

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 972

(Delegate Kelly, *et al.*)

Health and Government Operations

Finance

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Continuing Care at Home - Certificate of Need - Exemption

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This bill exempts continuing care at home agreements from certificate of need requirements by altering the definition of “health care facilities” for the purpose of providing an exception to the requirement for a certificate of need (CON). The bill specifies that certain requirements for providers of continuing care at home services do not apply to a provider that (1) meets any reserve requirements and (2) until the provider has enrolled the minimum number of subscribers needed for its revenues to equal its expenses, holds in escrow the entirety of all entrance fees or maintains a surety bond of \$1.0 million or an equivalent replacement security. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** None. The change is technical in nature and does not directly affect governmental finances.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** Under § 10-401 of the Human Services Article, “continuing care at home” means providing medical, nursing, or other health-related services directly or by contractual agreement (1) to an individual who is at least 60 years old and not related by blood or marriage to the provider for the life of the individual or for a period exceeding one year and (2) under a written agreement that requires a transfer of assets or an entrance

fee notwithstanding periodic charges. “Continuing care at home” includes providing assistance with the physical maintenance of the individual’s dwelling.

An application for a certificate of registration to provide continuing care at home services must include at least the following information: (1) verification that the required number of agreements has been executed and the corresponding deposits collected; (2) the form and substance of any proposed advertisements, advertising campaigns, or other promotional materials, as specified; (3) verification that any other license or certificate required by other appropriate State units has been issued to the provider; and (4) any other information the Maryland Department of Aging (MODA) requires.

MDOA must issue a certificate of registration for continuing care at home to a provider if the department determines, among other things, that the required number of agreements has been executed and the corresponding deposits collected.

### *Certificate of Need*

For purposes of CON requirements, a “health care facility” is a hospital, limited-service hospital, related institution, ambulatory surgical facility, inpatient facility for the rehabilitation of disabled individuals, home health agency, hospice, freestanding medical facility, and any other health institution, service, or program that requires a CON.

For the purpose of providing an exception to the requirement for CON, “health care facility” does not include (1) a facility to provide comprehensive care constructed by a provider of continuing care, as specified; (2) a facility to provide comprehensive care owned by the Maryland Department of Veteran Affairs; (3) a kidney disease treatment facility, or the kidney disease treatment stations and services provided by or on behalf of a hospital, if the facility or the services do not include kidney transplant services or programs; or (4) the office of one or more individuals licensed to practice dentistry for the purposes of practicing dentistry.

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 (1) are the most cost-effective approach to meeting identified needs; (2) are of high quality; (3) are geographically and financially accessible; (4) are financially viable; and (5) 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 (1) build, develop, or establish a new health care facility; (2) move an existing health care facility to another site; (3) change the type or scope of any health care service offered by a

health care facility; (4) change the bed capacity of a health care facility; or (5) make a health care facility capital expenditure that exceeds a specified threshold.

Certain continuing care facilities are exempt from the CON program, including a facility to provide comprehensive care constructed by a provider of continuing care if:

- the facility is for the exclusive use of individuals who have continuing care agreements and paid entrance fees;
- the facility is located on the campus of the continuing care community; and
- the number of comprehensive care nursing beds in the community does not exceed (1) 24% of the number of independent living units in a community having less than 300 independent living units or (2) 20% of the number of independent living units in a community having 300 or more independent living units.

In general, a continuing care community does not lose its exemption from CON requirements when the community admits an individual directly to a nursing facility within the continuing care community if the admittee's spouse, relative, or an individual with a significant long-term relationship with the admittee is admitted at the same time under a joint contract to an independent living unit or assisted living unit within the continuing care community.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 804 (Senator Beidle, *et al.*) - Finance.

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

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