SB 1020

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1020 (Senator Middleton)
Finance

Maryland Health Care Regulatory Reform Act of 2017

This bill repeals and substantially recodifies statute related to the Health Services Cost Review Commission (HSCRC) and modifies statute related to the Maryland Health Care Commission (MHCC) to establish the new Maryland Health Care and Cost Review Commission (MHCCRC). Current membership of the commissions (7 HSCRC members and 15 MHCC members) is repealed, and the terms of all current members expire September 30, 2017. Instead, the new MHCCRC consists of five full-time, salaried members. Funding for the services and programs under MHCC and HSCRC must be provided for MHCCRC in the fiscal 2019 State budget. The total fees that may be assessed by MHCCRC may not exceed $24.0 million (the combined current user fees caps of HSCRC and MHCC). MHCCRC must, by January 1, 2018, propose to the Governor and the General Assembly (1) a streamlined certificate of need (CON) process and (2) a list of health care facilities and services that would be suitable to remove from the CON requirement. The bill also makes numerous technical, conforming, and stylistic changes.

Fiscal Summary

State Effect: Special fund expenditures increase by $1.2 million in FY 2018 for MHCCRC to hire five full-time members and three full-time administrative personnel and for one-time expenses to contract with an outside firm to develop recommendations for the revision of the CON process. To the extent permitted under MHCCRC's user fee cap, MHCCRC special fund revenues increase accordingly beginning in FY 2018. Otherwise, existing special fund revenues and expenditures for HSCRC and MHCC continue under MHCCRC.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	-	-	-	-	-
SF Expenditure	$1,162,600	$1,241,300	$1,290,600	$1,342,200	$1,396,100
Net Effect	($1,162,600)	($1,241,300)	($1,290,600)	($1,342,200)	($1,396,100)

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

Local Effect: The bill is not anticipated to impact local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Much of the bill makes technical, conforming, and stylistic changes. These changes include (1) recodification of definitions; (2) recodification of provisions related to the powers and duties of HSCRC; (3) repealing provisions that require MHCC to coordinate or act in conjunction with HSCRC; (4) changing "chairman" to "chair" within MHCCRC; and (5) altering provisions throughout statute that reference either MHCC or HSCRC to instead reference MHCCRC.

Establishment of the Maryland Health Care and Cost Review Commission

Commissioners: MHCCRC consists of five full-time members appointed by the Governor with the advice and consent of the Senate. The term of a member is five years, and terms are staggered as specified in the bill. Each member must have recognized knowledge and interest in health care, including experience in (1) health care regulation; (2) hospital, health care facility, or health plan administration; (3) medical professions; (4) business or legal professions; or (5) consumer protection. Additionally, members must be registered to vote in the State. Before taking office, each appointee must take a specified oath.

A member is entitled to compensation in accordance with the State budget and reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The salary of the MHCCRC chair must be at least $40,000 a year, and the salary of each member must be at least $35,000 a year.

MHCCRC must be (1) broadly representative of the geographic and demographic diversity of the State and the public and (2) composed of individuals with diverse training and experience in health care.

Appointment of the Chair: With the advice and consent of the Senate and from among the members of MHCCRC, the Governor must appoint the chair to a five-year term that begins October 1. At the end of a term, the chair continues to serve until a successor qualifies.

Executive Director and Legal Counsel: With the approval of the Governor and the advice and consent of the Senate, MHCCRC must appoint an executive director to be the chief administrative officer of the commission. The term of the executive director is three years and begins on October 1. At the end of a term, the executive director continues to serve

until a successor qualifies. The bill requires the Attorney General to provide legal counsel to MHCCRC.

Additional Experts: MHCCRC may hire or retain on a case-by-case basis experts to assist in the regulation of health care services and facilities and the review of the cost of health care services in the State.

Ensuring Ongoing Operations

Powers, Duties, and Assets: On October 1, 2017, all of the functions, powers, duties, books and records, real and personal property, equipment, fixtures, assets, liabilities, obligations, credits, rights, and privileges of MHCC and HSCRC must be transferred to MHCCRC. All appropriations held by MHCC and HSCRC must also transfer to MHCCRC by this date.

Laws, Regulations, and Standards: Generally, all existing laws, regulations, proposed regulations, standards and guidelines, policies, orders and other directives, forms, plans, memberships, contracts, property, investigations, administrative and judicial responsibilities, rights to sue and be sued, and all other duties and responsibilities associated with the functions of MHCC and HSCRC must continue under and, as appropriate, are legal and binding on MHCCRC until completed, withdrawn, canceled, modified, or otherwise changed.

