

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 940  
Finance

(Senator Klausmeier)

Health and Government Operations

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Health Care Facilities - Certificate of Need - Modifications

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This bill modifies certificate of need (CON) requirements related to (1) changes in health care services offered and (2) capital expenditures related to a health care facility other than a hospital. The bill also requires a specified CON filed after October 1, 2019, to be deemed approved if (1) the CON is uncontested and (2) final action by the Maryland Health Care Commission (MHCC) does not occur within 120 days after the application for the CON was docketed. Finally, the bill alters the definition of “ambulatory surgical facility” and repeals an associated CON exemption.

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Fiscal Summary

**State Effect:** MHCC can handle the bill’s requirements with existing budgeted resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary/Current Law:**

*Changes in Health Care Services Offered*

The bill requires a CON before the type or scope of any health care service is changed if the health care service results in a change in operating room capacity in a hospital, freestanding medical facility, or ambulatory surgical facility.

Under current law, a CON is required before the type or scope of any health care service is changed if the health care service is offered (1) by a health care facility; (2) in space that is leased from a health care facility; or (3) in space that is on land leased from a health care facility.

### *Capital Expenditures*

The bill repeals the CON requirement for a capital expenditure made by or on behalf of a health care facility other than a hospital that:

- under generally accepted accounting principles, is not properly chargeable as an operating or maintenance expense, if (1) the expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation, the total expenditure is more than \$5 million or (2) the expenditure is made as part of a replacement of any plant and equipment and is more than \$5 million after adjustment for inflation; or
- is made to lease or obtain any plant or equipment, if (1) the expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation, the total expenditure is more than \$5 million or (2) the expenditure is made as part of a replacement of any plant and equipment and is more than \$5 million after adjustment for inflation.

Under current law, in addition to the circumstances repealed under the bill, a CON is required for a health care facility other than a hospital before:

- any expenditure that, under generally accepted accounting principles, is not properly chargeable as an operating or maintenance expense, if (1) the expenditure results in a substantial change in the bed capacity or (2) the expenditure results in the establishment of a new medical service that would require a CON; or
- any expenditure that is made to lease or obtain any plant or equipment, if (1) the expenditure results in a substantial change in the bed capacity or (2) the expenditure results in the establishment of a new medical service that would require a CON.

### *Acquisition of a Facility by a Hospital*

The bill repeals provisions that authorize a hospital to acquire a freestanding ambulatory surgical facility or office of one or more health care practitioners or a group practice with one or more operating rooms used primarily for the purpose of providing ambulatory surgical services if the facility, office, or group practice (1) has obtained a CON; (2) has obtained an exemption from CON requirements; or (3) did not require a CON in order to provide ambulatory surgical services after June 1, 1995.

### *Ambulatory Surgical Facility*

The bill alters the definition of “ambulatory surgical facility” for purposes of the CON program to mean any center, service, office, facility, or office of one or more health care practitioners or a group practice that, among other requirements, has *three or more* operating rooms (rather than two or more operating rooms under current law). The bill repeals a related exemption from CON requirements for the office of one or more health care practitioners or a group practice with two operating rooms that currently applies under specified circumstances.

### *Required Approval*

The requirement that MHCC approve an uncontested CON application after 120 days under specified circumstances does not apply to an application for a CON involving (1) the establishment of a health care facility; (2) the relocation of a health care facility; or (3) the introduction by a hospital of cardiac surgery or organ transplantation.

**Background:** The CON program, located within 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 type or scope of any health care service offered by a health care facility;
- make a health care facility capital expenditure that exceeds a threshold established in Maryland statute; or
- change the bed capacity of a health care facility.

## *Certificate of Need Modernization Task Force*

In June 2017, the Senate Finance and House Health and Government Operations committees directed MHCC to review specific elements of the CON program. In response, MHCC convened a CON Modernization Task Force. In the task force's December 2018 [final report](#), the task force made several recommendations, some of which form the basis for the bill's provisions, including:

- create an abbreviated review process for all uncontested projects that do not involve (1) establishment of a health care facility; (2) relocation of a health care facility; or (3) the introduction by a hospital of cardiac surgery or organ transplantation;
- establish deemed approval for uncontested project reviews eligible for an abbreviated project review process if final action by MHCC does not occur within 120 days after docketing;
- define “ambulatory surgical facility” in the CON statute as an outpatient surgical center with three or more operating rooms; and
- limit the requirement for CON approval of changes in operating room capacity by hospitals to the rate-regulated hospital setting (*i.e.*, a general hospital).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 931 (Delegate Kipke) - Health and Government Operations.

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

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Analysis by: Nathan W. McCurdy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510