

MHCC_FAV_SB106

Uploaded by: Renfrew, Megan

Position: FAV



Andrew N. Pollak, MD
CHAIR

Ben Steffen
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

**2020 Session
Position Paper**

DATE: January 14, 2020

BILL NO: S.B. 106

COMMITTEE: Finance

POSITION: SUPPORT

FOR INFORMATION CONTACT: Megan Renfrew 410-764-3483

.....
TITLE: Health Care Facilities- Certificate of Need- Exception for State Owned Facilities

BILL ANALYSIS: Senate Bill 106 eliminates Certificate of Need (CON) regulation for health care facilities that are owned by the State of Maryland. The bill strikes an existing narrow exception for a single type of State-owned facility (comprehensive care facilities owned and operated by the Maryland Department of Veteran Affairs) and replaces it with a broad exception that applies to all State-owned facilities.

POSITION AND RATIONALE: The Maryland Health Care Commission (the “Commission”) supports Senate Bill 106.

Under current law, major capital projects at State-owned facilities are authorized by both the legislative and executive branches of the State government. Funding for each project is specifically appropriated by the General Assembly before the project can be implemented. The Commission also reviews an application for Certificate of Need for the project from the project’s

Note: The Maryland Health Care Commission is an independent State agency. The position of the Commission may differ from the Maryland Department of Health

sponsoring entity (typically the Maryland Department of Health (MDH). The Commission's review of the Certificate of Need application for the project typically occurs after the appropriation is made for the project.

The Commission believes that, for State-owned facilities, CON review unnecessarily delays projects that the executive and legislative branches of State government have already considered and approved. The Commission believes that existing review processes for State capital projects are sufficient to ensure that concerns about project need, cost-effectiveness, viability, and impact are thoroughly considered and that the Commission's CON review is both unnecessary and duplicative. Senate Bill 106 proposes amendments to §19-114, Health-General, to create an exception to CON approval requirements for capital projects by State-owned facilities.

Instead of CON review, MDH may seek an informal review of major planned capital projects by the Commission prior to their inclusion in State budget plans to identify any issues the project might present, given the Commission's expertise in planning related to health facilities in the State.

BACKGROUND: In 2014, the CON statute was amended to provide an exception to CON regulation for a comprehensive care facility owned and operated by the Maryland Department of Veterans Affairs. This bill replaces that specific exception with a general exception that applies to all State-owned facilities.

The Commission has reviewed two CONs for State-owned facilities in the past 15 years. CON applications to expand existing State facilities are infrequent. The proposed change will reduce the regulatory burden on MDH by eliminating the time and expense associated with preparing and processing a CON application for a State Facility, as well as removing the Commission's requirement to review the applications. This proposed change should not affect local government or small businesses.

The level of competition between state-owned facilities and private-sector facilities is negligible. Some concern has been raised about nursing homes. The State currently has one freestanding nursing home: the Charlotte Hall Veteran's home. This nursing home serves veterans and their spouses, and is already covered by the existing CON exception. The State also owns two combination chronic care hospitals and nursing homes (Deers Head Hospital Center – 42 staffed NH beds; and the Western Maryland Hospital Center – 46 staffed nursing home beds). MDH would be in the best position to speak to their plans for these small and underutilized facilities. (Deer's Head staffs about half of its licensed beds and Western Maryland staffs a little over 70% of its total licensed beds.)

In 2018, the Commission engaged stakeholders in an extensive review of State Health Planning and Certificate of Need policies and processes. The goal of this study was to develop recommendations for the modernization of the Commission's regulatory authority over health facilities and services, including aligning the Commission's regulations with the All-Payer Model and the Total Cost of Care Model. The final report for this study, *Modernization of the Maryland Certificate of Need Program: Final Report*, was submitted to the legislature in December, 2018. This report contains a number of recommendations for regulatory and

Note: The Maryland Health Care Commission is an independent State agency. The position of the Commission may differ from the Maryland Department of Health

statutory changes. The report is available on the Commission's website: https://mhcc.maryland.gov/mhcc/pages/home/workgroups/documents/CON_modernization_workgroup/Final%20Report/con_modernization_workgroup_final_report_corrected_20181221.pdf While the specific concept in this bill was not discussed in the report, it is aligned with the report's goals to reduce regulatory burden and streamline CON processes.

