HB 1074

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1074 (Delegate Eckardt, *et al.*)
Health and Government Operations

Repeal of Certificate of Need Requirements - Health Care Facilities Other Than Home Health Agencies and Hospices

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This bill repeals the Certificate of Need (CON) program within the Maryland Health Care Commission (MHCC) for all health care facilities other than home health agencies and hospices. MHCC is required to develop a comprehensive plan for emergency medical services by December 1, 2007.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: MHCC special fund revenues and expenditures each decrease by $327,100 in FY 2008 due to a reduction of $475,823 in personnel expenses, offset by a $150,000 increase in special fund expenditures (corresponding revenue increase) for the study required by the bill. Medicaid and State Employee and Retiree Health and Welfare Benefits Program expenditures could increase or decrease by a significant amount beginning in FY 2008 depending on whether health care costs increase or decrease as a result of the bill. Future year estimates reflect inflation.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
SF Revenue	($327,100)	($483,600)	($505,300)	($528,000)	($551,700)
SF Expenditure	(327,100)	(483,600)	(505,300)	(528,000)	(551,700)
Net Effect	$0	$0	$0	$0	$0

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

Local Effect: Local jurisdiction employee health benefits expenditures would be affected to the extent health care costs increase or decrease.

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

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.

Home Health Agencies and Hospice Facilities: Home health agencies provide skilled nursing, home health aid, and home health care services such as nursing, physical

therapy, and equipment and supplies. Home health agencies must obtain an annual license from the Office of Health Care Quality (OHCQ). According to OHCQ, home health agencies are also strongly regulated by the federal Centers for Medicare and Medicaid Services, which pays the agencies for services provided to Medicare beneficiaries. Home health agencies are surveyed at least every three years. In fiscal 2006, there were 55 licensed home health care agencies in Maryland.

Hospice facilities provide a coordinated, interdisciplinary program of hospice care services for meeting the special physical, psychological, spiritual, and social needs of dying individuals and their families, by providing palliative and supportive medical, nursing, and other health services through home or inpatient care during the illness and bereavement. Hospice facilities must obtain a license from OHCQ every three years and are surveyed by OHCQ at least every three years. In fiscal 2006, there were 33 hospice facilities in Maryland.

In its January 2001 report, *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Phase I, Final Report to the General Assembly*, MHCC recommended that Maryland maintain existing CON regulation for new or expanded hospice services and home health agencies through the CON process.

The November 2005 report of the Certificate of Need Task Force recommended no change to CON regulation of hospices. The task force did recommended removing home health services from CON review based on a number of considerations, including the limited scope of home health agency CON regulation and ability of the Medicare program to control costs and establish and enforce conditions of participation.

Emergency Medical Services: Maryland's system of emergency medical services is governed by the 11-member Emergency Medical Services Board, appointed by the Governor. The board directs the Maryland Institute of Emergency Medical Services Systems (MIEMSS), an independent State agency. MIEMSS oversees an EMS system that includes over 30,000 Maryland-certified EMS providers, 48 emergency departments, and 9 trauma centers. In addition to the Department of State Police Medevac helicopter system that provides over 5,400 transports per year, MIEMSS regulates commercial ground and air ambulance services that provide 191,000 ground and 3,500 air transports annually.

MHCC oversees the Maryland Trauma Services Fund. The fund uses revenues from a $5 surcharge on motor vehicle registrations to subsidize the cost of uncompensated care, under-compensated care, and on-call services at Maryland trauma centers and stand-by costs incurred by Children's National Medical Center in Washington, DC. The

Governor's proposed fiscal 2008 budget for the fund is $13.1 million, with a projected fund balance at the end of fiscal 2007 of $15.3 million.

State Fiscal Effect: MHCC special fund expenditures would decrease by a total of $327,083 in fiscal 2008, which reflects the bill's July 1, 2007 effective date. This includes a reduction of $475,823 in personnel expenses for six positions offset by an increase of $150,000 to procure a contractor to collect and analyze data for the required study on emergency medical services. The CON program within MHCC consists of six positions, including two program managers, one fiscal services administrator, two health policy analysts, and one administrative officer, whose positions would be abolished. MHCC indicates that CON regulation of home health and hospice facilities could be handled within existing resources. Future year estimates reflect inflation.

MHCC special fund revenues would decrease by $327,083 beginning in fiscal 2008. 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: Similar bills were introduced in 2006 as SB 529/HB 1420. The bills would have repealed all CON regulation, including home health agencies and hospice providers. The bills received unfavorable reports from the Senate Finance and House Health and Government Operations committees, respectively.

Cross File: SB 628 (Senators Pipkin and Jacobs) – Finance.

Information Source(s): *Annual Report and Staffing Analysis*, Office of Health Care Quality, January 2006; *Health Care Law and Ethics* (1998), Mark A. Hall and Ira Mark Ellman; Department of Health and Mental Hygiene; Department of Legislative Services

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