

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 532
Finance

(Senator Benson)

Temporary Family Health Care Structures - Permits

This bill establishes regulatory requirements for temporary family health care structures (TFHCSs) in the State. The bill establishes a process for obtaining a permit for a TFHCS, prohibits a legislative body from requiring a specified caregiver to obtain a special use permit for a TFHCS, and prohibits, with specified exceptions, the imposition of any other zoning law or requirement on a TFHCS. The bill also exempts services performed by a caregiver in a TFHCS, for which the caregiver has obtained a permit, from the definition of “assisted living program.”

Fiscal Summary

State Effect: The bill is not anticipated to impact State operations or finances.

Local Effect: Under the bill, local governments are required to issue permits for TFHCSs and are limited in the fees that may be assessed. While some jurisdictions advise that the bill codifies current practice and, thus, has no impact, other jurisdictions advise that they may be required to develop and implement specialized permitting procedures, the cost of which would not be recouped by the limited fees. To the extent that TFHCSs are subject to the personal property tax, local tax revenues increase by an indeterminate amount. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: “Temporary family health care structure” means a transportable residential structure where a caregiver provides care for a mentally or physically impaired individual that:

- is primarily assembled at a location other than its installation site;
- is limited to one occupant who must be the mentally or physically impaired individual;
- is no more than 300 gross square feet;
- complies with applicable building codes; and
- is not located on a permanent foundation.

“Mentally or physically impaired individual” means an individual who is a resident of the State who requires assistance with two or more activities of daily living, as certified in writing by a licensed physician.

“Activities of daily living” means bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.

“Caregiver” means an individual who (1) is at least 18 years old; (2) provides care for a mentally or physically impaired individual; and (3) is a first- or second-degree relative of the impaired individual.

Permit Application Process and Fees

The bill sets out a process for applying for a permit to install a TFHCS. In order to receive a permit, an individual must submit an application to the local department of planning and zoning and pay an application fee. The bill limits the fees that may be assessed by the local department to \$100 for the initial permit and an annual fee of \$50.

A caregiver may not install more than one TFHCS on a lot, and the TFHCS must comply with all setback requirements that apply to the primary structure on the property as well as any maximum floor area ratio limitations that may apply to the primary structure.

If an applicant provides sufficient proof of compliance with the bill’s requirements, a local department of planning and zoning may not deny the application. However, an applicant may be required to provide evidence of continued compliance with the bill’s requirements on an annual basis for as long as the TFHCS remains on the property. Specifically, a local department of planning and zoning may require evidence of (1) an annual inspection of the TFHCS by the local department of planning and zoning; (2) an inspection to determine

compliance with the bill's provisions at a reasonable time convenient to a permit holder after notifying the permit holder; and (3) annual submission of a doctor's certification that the mentally or physically impaired individual requires assistance with two or more activities of daily living.

Limitations on Legislative Bodies

A legislative body must consider a TFHCS a permitted accessory use in a single-family residential zoning district on lots zoned for single-family detached dwellings if the TFHCS is used by a caregiver who is (1) providing care for the mentally or physically impaired individual in the TFHCS that is located on the property of the residence of the caregiver or (2) the legal guardian of a mentally or physically impaired individual who is providing care for the individual in the TFHCS that is located on the property of the residence of the caregiver.

Additional Restrictions

A State law, zoning law, or other local law that applies to the property of the caregiver must also apply to the TFHCS, and a TFHCS must be treated as tangible personal property under the Tax-Property Article. A permit holder may be required to connect a TFHCS to any water, sewer, and electric utilities serving the property.

A TFHCS must be removed within 60 days after the mentally or physically impaired individual is no longer receiving assistance or is no longer in need of assistance. If the TFHCS is needed for the care of *another* mentally or physically impaired individual, the structure may continue to be used or may be reinstalled on the property within 60 days after its removal.

A permit holder may not place any signs advertising the TFHCS on the exterior of the structure or anywhere else on the property.

A local planning and zoning department may revoke the permit for a TFHCS and bring an action for an injunction against the permit holder if the permit holder violates the bill's requirements or prohibitions.

Current Law: Generally, planning and zoning controls in the State are implemented by local governments. To promote the health, safety, and general welfare of the community, a legislative body may regulate:

- the height, number of stories, and size of buildings and other structures;
- the percentage of a lot that may be occupied;
- off-street parking;

- the size of yards, courts, and other open spaces;
- population density; and
- the location and use of buildings, signs, structures, and land.

“Legislative body” means the elected body of a local jurisdiction; it includes the board of county commissioners, the county council, and the governing body of a municipal corporation.

When zoning or rezoning land, a legislative body may impose any additional conditions or limitations appropriate to improve or protect the general character and design of the area being zoned or rezoned or the surrounding or adjacent areas. A legislative body may retain the power to approve or disapprove the design of buildings, construction, landscaping, or other improvements and changes made on the land.

A local legislative body may only enforce restrictions if the legislative body adopts a local law that includes enforcement procedures and notice requirements that give adequate notice of public hearings about any conditions or limitations that the legislative body intends to impose.

Background: In 2015, AARP estimated that 43.5 million adults in the United States provided unpaid care to an adult or a child in the preceding 12 months. TFHCSs, which are also known as “medical cottages,” are intended to provide extra space to care for family members who require significant care, as well as an alternative to nursing homes for family members. Generally, medical cottages are portable, prefabricated structures that are assembled on-site and typically attach to existing sewer, water, and electrical systems. Units are typically broken up into sleeping, living, and bathing areas, and they can be equipped with a variety of sensors, including cameras, to provide additional security. Several states, including Virginia and North Carolina, have passed legislation related to the permitting of TFHCSs in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): cities of Baltimore and Bowie; Montgomery County; Department of Health and Mental Hygiene; Maryland Department of Planning; State Department of Assessments and Taxation; AARP; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2017
mm/jc

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510