Department of Legislative Services

Maryland General Assembly

FISCAL NOTE
Revised

House Bill 2 (Delegate Goldwater, *et al.*)
Environmental Matters and Economic Matters

Maryland Health Care Regulatory and Systems Reform Act

This bill consolidates health care regulatory responsibilities under a new Health Regulatory Commission (HRC), establishes a Health Regulatory Commission Fund, and sets fee limits on hospital, nursing home, payor, and health care practitioner assessments to be paid into the fund. The bill abolishes the Health Resources Planning Commission (HRPC), the Health Services Cost Review Commission (HSCRC), and the Health Care Access and Cost Commission (HCACC), and transfers their responsibilities to HRC. It establishes a $10 million annual limit on HRC expenditures and fee assessments.

The bill takes effect January 1, 1999.

Fiscal Summary

State Effect: Net special fund expenditures decrease by $270,610 (of which $150,000 represents one-time savings) in FY 1999. Future year special fund savings increase with annualization and inflation, exclusive of potential significant special fund savings in future years from elimination of redundant health commission functions and resources. FY 1999 budget language stipulates that up to $100,000 of the three health regulatory commissions' appropriation may be reduced to represent health regulatory reorganization savings, contingent upon enactment of this bill. Although not shown in the box below, general fund expenditures increase by at least $291,300 beginning in FY 2000 to cover health planning functions transferred to the Department of Health and Mental Hygiene (DHMH) and are offset by an equivalent decrease in special fund expenditures. Special fund revenues decrease by $200,000 in FY 1999; the decrease grows with annualization in future years.

(in dollars)	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
SF Revenues	($200,000)	($400,000)	($400,000)	($400,000)	($400,000)
GF Expenditures	0	--	--	--	--
SF Expenditures	(270,610)	(243,800)	(250,500)	(257,400)	(264,500)
Net Effect	$70,610	($156,200)	($149,500)	($142,600)	($135,500)

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

Local Effect: The civil penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Meaningful.

Fiscal Analysis

Bill Summary: The bill transfers HRPC health planning functions to DHMH, except that DHMH is to delegate to HRC those health planning functions necessary to support its Certificate Of Need (CON) function. It repeals the Advisory Committee on Practice Parameters, the Advisory Board on Hospital Licensing, and the requirement that a health care practitioner payment system be implemented.

For fiscal 1999 only, HRPC special funds that support the State health plan functions are to be transferred to DHMH. The authority of HRPC, HSCRC, and HCACC to assess and collect user fees remains in effect through fiscal 1999. These provisions take effect June 1, 1998.

The bill requires HRC to study the CON program, including specialized medical services, to determine whether to retain or streamline CON requirements and report by October 1, 1999 to the Governor and various legislative committees. It eliminates CON requirements for hospitals in merged asset organizations for changes related to the reallocation of existing bed capacity and the type of health care services. It also eliminates CON requirements prior to closing. These changes do not apply to single hospital jurisdictions.
It establishes a new hospital licensing category called a “limited service hospital”.

Regarding cardiac surgery program CON review, the bill: (1) defines, for CON review, the capacity of existing cardiac surgery programs to be in effect until October 1, 1999 or until HRC adopts new standards for cardiac surgery program CONs; and (2) validates CON standards set forth in COMAR 10.24.01. This provision of the bill takes effect June 1, 1998. The bill requires the following studies to be conducted: (1) DHMH, in consultation with HRPC, is to study the impact of *eliminating home health or hospice CON requirements* on

