

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 384 (Chair, Health and Government Operations  
Committee)(By Request - Departmental - Health)  
Health and Government Operations

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**Substance Use Facilities and Programs - Certificate of Need - Repeal of Requirement**

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This departmental bill repeals the certificate of need (CON) requirement for health care facilities or programs that offer nonhospital substance use outpatient, residential, or inpatient treatment services licensed by the Behavioral Health Administration (BHA). **The bill takes effect June 1, 2018.**

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances or operations, as discussed below.

**Local Effect:** None.

**Small Business Effect:** The Maryland Department of Health (MDH) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment, as discussed below.

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**Analysis**

**Current Law/Background:** The CON program, located within the Maryland Health Care Commission (MHCC), is intended to ensure that new health care facilities and services are developed only as needed and that, if determined to be needed, they:

- are the most cost-effective approach to meeting identified needs;
- are of high quality;

- are geographically and financially accessible;
- are financially viable; and
- will not have a significant negative impact on the cost, quality, or viability of other health care facilities and services.

The CON program requires review and approval of certain types of proposed health care facility and service projects by MHCC. With certain exceptions, a CON is required to:

- build, develop, or establish a new health care facility;
- move an existing health care facility to another site;
- change the bed capacity of a health care facility;
- change the type or scope of any health care service offered by a health care facility; or
- make a health care facility capital expenditure that exceeds a threshold established in Maryland statute.

BHA and the Office of Health Care Quality are jointly responsible for licensing behavioral health programs, including outpatient, residential, and inpatient substance use treatment programs. According to BHA's application materials, only a residential-intensive inpatient level 3.7 program is required to have a CON as a condition of licensure. Such programs provide medically monitored, intensive substance-related disorder treatment.

MHCC advises that such programs comprise less than 4% of substance use treatment programs in the State. Given the State's opioid epidemic, MHCC expects demand for such services to grow but advises that the CON requirement may be a disincentive. As a result, other programs that do not require a CON may be inappropriately substituted. MHCC advises that the bill is intended to alleviate this disincentive.

**State Fiscal Effect:** As few CON applications for residential-intensive inpatient level 3.7 programs are requested, elimination of the CON requirement for these programs may decrease MHCC expenditures marginally. As no fee revenue is generated from CON applications, revenues are not affected.

DLS notes that the bill may result in an increase in applications for licensure for residential-intensive inpatient level 3.7 programs, as the bill streamlines the licensure process by eliminating the CON requirement. DLS advises that any increase can likely be handled with existing budgeted resources.

**Small Business Effect:** MDH has determined that this bill has minimal or no impact on small business. However, MDH also advises that, by eliminating the CON requirement, the bill may significantly reduce legal and technical costs for any small business seeking

to provide residential-intensive inpatient level 3.7 services. Thus, DLS advises that the bill has a potential meaningful impact on such small businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 9, 2018  
mm/jc

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**Department of Health  
Session 2018**

**TITLE:** Alcohol and Drug Abuse Intermediate Care  
Facilities - Certificate of Need - Requirement

**PREPARED BY:** Bridget Zombro

**(Program\Unit):** MHCC

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

  x   WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

       WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**

This would reduce the costs for providers looking to enter or expand in the Maryland market. Obtaining a CON requires time and consultant expenses, usually both legal and technical. These costs can be substantial, especially if applications are contested.