

2024 SESSION
POSITION PAPER

BILL NO: HB 804

COMMITTEE: Health and Government Operations Committee

POSITION: Oppose

TITLE: Certificate of Need - Psychiatric Health Care Facilities and Psychiatric and Mental Health Services - Exemption

BILL ANALYSIS

HB 804 - Certificate of Need - Psychiatric Health Care Facilities and Psychiatric and Mental Health Services – Exemption alters the definition of “medical service” for the purpose of providing an exemption to the certificate of need requirement by removing psychiatry and any subcategory of psychiatry; providing that a certificate of need is not required to establish or operate a psychiatric health care facility or to offer psychiatric or other mental health services at a health care facility.

POSITION AND RATIONALE

The Maryland Health Care Commission (MHCC) opposes HB 804. This proposed legislation was introduced to solve a perceived delay in the establishment of a group home for abused women and children that were subject to human trafficking. The establishment of a group home for abused women and children does not require a certificate of need (CON) or any other direct involvement of MHCC, but it does require approval by local government agencies and by the Department of Human Services if the State is to reimburse the provider for residential care.

MHCC staff believes that the legislation was proposed because a constituent organization wanted to be reimbursed through the Department of Human Services as a group home provider. Group homes are not regulated by the MHCC nor are they health care facilities regulated under certificate of need. Further, some supporters may agree that this legislation will not benefit the prospective group home operator, but it would nonetheless be beneficial because it could spawn the establishment of additional psychiatric capacity, which might be beneficial in reducing emergency department wait times for individuals with behavioral health issues by increasing bed capacity. This rationale for introducing HB 804 fails for three reasons.

First, since 2019, licensed psychiatric bed capacity at acute care hospitals has climbed from 714 to 845 beds in 2022 and licensed beds at psychiatric beds at private psychiatric hospitals has climbed from 406 to 488 beds. Only 696 of the 845 licensed beds or 82 percent of licensed beds at acute care hospitals are staffed and only 404 of the 488 beds or 83 percent of licensed beds at private psychiatric hospitals are staffed. These data suggest the first challenge to address is staffing. A factor contributing to the staffing problem is inadequate reimbursement for behavioral health care services, which MHCC has noted throughout the years and is currently required to provide recommendations to this Committee in December 2024.¹ Finally, the occupancy rate for staffed beds is 76 percent for psychiatric units in acute care hospitals and 85 percent for private psychiatric hospitals. These occupancy levels have remained about the same from 2019. MHCC thinks it is more prudent to focus on staffing before adding more bed capacity, which will only exacerbate staffing challenges in the short term.

Second, exempting psychiatric beds from the CON process would not accelerate the availability of psychiatric beds. CON is not the only regulatory process that a hospital must access before developing hospital capacity. Even if CON is eliminated hospitals would have to seek rate adjustments from HSCRC. Currently HSCRC relies on MHCC to confirm the need for new capacity before additional funds are added to hospital rates. Nor is the CON process such a major bottleneck. In the last several years, MHCC has streamlined and accelerated the CON process. These changes culminated in the adoption of new procedural regulations governing the health planning and CON processes. Beginning in December 2023, the effective date of updated regulations, MHCC has established new processes that will accelerate its work, limit the ability of interested parties to delay CON reviews, and reduce an applicant's post-approval reporting requirements. As a result of these and other changes there is no backlog of projects on the CON docket.

Third, passage of this legislation will create opportunities for some operators to establish additional inpatient psychiatric bed capacity and then convert that capacity to other service lines, which would otherwise continue to be subject to CON. MHCC regulates a hospital's overall bed capacity but allows hospitals to adjust bed capacity among the services lines of medical-surgical, gynecological, and addictions (MSG), obstetrics, pediatric, and psychiatric beds if a hospital does not exceed its overall licensed capacity. This flexibility is important and enables hospitals to respond to changing local needs. However, creating an exception for psychiatric bed capacity would generate an incentive for hospitals to add psychiatric capacity and then circumvent what remains of the CON statute by converting the psychiatric beds to other service lines without CON review.

¹ [SB0582\(CH 290\)/HB1148\(CH291\), 2023 - Behavioral Health Care – Treatment and Access \(Behavioral Health Model for Maryland\)](#).

Further, HB 804 proposed change is not supported by the data and could create havoc in the management of hospital beds supply. Since 2015, MHCC has approved three new or replacement psychiatric hospitals in Anne Arundel, Howard, and Harford Counties. We have also approved expansion of psychiatric capacity at hospitals in Baltimore, Carroll, Montgomery County, Prince George's Counties among others. Only one psychiatric project has been denied over that period and that was because MHCC and HSCRC agreed that the project was not financially feasible.

HB 804 will not expand access to behavioral health beds; it will create a loophole for adding other bed capacity that tends to be more favorably reimbursed. CON is appropriate for regulating hospital bed capacity and should continue, particularly in the context of the Total Cost of Care (TCOC) model, which has inherent incentives to be cautious about hospital expansion. Allowing hospitals to add psychiatric capacity will not resolve problems of a limited clinical workforce, poor reimbursement for behavioral health treatment, and limited post-discharge placements. CON is still needed for establishing or adding new psychiatric bed capacity.

MHCC urges the Committee to reject HB 804 for the compelling reasons stated above and we ask for an unfavorable report on HB 804.