Health facilities must apply to the Commission for CONs when establishing a health care facility; relocating and replacing a health care facility; making capital investments in a hospital that exceed a threshold established in law; adding physical bed capacity or operating rooms at a health care facility; and/or adding certain services, such as cardiac surgery service, percutaneous coronary intervention service, organ transplant surgery, burn treatment service, or a neonatal intensive care program. The Commission issues CONs on a project-by-project basis, in response to applications submitted by health facilities. Review of a CON application is intended to determine if the proposed project is needed, cost-effective, viable, and has an acceptable impact.

After approval of a CON application, the Commission monitors the project until the applicant confirms that they have completed the project and met any conditions of the CON; at this point, the Commission's oversight ends. CON does not provide for on-going monitoring of the quality of the services provided at a facility. Health facilities that obtain CONs are also subject to state licensure through MDH. Licensure provides for periodic renewal and ongoing oversight of health facility compliance and safety. This bill would not change MDH's oversight authority.

The Commission is an independent regulatory executive branch agency subordinate to the Governor.

Note: The Maryland Health Care Commission is an independent State agency. The position of the Commission may differ from the Maryland Department of Health



The Maryland Health Care Commission’s Regulatory Authority: The State Health Plan and Certificate of Need

The Maryland Health Care Commission (MHCC) regulates certain types of health care facility capital projects based on a set of regulations referred to as the State Health Plan (SHP). The State Health plan sets standards for the review of applications for a Certificate of Need (CON). Health facilities must apply to MHCC for CONs for the following types of projects:

- Establishing a health care facility;
- Relocating and replacing a health care facility;
- Adding certain services (see list in Table 1);
- Hospital capital projects requiring an expenditure that exceeds an established threshold;
- Adding physical beds or operating rooms at certain types of health care facilities; and
- Expanding the authorized service area of a home health agency or general hospice.

State Health Plan

The State Health Plan contains standards that must be met by health care facility projects in order to obtain CON approval by MHCC. The SHP currently has fourteen chapters of regulations (COMAR 10.24.07 through COMAR 10.24.20). Each chapter is focused on a type of facility or service regulated under the State Health Plan. A separate chapter contains procedural regulations defining how MHCC will review projects and monitor the applicant’s post-approval project development. State Health Plan chapters are revised through the formal regulatory process, with opportunities for public comment and review and approval by MHCC’s fifteen commissioners.

Table 1: Health Facilities and Medical Services Regulated under the State Health Plan

Health Facilities		Medical Services
<ul style="list-style-type: none"> • Acute Rehabilitation Facilities • Alcoholism & drug abuse treatment intermediate care facilities • Ambulatory surgical facilities • Comprehensive care facilities (or nursing homes) 	<ul style="list-style-type: none"> • Freestanding medical facilities (i.e. freestanding emergency centers) • General Hospices • Home health agencies • Hospitals <ul style="list-style-type: none"> ○ General ○ Special • Residential treatment centers • General hospices 	<ul style="list-style-type: none"> • Cardiac surgery services • Percutaneous coronary intervention services • Organ transplantation • Burn treatment services • Neonatal intensive care services • Acute inpatient rehabilitation services

CON Process and Approval

MHCC issues CONs on a project-by-project basis, in response to applications submitted by health facilities. MHCC’s CON application review processes requires that a project meet all of the applicable SHP standards. Additionally, under procedural regulations established by MHCC, project applicants must demonstrate that the proposed project is needed, that it is the most cost-effective



alternative available, that it is viable, that they (the project applicant) have a record of complying with the terms and conditions of previous CON awards, and that the impact of the project on existing providers, on the costs and charges of the facility, and on the health care delivery system is acceptable.

Exemption from CON and Certificates of Conformance

The MHCC's statute permits multi-facility systems to obtain approval for certain types of capital projects through an "exemption from CON review." In general, these include merger and consolidations of health care facilities, relocation of health care facilities, changes in bed capacity, conversion of general hospitals to freestanding medical facilities, and changes in the type or scope of services or capital projects with estimated expenditures above an established threshold that are related to merger or consolidation of health care facilities. Such exemption requests are intended to be shorter in length and typically have fewer requirements than CON reviews. MHCC must conclude that a qualified project seeking an exemption from CON review: (a) is consistent with the State Health Plan; (b) will result in more efficient and effective delivery of health care services; and (c) is in the public interest. Unlike CON reviews, interested parties do not participate in exemption reviews.

