.

Startup Funding Estimate: The U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), requires that public cord blood banks have 600 transplantable cord blood units and a viable minority outreach program developed before an application will be accepted for competitive grants currently available to expand the national cord blood inventory. In order to reach the level necessary to apply for federal funding (600 units) it is estimated that only 30% of the total collected units will ultimately be placed in the bank due to stringent quality standards that must be met. This would require the initial collection of at least 2,000 cord blood units. Testing costs are significant, with the direct cost of testing reported to be between $1,000 and $1,700 for each unit banked. Testing costs for collected units that are discarded prior to storage are estimated to be approximately $500 per unit. Annual storage costs for banked units are estimated to average $50 per unit. Total testing cost required to reach the number of banked units necessary to apply for federal funding is estimated to range from $1,315,000 to $1,735,000.

Collection costs are assumed to be donated by the participating hospitals. If collection costs cannot be absorbed by the hospitals, this could result in additional expense to the public cord blood bank. Collection of the cord blood units includes the completion of an extensive medical history by the mother as well as the collection of the cord blood. As a point of reference, Medicaid currently has a $55 charge for medically necessary aspiration of cord blood. If only collection costs for the aspiration of cord blood at the Medicaid reimbursement rate would be paid by the public cord blood bank, an additional $110,000 would be necessary for the collection of the first 2,000 units.

Existing cord blood banks are reported to experience a transplant utilization rate of less than 1% with the charge for a transplantable unit being approximately $15,000. If this experience is assumed to apply to the

first 600 banked cord blood units, 6 matches might be expected. $90,000 may be realized in revenue from this source.

The bill also allows the cord blood bank to make units not eligible for banking available for research purposes. Umbilical cord blood units or placentas used for research purposes may be sold for $185 to $505 depending on the level of processing performed. This source is estimated to generate revenue in the range of $259,000 to $707,000.

It is assumed that the collection program will be subject to a phased implementation with the initial program being implemented in the Indianapolis metropolitan area to include Marion and the surrounding counties. This geographic area had 25,600 live births in 2005, about 30% of the total annual births in the state. If only 10% agree to donate their child's cord blood (2,600), the program would have more than the volume estimated to be necessary to bank the initial 600 units required to apply for federal funding. (The associated costs would also be higher as well.)

The bill requires the nonprofit corporation to establish an umbilical cord blood donation initiative to promote public awareness of the purposes of cord blood banking and the opportunity to donate to a public cord blood bank. This information is required to be distributed in a written format. The program is also required to educate health care professionals about collection procedures and requirements as well as other administrative requirements to implement the cord blood bank. The cost of these provisions will depend on the number of initial participating hospitals and physicians.

Other State Initiatives: The New York Blood Center, one of the largest public cord blood banks with about 35,000 cord blood units, reports that processing a unit of cord blood costs between $1,000 and $2,000 depending on how it is collected and stored and the location of the bank. This bank reported that their operations "about break-even" since they have such a large inventory of units. Most of the nearly two dozen public banks in the country rely on private donations to operate.

Federal initiatives are making limited funding available with the intent of increasing the national inventory of cord blood units available. HRSA awarded $12 M in grants in 2006 to the first group of cord blood banks to begin collections for the National Cord Blood Inventory. A second round of competitive grants was distributed to the original six grantees plus two additional cord blood banks in September 2007. HRSA requires that public cord blood banks have 600 transplantable cord blood units and have a viable minority outreach program developed before an application will be accepted for the competitive grants.

Several states have funded the startup and operations of state-sponsored cord blood banks. New York announced construction of a new $10 M umbilical cord blood bank to be operated by the State Health Department's Wadsworth Laboratory with about 20 employees.

Texas started the Texas Cord Blood Bank in 2004 with a $1 M startup grant, promising up to $3.5 M in matching funds for the facility. The first unit of cord blood was collected in June 2005; in November of the same year, the facility was awarded another $1.2 M in state matching funds after reaching 1,000 collected units. The facility has also been raising funds in the community. In May 2007, the Texas legislature appropriated another $4 M to assist in the collection of cord blood units. Additionally, the Texas Cord Blood Bank was awarded $1.66 M in federal funds in the 2007 round of HRSA competitive grants. As of November 2007, the Texas Cord Blood Bank reported six participating hospitals in the state. Texas officials reported that the program needed to collect about 6,000 units to be financially self-sustaining.

New Jersey appropriated $2.5 M annually in April 1998. However, in 2006 the appropriation and the authorizing language was discontinued.

Explanation of State Revenues: (Revised) *Home Health Agency Employee Criminal History Checks*- Under current law, home health and personal services agencies are required to obtain a *national* criminal history check on new employees. The bill would require, between July 1, 2008, and June 30, 2009, that new employees who have not resided out-of-state in the previous two years to have only a *limited* criminal history check. As a result, there would be a decrease in revenue to the state General Fund during FY 2009. The impact to the General Fund would depend on the difference between the amount of fees deposited into the General Fund for national and limited criminal history checks ($15 for national, $7 for limited, for an $8 difference).

If more fees for limited criminal history checks are paid via AccessIndiana, then revenue to the IOT Portal Fund would increase.

Therefore, the total revenue impact to the state would depend on the means of requesting limited criminal history checks made by home health providers and, as a result, the fees paid. (Currently, total fees for a limited criminal history background check are between $0 for certain home health agencies and $16.32 for agencies or employees requesting the information online without an AccessIndiana subscription).

