SB 529

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 529 (Senator Pipkin)
Finance

Health Facilities - Certificates of Need - Repeal

This bill repeals the Certificate of Need (CON) program within the Maryland Health Care Commission (MHCC).

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: MHCC special fund revenues and expenditures each decrease by $680,500 in FY 2007. Medicaid and State Employee and Retiree Health and Welfare Benefits Program expenditures could increase or decrease by a significant amount, beginning in FY 2007, depending on whether health care costs increase or decrease as a result of the bill. Future year estimates reflect inflation.

Local Effect: Local jurisdiction employee health benefits expenditures would be impacted to the extent health care costs increase or decrease as a result of the bill.

Small Business Effect: Potential meaningful. Small business health benefits expenditures would be impacted to the extent health care costs increase or decrease as a result of the bill.

Analysis

Current Law: MHCC must issue a CON before a health care facility may be built, developed, or established in the State. A CON is also required for any capital expenditures to add a new medical service to an existing facility. A CON is the primary method for implementing the State Health Plan and is generally required for capital expenditures, additions, or modifications to existing facilities or services, and new services. The basis for approval of a CON is need, as determined in the State Health Plan.

Background: The CON process, employed in most states in some form, is a cost-containment regulatory method that began in the early 1970s. CONs prohibit capital expenditures by hospitals and other health care institutions unless a governmental agency finds a need for the new health care services to be offered. Beginning in the 1980s, some states eliminated CON programs, while others modified the programs and continue to use them in combination with other regulatory programs.

CON laws were a response to the perceived excess capacity in capital resources. Hospitals commonly have far more space than they require, frequently operating at 50% capacity or lower. Ordinarily, market forces penalize such over-investment of capital resources because a company with excess capacity must charge higher prices to service its debt. In the health care industry, however, higher prices do not automatically cause a loss of business. According to some analysts, the health care industry is ruled by what is known as "Roemer's law," which states that empty beds generate increased demand for services when health insurance use is widespread. Roemer was the first to identify and explain the apparent paradox that health care utilization tends to be the highest where there is the most unused capacity.

Some analysts state that CON laws have not met the compelling need for rigorous control of capital expenditures. Several studies have demonstrated that CON regulation has virtually no effect on health care investment or expenditures. This failure is due to several shortcomings in the design and implementation of CON laws that regulate health care capital expenditures but not actual health care charges. CON laws may also create an unintended protectionist effect. Once a hospital has a CON, it has a naturally-favored position to continue to expand to meet future growth in need.

State Fiscal Effect: MHCC special fund expenditures would decrease by an estimated $680,521 in fiscal 2007, which reflects the bill's July 1, 2006 effective date. The CON program within MHCC consists of seven positions, including two program managers, two fiscal services administrators, two health policy analysts, and one administrative officer, whose positions would be abolished. Total savings for salaries and fringe benefits would be $593,121. Additionally, MHCC has requested $87,400 in its fiscal 2007 budget request to automate CON applications and the analyses of data sets in relation to long-term care. Future year estimates reflect inflation.

MHCC special fund revenues would decrease by the same amount, beginning in fiscal 2007. MHCC is specially-funded through fees imposed on payors and providers. As a result of the decrease in expenditures, MHCC would decrease its fees to exactly offset the estimated expenditure reduction. Future year estimates reflect inflation.

Additional Information

Prior Introductions: None.

Cross File: HB 1420 (Delegate Smigiel) – Health and Government Operations.

Information Source(s): *Health Care Law and Ethics* (1998), Mark A. Hall and Ira Mark Ellman; Department of Health and Mental Hygiene; Department of Aging; Department of Legislative Services

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