Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 597 (Senator Kelley, *et al.*)
Finance Health and Government Operations

Maryland Health Care Commission - State Health Plan and Certificate of Need for Hospital Capital Expenditures

This bill requires the Maryland Health Care Commission (MHCC) to adopt the State Health Plan annually by October 1, and specifies that the plan must be consistent with the Maryland All-Payer Model Contract. MHCC must annually, or on petition by any person, determine the chapter or chapters of the State Health Plan that should be reviewed and revised and establish, at a public meeting, the priority order and timeline of the review and revision. The bill also increases the threshold below which a specified certificate of need (CON) is generally not required when a hospital intends to make specified capital expenditures, from $10 million to the "hospital capital threshold," which is defined as the lesser of 25% of a hospital's gross regulated charges for the immediately preceding year or $50 million.

Fiscal Summary

State Effect: MHCC can handle the bill's requirements with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

State Health Plan

At least every five years, MHCC must adopt a State Health Plan. The plan must include (1) the methodologies, standards, and criteria for CON review and (2) priority for conversion of acute capacity to alternative uses where appropriate. Each year, or on petition by any person, MHCC must *review* the State Health Plan and publish any changes in the plan that MHCC considers necessary, subject to the review and approval granted to the Governor under the Health-General Article. MHCC must adopt rules and regulations that ensure broad public input, public hearings, and consideration of local health plans in development of the State Health Plan.

MHCC must develop standards and policies consistent with the State Health Plan that relate to the CON program. The standards must address the availability, accessibility, cost, and quality of health care, and they must be reviewed and revised periodically to reflect new developments in health planning, delivery, and technology. In adopting standards regarding cost, efficiency, cost-effectiveness, or financial feasibility, MHCC must take into account the relevant methodologies of the Health Services Cost Review Commission (HSCRC).

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, they:

- 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 type or scope of any health care service offered by a health care facility;
- make a health care facility capital expenditure that exceeds a threshold established in Maryland statute; or
- change the bed capacity of a health care facility.

Specifically, a CON *is required* before any of the following capital expenditures are made by or on behalf of a hospital:

- any expenditure that is not properly chargeable as an operating or maintenance expense, if (1) the expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation, the total expenditure is more than $10 million *or* (2) the expenditure is made as part of a replacement of any plant and equipment of the hospital and is more than $10 million after adjustment for inflation; or
- any expenditure that is made to lease or obtain any plant or equipment for the hospital, if (1) the expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation, the total expenditure is more than $10 million *or* (2) the expenditure is made as part of a replacement of any plant and equipment and is more than $10 million after adjustment for inflation.

The CON requirement *does not apply* to a specified capital expenditure by a hospital for a project in excess of $10 million for construction or renovation that:

- may be related to patient care;
- does not require, over the entire period or schedule of debt service associated with the project, a total cumulative increase in patient charges or hospital rates of more than $1.5 million for the capital costs associated with the project as determined by MHCC, after consultation with HSCRC;
- at least 45 days before the proposed expenditure is made, the hospital notifies MHCC;
- within 45 days of receipt of the relevant financial information, MHCC makes the financial determination or MHCC has not made the financial determination within 60 days of the receipt of the relevant financial information; and
- the relevant financial information to be submitted by the hospital is defined in regulations adopted by MHCC, after consultation with HSCRC.

Maryland All-Payer Model Contract and Total Cost of Care Model

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 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 was not only required to limit inpatient, outpatient, and Medicare per beneficiary hospital growth but also to shift hospital revenues to a population-based system and to reduce both hospital readmissions and potentially preventable complications.

The All-Payer Model Contract also called for Maryland to submit a proposal for a new model, no later than January 2017 that would limit, at a minimum, the Medicare beneficiary total cost of care growth rate. In July 2018, Maryland and the federal Centers for Medicare and Medicaid Services agreed to the terms of the new Total Cost of Care Model (TCOC). TCOC, which went into effect January 1, 2019, is designed to (1) improve population health; (2) improve outcomes for individuals; and (3) control growth of the total cost of care. To accomplish these goals, the model is designed to move beyond hospitals to address Medicare patients' care in the community. Under the new model, the State will be required to address care delivery across the health care system with the objective of improving health and quality of care, while limiting State growth in Medicare spending to a level lower than the national rate.

Certificate of Need Modernization Task Force

In June 2017, the Senate Finance and House Health and Government Operations committees directed MHCC to review specific elements of the CON program. In response, MHCC convened a CON Modernization Task Force. In the task force's December 2018 final report, the task force recommended, among other things, replacing the existing hospital project capital expenditure thresholds with a requirement that hospitals obtain CON approval for a capital project with an estimated expenditure that exceeds a specified proportion of the hospital's annual budgeted revenue, but only if the hospital is requesting an adjustment in budgeted revenue, based on an increase in capital costs.

Additional Information

Prior Introductions: None.

Cross File: HB 646 (Delegate Pendergrass) - Health and Government Operations.

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

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