the health care industry and to report by December 1, 1998 to the Governor and the General Assembly; (2) HCACC is to contract with an independent entity to study *HRC's proposed management and organization* and to report by December 1, 1998 to the Governor and the General Assembly; (3) HCACC is to study *practice parameters* and their uses in the private health insurance market and report by December 1, 1998 to the Governor and the General Assembly; (4) the Insurance Administration, in consultation with the HSCRC and HCACC, is to study *downstream risk arrangements* between licensed carriers and subcontracting provider entities and make recommendations as to whether changes to the current regulatory structure are needed to ensure consumer protection against provider insolvency by December 1, 1998 to the General Assembly; (5) HCACC is to study the feasibility of implementing a *hospital and health care provider report card* to comparatively evaluate the quality of care outcomes for hospitals and other health care providers and report by December 1, 1998 to the Governor and the General Assembly; (6) DHMH, in consultation with HRPC, HSCRC, and HCACC, is to develop a methodology for *calculating hospital licensed bed capacity* that reflects actual licensed and staffed beds and report by January 1, 1999 to the Governor and the General Assembly on the methodology and number of beds to be delicensed; and (7) DHMH, in consultation with the Insurance Administration and HSCRC, is to study the *extent that carriers refer a member to a hospital based on the availability of specialized medical services or the ability of nonrate hospitals to negotiate rates* and report by January 1, 1999 to the General Assembly. These study provisions of the bill take effect June 1, 1998.

DHMH, in consultation with HRPC, HSCRC, and HCACC, is to adopt delicensing regulations and delicense any hospital beds determined to be excess by July 1, 1999. This provision takes effect June 1, 1998.

DHMH is required to ensure that Medicaid payments for services provided by a hospital or freestanding ambulatory care facility in a contiguous state or the District of Columbia are reduced by 20% if the hospital or facility does not submit discharge data on all Maryland patients to the HSCRC.

The bill requires the Governor to appoint members of the nine-member HRC. For the first term only, commission members are to come from among the current members of the HCACC, HSCRC, and HRPC in a specified manner. The Governor is to appoint the Chairman of HCACC to serve as Chairman of HRC. These provisions take effect June 1, 1998.

All property and contracts held by HSCRC, HRPC, and HCACC must be transferred to HRC. Transferred employees will have the same rights, benefits, and employment and retirement status as they do currently. HRC is required to submit an annual report to the Governor and the General Assembly on December 1, 1999 and each subsequent December 1.

Background: Health care regulation in Maryland has evolved over the last three decades into a highly developed regulatory structure that incorporates DHMH, MIA, and three independent commissions - HRPC, HSCRC, and HCACC. The cost of health care regulation by these agencies is approximately $21 million, supported by a combination of user fees, general funds, and federal funds. Recent developments in health care delivery and financing, including the growth of managed care and the evolution of provider networks, have obscured the boundaries of the five regulatory agencies.

Exhibit 1 sets forth the fiscal 1999 budget for the five entities involved in regulating health care.

Exhibit 1
Health Care Regulatory Agencies
FY 1999 Budget

($ in millions)	General Funds	Special Funds	Federal Funds	Total	Positions
HCACC	$0.0	$4.4	$0.0	$4.4	29
HSCRC	0.0	2.9	0.0	2.9	30
HRPC	0.0	3.1	0.0	3.1	39
Subtotal	0.0	10.4	0.0	10.4	98
Insurance Adm. (Life&Health)	2.4	0.3	0.0	2.7	51
DHMH Licensing.&Cert.	5.8	0.0	2.2	8.0	148
Total	$8.2	$10.7	$2.2	$21.1	297

State Expenditures: Exhibit 2 provides a summary of the bill's provisions which affect expenditures. Additional detail on each item is provided below.

Exhibit 2
Net Fiscal Expenditures FY 1999

Provision	Expenditures (in dollars)	Positions
Practice Parameters*	($200,000)	
Management Study*	50,000	
Abolished Positions**	(107,710)	(6)***
Commissioner Travel**	(12,900)	
Total	($270,610)	(6)

* one-time expenditures/savings
** ongoing savings - reflects the bill's January 1, 1999 effective date
*** represents three permanent and three contractual positions in HRPC

Health Care Access and Cost Commission

Net special fund expenditures could decrease by an estimated $150,000 in fiscal 1999. This estimate reflects: (1) savings of $200,000 for practice parameter activities included in the proposed fiscal 1999 budget since the bill repeals the Advisory Committee on Practice Parameters; and (2) the cost of hiring a consultant to perform the management study required by the bill ($50,000). Fiscal 1999 budget language stipulates that up to $100,000 of the three health regulatory commissions' appropriation may be reduced by the Secretary of Budget and Management to represent health regulatory reorganization savings, contingent upon enactment of this bill.