Employees: All employees of MHCC and HSCRC who are transferred to MHCCRC as a result of the bill must be transferred without diminution of their rights, benefits, employment, or retirement status.

Repeal of Obsolete Provision

Small Group Insurance Market: The bill also repeals a requirement that small employers receiving a subsidy of small employer health benefit plan premium contributions agree to purchase a wellness benefit as this provision is obsolete under the federal Patient Protection and Affordable Care Act.

Current Law/Background:

Maryland Health Care Commission and Health Services Cost Review Commission

MHCC is an independent regulatory agency within the Department of Health and Mental Hygiene (DHMH). MHCC's mission is to plan for health system needs, promote informed decision making, increase accountability, and improve access in a rapidly changing health care environment by providing timely and accurate information on availability, cost, and quality of services to policymakers, purchasers, providers, and the public. MHCC is also

responsible for the development and updating of the State Health Plan, a body of regulation that establishes criteria and standards for considering the need, costs and effectiveness, impact, and viability of health care facility capital projects and which guides the State's CON process. MHCC is composed of 15 members appointed by the Governor with the advice and consent of the Senate.

HSCRC is an independent regulatory agency within DHMH whose primary mandates are to review and approve reasonable hospital rates and publicly disclose information on the costs and financial performance of Maryland hospitals. HSCRC establishes hospital-specific and service-specific rates for all inpatient, hospital-based outpatient, and emergency services. HSCRC is composed of seven members appointed by the Governor.

Both MHCC and HSCRC are special funded using user-fee assessments generated from the entities each commission regulates. MHCC is funded primarily by user fees assessed on health care payers, hospitals, nursing homes, and practitioners. By law, the maximum limit on user fees collected by MHCC is $12.0 million, and the fees are assessed based on the portion of the commission's workload attributable to each industry. HSCRC is funded through the collection of user fees assessed on all hospitals (including private, psychiatric, and rehabilitation hospitals), with rates approved by the commission. HSCRC's total user fees are also capped by statute at $12.0 million.

Certificate of Need Program

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:

- 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 bed capacity of a health care facility;
- change the type or scope of any health care service offered by a health care facility; or

- make a health care facility capital expenditure that exceeds a threshold established in Maryland statute.

While MHCC is responsible for determining the size of a hospital facility, HSCRC is responsible for setting its rates. HSCRC's role has expanded under the Maryland all-payer model contract, where hospitals have been transitioned to Global Budget Revenue and Total Patient Revenue agreements.

All-payer Model Contract

Effective January 1, 2014, Maryland entered into a contract with the federal government to replace the State's 36-year-old Medicare waiver with the new Maryland all-payer model contract. Under the waiver, Maryland's success was based solely on the cumulative rate of growth in Medicare inpatient per admission costs. Under the model contract, however, the State will:

- limit all-payer per capita inpatient and outpatient cost growth;
- constrain Medicare per beneficiary hospital growth;
- shift hospital revenues to a population-based system; and
- reduce both hospital readmissions and potentially preventable complications.

The model contract will be deemed successful if Maryland can meet cost and quality targets without inappropriately shifting costs to nonhospital settings and if there is a measurable improvement in quality of care.

Building on the success of the first phase of the model contract, HSCRC is developing and implementing changes that will shift the focus from the cost of hospital care to the total cost of care in the State. A plan for phase two of the contract was provided to the federal Centers for Medicare and Medicaid Services (CMS) in December 2016. The key themes of the plan are to (1) foster accountability for system-wide and patient-level goals; (2) align measures and incentives for all providers; (3) encourage and develop payment and delivery system transformation approaches; and (4) ensure availability of tools to support providers in achieving transformation goals. Negotiations with CMS are ongoing.

Revisions to the model contract will include integrated care incentives, such as integrated care networks, pay-for-performance programs, and gain-sharing programs to achieve the goals of care coordination and provider alignment. The State has received approval for an amendment to implement specific care redesign strategies, which will allow hospitals to access comprehensive Medicare data, share resources, and offer incentives to nonhospital care partners. Changes will also emphasize the utilization of the Chesapeake Regional

Information System for our Patients (CRISP), the State designated health information exchange, and other health information technology tools.

