HB 1350

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1350 (Delegate Hammen, *et al.*)
Health and Government Operations Finance

Freestanding Medical Facilities - Certificate of Need, Rates, and Definition

This bill exempts, under specified criteria, the conversion of a licensed general hospital to a freestanding medical facility (and any related capital expenditure) from the requirement to obtain a certificate of need (CON) and establishes the procedures for obtaining the exemption from the Maryland Health Care Commission (MHCC). Provisions governing freestanding medical facilities are consolidated and updated. MHCC must establish by regulation specified requirements for a public informational hearing for hospitals proposing to close, partially close, or convert to a freestanding medical facility. The bill also establishes a workgroup on rural health care delivery to oversee a study of rural health care needs in specified counties and authorizes certain funds to be used for the study in fiscal 2017 and 2018.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: Special fund expenditures for MHCC increase by as much as $165,000 in FY 2017 and $335,000 in FY 2018 to conduct the required study of rural health care needs. Any additional workload on MHCC and the Health Services Cost Review Commission (HSCRC) can be handled within existing budgeted resources. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	$0	$0	$0	$0	$0
SF Expenditure	165,000	335,000	0	0	0
Net Effect	($165,000)	($335,000)	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government finances are not anticipated to be materially affected.

Small Business Effect: None.

Analysis

Bill Summary: A CON is not required to close any health care facility or part of a health care facility if, at least 90 days before the closing or at least 45 days before the partial closing, the health care facility files notice with MHCC.

The Department of Health and Mental Hygiene (DHMH) must issue a license to a freestanding medical facility that receives a CON or an exemption from obtaining a CON.

Exceptions to the Certificate of Need Requirement for Freestanding Medical Facilities: A CON is required to establish or operate a freestanding medical facility except if (1) the facility is established as the result of the conversion of a licensed general hospital; (2) through the conversion, the licensed general hospital will eliminate the capability to admit or retain patients for overnight hospitalization, except for observation stays; (3) the facility will remain on the site of or adjacent to the licensed general hospital, with certain exceptions; (4) at least 60 days before the conversion, written notice of intent to convert is filed with MHCC; (5) MHCC finds that the conversion is consistent with the State Health Plan, will result in the delivery of more efficient and effective health care services, will maintain adequate and appropriate delivery of emergency care as determined by the Emergency Medical Services Board, and is in the public interest; and (6) MHCC notifies the licensed general hospital of its findings within 60 days after receiving notice of intent to convert. A CON is also not required for the establishment or operation of a freestanding medical facility pilot project. Notwithstanding these provisions, a licensed general hospital in Kent County may not convert to a freestanding medical facility before July 1, 2020. In addition, a licensed general hospital in Harford County may not close before the later of October 1, 2017, or the conversion to a freestanding medical facility in accordance with the bill's requirements is complete.

Exceptions for Siting of Freestanding Medical Facilities: MHCC may approve a site for a freestanding medical facility that is not on the site of or adjacent to the licensed general hospital if the hospital is (1) either the only hospital in the county or one of two hospitals in the county that are part of the same merged asset system and are the only two hospitals in the county and (2) the site is within a five-mile radius and in the primary service area of the licensed general hospital.

Requirements for Public Informational Hearings: A hospital must hold a public informational hearing in the county where the hospital is located if the hospital (1) files a notice of the proposed closing with MHCC; (2) requests a CON exemption to convert a hospital to a freestanding medical facility; or (3) is located in a county with fewer than

three hospitals and files a notice of the partial closing of the hospital with MHCC. A public informational hearing must be held within 30 days after the hospital files a notice of intent to convert to a freestanding medical facility.

Within 10 working days after a public informational hearing, the hospital must provide a written summary of the hearing to the Governor, the Secretary of Health and Mental Hygiene, the governing body of the county in which the hospital is located, the local health department and local board of health, MHCC, and specified committees and members of the General Assembly.

Rate Setting: The bill alters the definition of "hospital services" for purposes of rate setting to include (1) emergency services provided at a licensed freestanding medical facility and (2) outpatient services provided at a licensed freestanding medical facility that has received a CON or an exemption from obtaining a CON. A freestanding medical facility must have a license, instead of a CON issued after July 1, 2015, to have the facility's rates set by HSCRC.

Provider-based Status: The definition of "freestanding medical facility" for purposes of licensure is altered to allow a freestanding medical facility established as a result of a conversion of a licensed general hospital to be physically part of a hospital or on hospital grounds. A freestanding medical facility must meet the requirements for provider-based status under the certification for an affiliated hospital established in federal regulations.

Workgroup on Rural Health Care Delivery: Uncodified language establishes a workgroup on rural health care delivery to oversee a study of rural health care needs in specified counties and hold public hearings to gain community input regarding health care needs in the study counties. The required study must (1) be carried out by an entity with expertise in rural health care delivery and planning; (2) examine challenges to the delivery of health care in the study counties; (3) take into account input gained through public hearings; (4) identify opportunities created by telehealth and the Maryland all-payer model contract; and (5) develop policy options for addressing the health care needs of residents and improving the health care delivery system in the study counties. The workgroup must review and make recommendations regarding the policy options developed under the study and report to the Governor and General Assembly by October 1, 2017.

