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FISCAL IMPACT STATEMENT

LS 6402
BILL NUMBER: SB 157

NOTE PREPARED: Dec 3, 2007
BILL AMENDED:

SUBJECT: Opioid Treatment Programs.

FIRST AUTHOR: Sen. Miller
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
X **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill changes the term "methadone treatment" to "opioid treatment" for purposes of the law concerning certification of opiate addiction treatment programs. It requires certification standards and certification and licensure related to opioid treatment programs. The bill requires the establishment of certain fees and amends other fees. The bill also specifies violations and penalties. This bill repeals the expiration of current law requiring a methadone diversion control and oversight program.

(The introduced version of this bill was prepared by the Health Finance Commission.)

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Department of Mental Health and Addiction (DMHA)*: The bill requires DMHA to establish a central registry to maintain information concerning each patient served by an opioid treatment program. The Indiana Central Opioid Patient Electronic (ICOPE) registry is currently online and in the implementation stage and assigns a unique identifier to each patient treated in the state by opioid treatment programs (OTPs). The information contained in this registry will be provided by the OTPs at least every month. The annual cost for the registry in the FY 2008 budget included $100,000 for the ICOPE program. This amount is the annual cost for operation and maintenance of the central registry required in the legislation.

The bill also requires DMHA to prepare and submit a biennial report to the Legislative Council and the Governor concerning the treatment offered by opioid treatment programs. This report is currently produced by DMHA and contains all information required in the legislation. The requirement that the report be prepared and submitted would have no additional fiscal impact on DMHA.

State Department of Health and State Health Commissioner: Under the provisions of the bill, the Department and the Commissioner would be responsible for licensing and inspecting OTPs. Currently, neither have any oversight or regulatory responsibilities of OTPs. The total cost incurred by the state of licensing OTPs is estimated to be $78,500 in the first year of implementation and $75,000 annually, thereafter.

There is currently a federal certification program for OTPs that is provided by DMHA. This bill would require the federal certification program and the licensing program to be housed in different state agencies. The State Department of Health reports that this requirement would make it unlikely that state costs of the licensing program would be offset by the funding received by the certification program, and the Department would be responsible for 100% of the costs of the licensing program.

Background Information: Indiana currently provides public funds to not-for-profit OTPs only. Indiana directly funds two not-for-profit OTPs from federal Substance Abuse Prevention and Treatment (SAPT) block grant funds to subsidize certain patients, based on income limitations. This reduces out-of-pocket expenses to these patients and allows clinics to charge lower-income patients on a sliding scale. Currently, there are two not-for-profit OTPs in the state, with a third scheduled for opening in Porter County.

The rule promulgation process requires the Department to conduct a public hearing with a reported cost of $1,500 to pay for the services of an administrative law judge and a reporter. However, rule-making expenditures should be able to be covered within the existing level of budget and resources.

The total cost incurred by the state of licensing OTPs is estimated to be $78,500 in the first year of implementation and $75,000 annually, thereafter. These costs are due to the following. The Department reports that annual inspections of OTPs in the state would likely be a one-day, on-site inspection that would require two days of report preparation and processing. With 14 OTPs that would require assessment, approximately 42 surveyor days for inspections would be needed. The bill requires the Department to perform inspections in response to alleged breaches, and this number is dependent on the number of complaints received by the Department about a specific program. The Department reported an anticipated 4 complaints per facility per year that would require a one-day, on-site inspection for every complaint with two days for report preparation and processing resulting in an anticipated 168 surveyor days. The total surveyor days for inspections would equal 210 or 42 weeks of survey time. The agency would require funding for one full-time equivalent (FTE) medical surveyor III at a cost of approximately $48,000 a year. As these locations vary across the state, the inspector would incur a high amount of travel costs and would require a laptop computer for documentation of findings as well as reporting. Annual travel costs are estimated at $6,000 with equipment costs of $2,000.

The additional inspection reports generated by the program would add workload to a secretary position for the filing and processing of reports and the generation of licenses. The agency would require funding of a 0.25 FTE secretary 3 position at a cost of $7,500. Management of the OTP licensing program would likely be absorbed under existing managerial positions.

The bill allows the Department to take enforcement actions based on violations of the licensing rules. The agency would require funding of a 0.25 E7 attorney at a cost of $13,500. If an OTP were to request administrative review of an agency enforcement action, the agency would incur costs of an administrative law judge and court reporter. If the administrative review were appealed to a state court, the Office of the Attorney General would handle the appeal and incur those costs.