The following table illustrates all limited criminal history fees by access type.

Limited Criminal History Background Check Fees

Means of Requesting Background Check	Information Obtained Through	Amount of Fee	Amount of Fee Deposited into State General Fund	Amount of Fee Deposited into IOT Portal Fund
AccessIndiana (Subscriber)	AccessIndiana Website	$15	$7	$8
AccessIndiana (Non-Subscriber)	AccessIndiana Website	$16.32	$7	$9.32
Mail/in-person	Mail; in-person	$7	$7	$0
Full Exemption	AccessIndiana Website; Mail; in-person	$0	$0	$0

Note: A National criminal history background check costs a total of $39, $24 of which is given to the federal government. The remaining $15 is deposited into the state General Fund.

The number of persons employed by home health and personal services agencies and the number of home health agencies which would be exempt from fees are not known.

Interstate Nurse Licensure Compact- Under the compact, nurses (RNs and LPNs) that reside in another state and work in Indiana would no longer hold an Indiana license as long as they maintain a license in their state of residence. As a result, the Indiana State Board of Nursing would no longer collect biennial renewal fees from nurses residing in compact states and practicing in Indiana. The Indiana Professional Licensing Agency

estimates that it will experience a decrease in revenue of approximately $238,000 every two years. However, there will be an indeterminable amount of revenue that could be gained through the licensure of nurses licensed to work in other compact states that live in Indiana. For example, FY 2006 figures indicate that there were 3,437 nurses who were licensed in Kentucky but live in Indiana. This could generate revenue of $171,850 (at the current $50 fee) every two years, although some of those nurses may already have an Indiana license.

Impaired Nurses Account- The Impaired Nurses Account (INA) would receive the lesser of 25% of license fees *or* the cost per license to run the impaired nurses program. (Under current law, the INA receives the lesser of 16% of license fees *or* the cost per license to run the impaired nurses program.) The 9% increase in the share of license fees for the INA, as proposed by the bill, would be used to meet estimated contract costs to run the program into FY 2009. (The PLA projects that the impaired nurses program will begin to run deficits in FY 2009, at the current level of funding.) As a result of this provision, the state General Fund would receive less revenue under existing fees.

The cost for the current year of the current impaired nurses program contract is $420,000. That would make the contract cost over the last two fiscal years equal to $840,000. Revenues that the INA received during FY 2006 and FY 2007 totaled $829,200. As of October 2007, there were 27,504 licensed practical nurses and 85,046 registered nurses. If the sum of active LPNs and RNs were used as a proxy, the per license cost of running the program would be $840,000 divided by 112,500, or approximately $7.50.

Penalty Provision: Persons violating the nurse's compact would commit a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is $1,000. However, any additional revenue would likely be small.

Acupuncture- A violation of an acupuncture statute constitutes a Class B misdemeanor. Treatment given by an acupuncturist without a physician's referral would no longer be a violation. Therefore, fees and fines collected for Class B misdemeanors could decrease slightly.

Dental Assistants & Hygienists- A violation involving the proposed changes in the bill would constitute a Class B misdemeanor under existing statutes. However, any additional revenue would likely be small.

Mental Health Counselors- If no longer under hypnotist law requirements, mental health counselors would not be subject to the misdemeanor penalties under hypnotist law, including two separate Class A and a Class B misdemeanor.

(Revised) *Marriage and Family Therapist Associates-* The impact of this provision on state revenues would depend on the fee set by the Social Worker, Marriage and Family Therapist, and Mental Health Counselor (MFT&MHC) Board on marriage and family therapist associates. Additionally, the amount of revenue collected would also depend on candidates meeting the other proposed requirements to receive an associate license.

Certain persons (certified health care professional, medical students/interns, limited out-of-state persons for less than six days, clergy, volunteer or nonprofit employees, and school counselors) would be able to practice marriage and family therapy for compensation without being licensed. Violations of MFT&MHC Board statute constitutes a Class A misdemeanor. Any impact of this provision on the reduction of either licensing or criminal penalty fees would be minimal.

(Revised) *Medicaid Provisions-* See *Explanation of State Expenditures* regarding federal reimbursement in the Medicaid program.

Explanation of Local Expenditures: (Revised) *Umbilical Cord Bank-* Participating county-owned hospitals would be required to offer each eligible maternity patient the option of making a postnatal donation following delivery at the facility. Participation by hospitals and birthing centers is optional.

Penalty Provision: A Class B misdemeanor is punishable by up to 180 days in jail. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly $44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: PLA; State Board of Nursing; MFT&MHC Board; SPD; Department of Homeland Security; FSSA.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: SPD website; Barbara McNutt, PLA, 234-1987; Brian Carnes, Indiana State Department of Health; *Indiana Handbook of Taxes, Revenues, and Appropriations*; *Report to the General Assembly, Public Act 06-77, An Act Concerning the Establishment of a Public Umbilical Cord Blood Bank*, January 5, 2007, J. Robert Gavin, MD, MPH, Commissioner, Department of Public Health, State of Connecticut at Cord Blood, Establishing a National Hematopoietic Stem Cell Bank Program, Committee on Establishing a National Cord Blood Stem Cell Bank,
http://www.ct.gov/dph/lib/dph/governmental_relations/2007reports/public_umbilical_cord_blood_bank_report.pdf. Program, Institute of Medicine of the National Academies, at: http://www.nap.edu/openbook.php?record_id=11269&page=221..

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