Health Resources Planning Commission

Savings

HRPC has identified $120,610 in fiscal 1999 expenditure savings (or $243,825 on an annual basis) needed to fit within the $10 million expenditure ceiling placed on HRC. The savings consists of: (1) three abolished permanent positions (one Associate Director and two Secretaries), which represents $64,618; (2) three abolished contractual positions (one Research Analyst and two Administrative Specialists), which represents $43,092; and (3) commissioner per diem and travel expenditure savings, which represents $12,900.

The responsibilities of the three contractual positions are to collect data in the areas of long-term care, ambulatory surgical facilities, hospices, and home health agencies. The bill establishes a nine-member HRC, whereas the three existing health commissions have a

combined 30 members. Each commission member abolished represents savings of $1,200 in per diem and travel expenses; each commission chairman represents savings of $1,500 in per diem and travel expenses. The bill results in a total of 21 abolished commission members, of which two are commission chairmen.

Health Planning Functions and Funds to be Transferred to DHMH

HRPC's health planning functions in support of the CON process (State health plan) are to be transferred to HRC; all other health planning functions are to be transferred to DHMH. The bill permits HRPC special funds to be transferred to DHMH to support these functions in fiscal 1999 only; after fiscal 1999, DHMH must support these functions with general funds. HRPC has identified $291,294 in grant funds to local health planning agencies that would be transferred to DHMH. Additional HRPC special funds would be transferred to DHMH as part of the health planning function, but it is not possible to readily determine an exact amount at this time because health planning staff perform both State health plan functions and general health planning functions. For illustrative purposes, the proposed fiscal 1999 budget includes $671,000 in the Health Planning and Policy Analysis Division and 14 positions, exclusive of $291,294 in local health planning grant funds.

HRPC Functions and Funds to be Transferred to HRC

Except the six abolished positions, commission member per diem and travel savings, and health planning functions transferred to DHMH, all of HRPC's functions are to be transferred to HRC.

Department of Health and Mental Hygiene

As indicated in the *HRPC* section, at least $291,294 in health planning funds will be transferred to DHMH from HRPC. The bill permits HRPC special funds to be transferred to DHMH to support these functions in fiscal 1999 only; after fiscal 1999, DHMH must support these functions with general funds.

HRPC has identified an estimated $700,000 in new expenditures that DHMH would incur in carrying out some of the functions that it inherits from HRPC, for which HRPC has no funding. These include: completion of population-based planning to achieve improvement in community health status; coordination of local health planning input and conducting public hearings and meetings; and development of an institution-specific plan for the reduction of health capacity of health services. These functions would require an estimated 7.5 new planning positions ($493,500) and consultant technical support ($206,500).

The Department of Legislative Services advises that the $700,000 in new expenditures is not a direct result of the bill's requirements and should not be included as part of the bill's fiscal impact. These functions are required under current law.

Department of Health and Mental Hygiene - Licensing and Certification

DHMH advises that general fund expenditures could increase by an estimated $27,156 in fiscal 1999. This estimate reflects the cost of hiring one Health Facilities Surveyor position to inspect limited service hospitals once a year, since the bill establishes limited service hospitals as a new category. The estimate includes salaries and fringe benefits.

The Department of Legislative Services advises, however, that the bill defines a limited service hospital as a health care facility that is licensed as a hospital on or after January 1, 1998 that changes the scope of health care services offered by eliminating overnight acute medical-surgical care. Because the Licensing and Certification Administration's (LCA) responsibilities already include hospital inspections, establishment of a limited care hospital category does not lead to additional duties for LCA. Therefore, LCA does not need an additional position to inspect hospitals which convert to limited service hospitals.

Judiciary

If a health care facility is not providing certain information requested by HCACC, the commission is authorized to apply to a circuit court for legal relief. The civil penalty provisions of this bill are not expected to significantly affect State expenditures.

Potential Future Year Savings

The bill's two provisions regarding the study of the CON program (to be completed by October 1, 1999) and HRC's management and organization (to be completed by December 1, 1998) could result in significant expenditure savings in future years, assuming that the studies identify possible duplicative functions and resources.