A third category of review is "certificate of conformance" review. This review process is only available to hospitals seeking to introduce primary or elective percutaneous coronary intervention services. Like "exemption" reviews, the set of issues considered is more limited than in full CON review and there are no provisions for participation by interested parties.

Closure and changes in bed capacity

MHCC's regulations do not require a CON for the closure of a hospital if notice is provided at least 90 days before the closing. Similarly, a CON is not required for partial closure of a hospital with 45 days' notice to MHCC. A public information hearing is required for hospitals that are planning to close if the hospital is converting to a free-standing medical facility or is located in a county with fewer than three hospitals.

Certificate of Need and Licensure

Health facilities that obtain CONs are also subject to state licensure through the Maryland Department of Health (MDH). The licensing authority focuses on the physical plant and operational standards that must be met by facilities while MHCC looks at issues of market need, health care access, and financial viability in reviewing CON applications. Licensure provides for periodic renewal and ongoing oversight of health care facility compliance and safety. Generally, once MHCC has confirmed the project has been completed within the approved costs, MHCC oversight ends.

MHCC Mission and Additional Information

The Maryland Health Care Commission (MHCC) is an independent State regulatory agency whose mission is to plan for health system needs, promote informed decision-making, increase accountability, and improve access in a rapidly changing health care environment. MHCC accomplishes this mission by providing timely and accurate information on availability, cost, and quality of services to policy makers, purchasers, providers and the public.

Additional information on MHCC is available at MHCC.Maryland.gov. Updates from MHCC are available through Facebook [@MHCC.MD](https://www.facebook.com/MHCC.MD), Twitter [@MHCCMD](https://twitter.com/MHCCMD), and [LinkedIn](https://www.linkedin.com/company/mhcc).

HFAM-JoeDeMattos_UNF_SB106

Uploaded by: DeMattos, Joe

Position: UNF



**TESTIMONY BEFORE THE
SENATE FINANCE COMMITTEE**

January 14, 2020

**Senate Bill 106: Health Care Facilities - Certificate of Need -
Exception for State-Owned Facilities**

POSITION: OPPOSE

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our opposition for Senate Bill 106. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers throughout the state. Our members provide services and employ individuals in nearly every jurisdiction in the state. HFAM members provide quality and cost-efficient care to the majority of the 5.8 million total Medicaid patient days in Maryland skilled nursing and rehabilitation centers annually.

Senate Bill 106 would dramatically alter the definition of “health care facility” to exempt completely State-owned facilities from the requirement that a certificate of need (CON) issued by the Maryland Health Care Commission (MHCC) permitting the establishment, expansion or major capital projects for any health care facility in the state, not limited to skilled nursing and rehabilitation centers (regulated by the MHCC as comprehensive care facilities). It would also enable the state to develop or own an unlimited number of hospitals, home health agencies, hospices, ambulatory surgery centers, or any other health care facility otherwise covered by the CON law. The amended law would permit the state to acquire, develop, or own any health care facility without a CON while not requiring any such health care facility to be operated or managed by the state. It could lead to unlimited state owned and privately operated health care facilities.

We understand that the source of this legislation may be for particular services such as opioid treatment and/or behavioral health services for children. If so, SB 106 goes far beyond any such issue. Moreover, the MHCC just completed a major strategic planning exercise evaluating and amending the CON law, regulations and multiple chapters of the State Health Plan. SB 106 represents a significant deviation from that major exercise since it exempts completely the development of a state-owned health care delivery system of any size, scale or scope from the CON requirement. If there is a problem to be addressed the question whether legislation is needed and if regulations would suffice should be answered.



The current Maryland CON law is intended to ensure that new health care facilities are developed only as needed and that, if determined to be needed, new facilities are cost effective, high quality, accessible, financially viable, and will not negatively impact other health care facilities and services. Under this proposed legislation, the State would not be subject to its own methodology and criteria, which could result in harm to the existing health care delivery system. Demonstrated need should be the driver of building new care capacity in the regulated health care environment, especially in light of the need to make effective use of existing facilities that are already innovating and making strides in adapting to Maryland's unique Total Cost of Care (TCOC) contract with the Federal government.