MHCC and DHMH must provide staff for the workgroup. Up to $500,000 in funds in the Maryland Health Benefit Exchange (MHBE) Fund deposited or transferred from the Maryland Health Insurance Plan (MHIP) Fund may be used by MHCC to fund the study in fiscal 2017 and 2018.

Laurel Regional Hospital: Uncodified language expresses the intent of the General Assembly that, due to unique circumstances and a desire for prompt consideration by

MHCC of the CON for Prince George's Regional Medical Center, the memorandum of understanding regarding Laurel Regional Hospital entered into by the University of Maryland Medical System and representatives of local government must supplement the process for community engagement regarding the modernization and transformation plan for Laurel Regional Hospital. This intent language may not be construed to affect the CON or freestanding medical facility processes established under the bill.

Current Law:

Freestanding Medical Facilities: Chapters 549 and 550 of 2005 established the category of freestanding medical facility and required licensure of such facilities by DHMH. Chapters 505 and 506 of 2010 required HSCRC to set rates for services provided at freestanding medical facilities and required all payers subject to the rate-setting authority of HSCRC, including Medicaid, to pay the HSCRC rates for hospital services at freestanding medical facilities.

Certificate of Need Process: Maryland's CON program is intended to ensure that new health care facilities and services are developed in the State only as needed and that, if determined to be needed, they are cost-effective; high quality; geographically and financially accessible; financially viable; and will not have a significant negative impact on the cost, quality, or viability of other health care facilities and services. With certain exceptions, a CON is required to (1) build, develop, or establish a new health care facility; (2) move an existing health care facility to another site; (3) change the bed capacity of a health care facility; (4) change the type or scope of any health care service offered by a health care facility; or (5) make a health care facility capital expenditure that exceeds a specified threshold. A CON is not required to close any health care facility or part of a health care facility in the State if notice of the proposed closure is filed with MHCC at least 45 days prior to closure or partial closure. A hospital located in a county with fewer than three hospitals must also hold a public informational hearing in the county where the hospital is located within 30 days after submitting notice of intent to close or partially close.

Rate Setting: For purposes of rate setting, "hospital services" means (1) inpatient hospital services under Medicare regulation 42 CFR 409.10; (2) emergency services, including services provided at freestanding medical facility pilot projects and a freestanding medical facility issued a CON by MHCC after July 1, 2015; (3) outpatient services provided at the hospital; and (4) identified physician services for which a facility has rates approved by HSCRC on June 30, 1985.

Background: There are three freestanding medical facilities in Maryland: Adventist HealthCare Germantown Emergency Center; the Bowie Health Center; and the Queen Anne's Emergency Center. Each of these facilities was established to provide limited

services. HSCRC sets the rates for emergency department (ED) and ED-related services for these facilities.

Under the bill, a licensed general hospital could elect to convert into a freestanding medical facility (without obtaining a CON from MHCC) rather than closing or partially closing. In addition to ED and ED-related services, freestanding medical facilities established from the conversion of a licensed general hospital could also provide (and be paid HSCRC-regulated rates for) outpatient services and observation stays (a stay generally lasting no more than 48 hours that is provided as an outpatient service to allow testing and medical evaluation of a patient's condition).

According to MHCC, hospital admissions have been declining nationally and in Maryland. Both urban and rural hospitals have been affected by reduced utilization. Preserving access to appropriate emergency and primary care services is a special concern for rural communities. The bill is intended to provide an alternative transitional model for preserving emergent/urgent care capability.

State Expenditures: Special fund expenditures for MHCC increase by as much as $165,000 in fiscal 2017 and $335,000 in fiscal 2018 (a combined total of $500,000) to perform the required study of rural health care needs (which assumes payment on delivery). MHCC advises that it would contract with a school of public health (or a team of schools) to conduct interviews with key stakeholders, conduct a survey of residents, assess health deficits and strengths in the study counties, and develop recommendations. These expenditures are estimated at $125,000 in fiscal 2017 and $205,000 in fiscal 2018. Additional grants will be made to conduct economic analyses of local economies, analyze transportation needs, perform a financial analysis of hospital and freestanding medical facility operations, and hire a facilitator to conduct six public meetings and five public comment sessions. These expenditures are estimated at $40,000 in fiscal 2017 and $130,000 in fiscal 2018. The Department of Legislative Services advises that this represents a robust and comprehensive study. To the extent a less expansive study is undertaken, special fund expenditures may be lower.

The bill authorizes up to $500,000 in funds in the MHBE Fund deposited or transferred from the MHIP Fund to be used by MHCC to fund the study in fiscal 2017 and 2018. Though not contingent, this provision assumes passage and implementation of House Bill 489 of 2016. Under House Bill 489, at the end of fiscal 2016, the now defunct MHIP will transfer $61.4 million from the MHIP Fund to the MHBE Fund. These funds will be used in fiscal 2017 and 2018 to oversee the closure of MHIP (including claims runout, document retention, asset resolution, and completion of final audits) and provide payments for the State Reinsurance Program (which provides payment to carriers to help mitigate the impact of high-risk individuals on rates in the individual health insurance market). To the extent up to $500,000 of this funding is used for the study of rural health

care needs, payments under the State Reinsurance Program may need to be reduced, likely by a minimal amount.

Additional Information

Prior Introductions: None.

Cross File: SB 707 (Senator Middleton, *et al.*) - Finance.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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