State Revenues:

HRC Fee Revenues

Effective July 1, 1999 (fiscal 2000), HRC is to assess a fee on all hospitals, nursing homes, payors, and health care practitioners to cover the commission's annual expenditures. The total fees assessed may not exceed $10 million in any fiscal year and are to be paid into the HRC Fund. HCACC, HSCRC, and HRPC are already assessing fees on hospitals, nursing homes, payors, and health care practitioners to cover health commission expenditures.

As shown in **Exhibit 1**, the proposed fiscal 1999 budget for HCACC, HSCRC, and HRPC totals $10.4 million. Because HRC's special fund revenues must cover its annual

expenditures, its expenditures would decrease by $200,000 in fiscal 1999 and $400,000 in fiscal 2000 and subsequent years, and special fund revenues would decrease by an equal amount.

Penalty Provisions

If a health care facility is not providing certain information requested by HCACC, the commission is authorized to: (1) impose a penalty of up to $100 a day for each day that information is not provided; (2) issue an administrative order requiring the information; or (3) apply to a circuit court for legal relief. The monetary penalty provisions of this bill are not expected to significantly affect State revenues.

Small Business Effect: Health care facilities and health insurers that are small businesses could benefit from consolidation and streamlining of State health care regulations. In addition, small business health care facilities and health care practitioners would realize lower fees assessed to support HRC than they are currently assessed to support the three existing health commissions.

HRC is required to assess a fee on all hospitals, nursing homes, payors, and health care practitioners to cover the commission's annual expenditures. Of these categories, only self-employed health care practitioners and around 20 nursing homes would be considered small businesses. The bill caps the total fees that can be assessed at $10 million annually starting in fiscal 2000; the three health commissions' fiscal 1999 budgets total $10.4 million. It also limits the portion of HRC's total fees that can be assessed on hospitals at 54% annually; on nursing homes at 3% annually; on payors at 29% annually; and on health care practitioners at 14% annually.

Exhibit 3 compares the allocation of fiscal 1999 funding with the allocation made under the bill for each type of health care entity. Hospitals and nursing homes are currently assessed fees to support HRPC and HSCRC. While the fiscal 1999 budget allocation for those two commissions totals $6 million, the bill allows a combined maximum assessment for hospitals and nursing homes of $5.7 million. Payors and health care practitioners are currently assessed fees to support HCACC; payors are assessed fees that support 2/3 of HCACC's operating expenses and health care practitioners are assessed fees that support 1/3 of HCACC's operating expenses. The fiscal 1999 budget for HCACC equals $4.4 million; hence, payors would be assessed $2.9 million and health care practitioners would be assessed $1.5 million. Under the bill's provisions, payors could be assessed a maximum of $2.9 million and health care practitioners could be assessed a maximum of $1.4 million.

Exhibit 3
Fees Assessed on Health Care Industry

		HB 2	

	FY 1999 Budget (in millions)	maximum assessment (in millions)	Difference (in millions)
HRPC/HSCRC			
Hospitals/nursing homes	$6.0	$5.7	($0.3)
HCACC			
Payors	2.9	2.9	(0.0)
Health care practitioners	1.5	1.4	(0.1)
TOTAL	$10.4	$10.0	($0.40)

Additional Comments:

Hospital Uncompensated Care Fund

HSCRC's proposed fiscal 1999 budget includes $39.4 million in special funds, but only $2.9 million is for actual HSCRC operations. The Hospital Uncompensated Care Fund accounts for the balance of $36.5 million; these funds are generated by an assessment on hospitals and are used to finance hospital uncompensated care. The Hospital Uncompensated Care Fund was created by regulation rather than by statute. The bill does not assume that the $36.5 million fund is transferred to HCACC, since the fees assessed by HCACC may not exceed $10 million in any fiscal year.

Information Source(s): Department of Health and Mental Hygiene (Licensing and Certification, Board of Physician Quality Assurance, Health Care Access and Cost Commission, Health Services Cost Review Commission, Health Resources Planning Commission); Insurance Administration; Maryland Ambulatory Surgical Center Association; Department of Legislative Services

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