For these reasons, we oppose SB 106 and request an unfavorable report from the committee.

Submitted by:

Joseph DeMattos, Jr.
President and CEO
HFAM
(410) 290-5132

Ashlie Bagwell
Senior Government Relations Associate
Harris Jones & Malone, LLC
(410) 366-1500

MD_Ambulatory_Surgery_Assoc_UNF_SB106

Uploaded by: Wise, Steve

Position: UNF



TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Richard A. Tabuteau

DATE: January 15, 2020

RE: **OPPOSE** – Senate Bill 106 – *Health Care Facilities – Certificate of Need – Exception for State-Owned Facilities*

The Maryland Ambulatory Surgery Association (MASA) represents the interests of 76 ambulatory surgery centers in the State of Maryland. MASA has significant concerns with Senate Bill 106 as introduced and is therefore **opposed** to the bill.

As introduced, Senate Bill 106 would exempt all State facilities from the Certificate of Need (CON) process. While there are already specified exemptions in the law for certain State-owned facilities, Senate Bill 106 proposes an open-ended exemption for all State facilities. MASA is unclear what facilities that are to be proposed in the future would fall under this exemption, and why the fact that they are State-owned changes the need to consider all of the normal factors that are taken into account when new health care facilities are proposed or existing ones expanded, particularly any negative impact they might have on existing facilities. Rather than abandon the CON analysis entirely for all State facilities, MASA suggests that the bill be narrowed to address specific types of facilities that may be the impetus for this legislation.

Alternatively, MASA is not aware that the State is in or desires to be in the business of operating ambulatory surgery centers. Assuming that to be the case, an amendment that would still apply the CON process to any “State-owned” ambulatory surgery center would address MASA’s concern.

Thank you for your consideration of our comments on Senate Bill 106.

For more information call:

J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Richard A. Tabuteau
410-244-7000

MHA-Jennifer Witten_INFO_SB106

Uploaded by: Witten, Jennifer

Position: INFO



Maryland
Hospital Association

January 14, 2020

To: The Honorable Delores Kelley, Chairman
Senate Finance Committee

From: Jennifer Witten, Vice President, Government Affairs
Maryland Hospital Association

Re: Letter of Concern- Senate Bill 106 Health Care Facilities - Certificate of Need - Exception for State-Owned Facilities

Dear Chairman Kelley:

On behalf of the Maryland Hospital Association's (MHA) 61 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 106. Ensuring the right mix of services and facilities are available and distributed throughout the state is essential to meet the demand for acute and post-acute care. The CON process plays an important role in estimating the need for health care services across the state.

Over the past two years, Maryland's hospitals, under the leadership of MHA sought to identify the types of patients who are difficult to discharge. These patients often end up getting "stuck" in a hospital setting rather than getting the care they need in a more appropriate setting. We conducted two surveys, focusing on behavioral health patients in both the inpatient setting and the emergency department.¹ These studies formed the basis for some of the work undertaken by the Department of Health's Post-Acute Care Workgroup.²

Through this work we found that the Certificate of Need (CON) process is not nimble or responsive enough to meet the changing needs of the patient population and the dynamics of the changing health care landscape. We appreciate the Maryland Health Care Commission's work to modernize the CON process. Exempting the state from CON would allow the state to increase capacity for important safety net services. We believe that the state should be subject to the same public information requirements as all practice care hospitals should the state decide to reduce or eliminate services.. Such decisions would impact all of Maryland's health care delivery system. These types of recommendations were not part of MHCC's Certificate of Need Task Force, further consideration is warranted. We look forward to being part of that discussion as this bill moves forward.

For more information, please contact: Jennifer Witten
Jwitten@mhaonline.org

¹ https://www.mhaonline.org/docs/default-source/resources/mha-report-jan-2019.pdf?sfvrsn=74b0d40d_2
<https://www.mhaonline.org/docs/default-source/resources/behavioral-health/behavioral-health-patient-delays-in-emergency-departments-study-2019.pdf>

² <https://www.mhaonline.org/docs/default-source/events/post-acute-discharge-planning-workgroup-report.pdf>