Review of the Health Services Cost Review Commission and the Maryland Health Care Commission

In 2016, the Department of Legislative Services (DLS) conducted a review of the missions and responsibilities of HSCRC, MHCC, and the Maryland Community Health Resources Commission (MCHRC) to determine how the responsibilities and roles of the commissions could be better aligned. The report noted that, as the commissions have evolved, some of the most substantive roles and responsibilities are increasingly shared by more than one commission. However, DLS noted that, despite the issues with overlapping roles, there were significant reasons to be cautious about proceeding with any effort to realign or condense commission functions. In response to the review, HSCRC asserted that any changes to the structures or missions of HSCRC and MHCC would be a distraction to efforts to develop and implement phase two of the model contract. Additionally, DLS noted that it is likely that phase two will require additional changes to the CON process; the duties, funding, and oversight of CRISP; the duties of HSCRC and MHCC; and how HSCRC utilizes the Medical Care Data Base (MCDB) to evaluate waiver performance. As a result, DLS concluded any attempts to modify CON, CRISP, or MCDB may interfere with the complex negotiations HSCRC is currently engaged in with CMS.

DLS concurred with HSCRC's position that any substantial modifications to the mission or structure of HSCRC and MHCC should wait until phase two of the model contract has been at least partially implemented. Ultimately, DLS recommended that another special evaluation of HSCRC, MHCC, and MCHRC occur in 2019. DLS also reiterated recommendations from its 2015 preliminary sunset evaluations of HSCRC and MHCC that the user-fee assessment caps be reviewed to ensure that both commissions have sufficient resources to carry out their current missions and responsibilities.

State Revenues: Under the bill, existing revenues planned for MHCC and HSCRC continue under MHCCRC. The bill combines the $12.0 million cap on revenues for MHCC and HSCRC for a total of up to $24.0 million that may be assessed by MHCCRC. As MHCCRC is special funded, MHCCRC special fund revenues increase correspondingly with any additional expenditures, to the extent permitted by the assessment cap. However, as discussed below, both commissions' expenditures are already anticipated to exceed the statutory assessment cap in fiscal 2018.

State Expenditures: Because the bill does not reduce the mandated activities of either commission and specifies that all employees of both commissions are transferred to MHCCRC, *existing* expenditures planned for MHCC and HSCRC continue under MHCCRC. Additionally, special fund expenditures increase by $1,162,593 in fiscal 2018,

which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring five full-time salaried commission members and three full-time administrative support staff, as well as contractual expenses to develop recommendations to streamline the CON process. The estimate includes salaries, fringe benefits, one-time start-up costs, contractual services, and ongoing operating expenses.

The bill requires the chair of MHCCRC to be paid a minimum of $40,000 and the remaining members to be paid a minimum of $35,000. However, MHCC advises that, due to the knowledge and experience required of the members, it would be extremely difficult to employ full-time members at the minimum salary. As a result, MHCC estimates salaries of $160,000 for the chair and $150,000 for the remaining members. DLS concurs with this estimate. The three administrative staff positions support the five members. Although these additional personnel expenditures are partially offset by a reduction in reimbursement expenses for the current 22 members of MHCC and HSCRC whose terms expire September 1, 2017, such an offset is not accounted for in this estimate. The new commissioners also receive reimbursement for expenses, which has not been factored into the estimate either.

MHCC advises that contractual expenses of approximately $200,000 are required to conduct a study of the CON process. The study would (1) analyze the use of CON programs in other states, including identifying the facilities that are subject to a CON, and (2) review the Maryland CON process and make recommendations to streamline that process. These costs would be incurred in fiscal 2018 only.

Positions	8
Regular Salary and Fringe Benefits	$921,723
One-time Start-up Costs	37,120
One-time Contractual Services	200,000
Operating Expenses	3,750
Total FY 2018 Special Fund Expenditures	**$1,162,593**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

MHCC advises that it will end fiscal 2017 with a fund balance of $3.6 million, and HSCRC will end with a fund balance of $2.0 million. Both commissions' allowances under the Governor's proposed fiscal 2018 budget currently *exceed the combined assessment cap* and will, thus, require utilization of the combined $5.6 million in fund balance to cover projected increased expenditures under the bill. The Governor's proposed fiscal 2018 budget includes $15,119,104 for MHCC and $14,080,920 for HSCRC, for a combined total of $30,200,024. As current revenues and expenditures for MHCC and HSCRC continue, and both commissions have already met their statutory assessment cap, it does not appear

that additional revenues are available to offset new expenditures required under the bill. To cover these additional expenditures, the user fee cap likely must be increased or supplemental general funds provided. Therefore, general funds may be necessary to support these activities. However, such support is not assumed in this analysis.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Maryland Insurance Administration; Maryland Institute for Emergency Medical Services Systems; Office of the Attorney General; Department of Budget and Management; Department of Legislative Services

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mm/jc

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510