The bill allows either the Commissioner or the Department to bring legal action, and the circuit and superior courts of the state are granted jurisdiction to compel and enforce the provisions of this article by either prohibitory or mandatory injunctions. This may result in a marginal increase in judicial case load to the extent that legal action against OTPs are sought by the Department and the Commissioner.

Explanation of State Revenues: *DMHA*: Proposed increases of the out-of-state patient fees along with the creation of in-state fees are required by the bill to be sufficient to cover the cost of implementation. Expenses experienced by DMHA in FY 2006 for their oversight of OTPs totaled $313,000. The legislation requires that out-of-state residents are to be charged a user fee of $300 per year and in-state residents are to be charged a user fee of $20 per year. This is an increase from the current $20 out-of-state fee. The revenue generated by the new user fees is estimated to be $1.6 M annually if demand for OTP use does not decrease as a result of the increase in user fees.

State Health Department: The bill requires the collection of a licensing fee sufficient to pay the costs of implementing the licensing requirements for OTPs. The total cost incurred by the state of licensing OTPs is estimated to be $78,500 in the first year of implementation and $75,000 annually, thereafter. Revenues from fees and penalties collected by the Department are deposited in the General Fund.

Court Fee Revenue: If additional civil or court actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee or a court costs fee of $100 would be assessed when a case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee ($2), automated record keeping fee ($7), judicial salaries fee ($17), public defense administration fee ($3), court administration fee ($3), and the judicial insurance adjustment fee ($1) are deposited into the state General Fund. The bill also provides for a maximum civil penalties of $10,000 per violation of certain offenses and a $25,000 penalty for each day of unlicensed OTP operation.

Background Information: Currently, the state collects revenue from for-profit opioid treatment facilities in the state. There are 14 opioid clinics in the state, of which 3 are considered not-for-profit clinics, one clinic operates under federal guidelines (and therefore is not under DMHA oversight), and 11 of the 14 are considered for-profit opioid clinics. Clinics can charge sliding scale fees for lower-income individuals, and there is financial assistance available for indigent individuals that is provided from the federal SAPT block grant. Indiana Medicaid can also provide limited coverage for OTP services. The revenue collected from these treatment programs currently comes in the form of out-of-state patient fees and licensing fees for OTPs. Currently, there are no fees charged to Indiana residents that utilize the treatment programs, and there are no program certification fees collected. All revenue collected from OTPs currently comes from the out-of-state user fees assessed at $20 per person, which generated a total of $102,100 in FY 2006 for 5,105 out-of-state patients. Currently, in-state users are not assessed a fee. All revenue collected from OTPs is deposited into the Opioid Treatment Diversion and Oversight Program fund which is administered by DMHA.

DMHA reports that the out-of-state fees received by the state are not paid by the patients, but are actually financed by the OTP. Increasing the fees for out-of-state residents might shift the cost to the patients in some form, or the fees may continue to be financed by OTPs in the state. The increase of the out-of-state user fees may increase the amount charged to patients for treatment, potentially decreasing the demand for OTP service. This potential decrease in demand for treatment can affect the revenue collected by DMHA for out-of-state patient fees. The actual decrease in out-of-state demand for treatment associated with increasing costs is indeterminable.

This legislation allows the Department to bring action at law in order to enforce the provisions of the bill. Requesting legal action will require a prosecuting attorney to act on behalf of the Department or the Commissioner in court. This can increase court fee revenue to the extent that legal action is requested.

As of 2006 there was no program licensing fee collected from OTPs; however, DMHA does certify OTPs as addiction service providers as required by law. This bill creates the ability for licensing fees to be collected from OTPs. This fee will be collected annually from OTPs for licensing, producing revenue for the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil or court actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the $100 civil or court costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case. However, additional fee revenue is anticipated to be small.

State Agencies Affected: DMHA; State Department of Health.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Cathy Boggs, DMHA; Jessaca Turner-Stults, FSSA; Terry Whitson, Indiana State Department of Health; Scott Zarazee, Indiana State Department of Health; *Report to the Health Finance Commission and General Assembly* prepared by DMHA; *Indiana Opioid Addiction Treatment Program Report, 2005*, prepared by FSSA and DMHA.

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