

2025 SESSION
POSITION PAPER

BILL NO: HB 735

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 735 - Certificate of Need - Psychiatric Health Care Facilities and Psychiatric and Mental Health Services – Exemption removes psychiatry and any subcategory of psychiatry from the definition of “medical service” and removes the requirement to obtain a certificate of need (CON) 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 735. The certificate of need process provides critical regulatory oversight to ensure that proposed health care facilities have the expertise and capabilities to provide high-quality services, the services are needed in a geographic area and the project is financially sustainable. The CON regulations also assess how a proposed project or expansion impacts the cost, quality and viability of other health care facilities. MHCC acknowledges that additional behavioral health care options are needed; however, efforts to increase services should not come at the expense of the State’s most vulnerable populations who rely on the State’s careful vetting of projects. HB 735 is not the solution.

First, since 2019, psychiatric bed capacity has increased but staffing levels have remained insufficient. Psychiatric bed capacity at acute care hospitals has climbed from 714 to 833 licensed psychiatric beds; however, only 85 percent of those licensed beds are staffed. Likewise, licensed beds at private psychiatric hospitals has climbed from 406 to 489 beds; however only 85 percent of licensed beds are staffed.¹ This data suggests the first challenge to address is staffing. A factor contributing to the staffing problem is

¹https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_hospital/documents/acute_care/con_chartbook_md_gen_hosp_fy24.pdf

inadequate reimbursement for behavioral health care services, which MHCC has noted throughout the years. 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, CON has not been a barrier to expanding psychiatric bed capacity. 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. In addition, the procedural regulations governing the CON process have been recently amended to substantially streamline the CON process. The new process sets tight deadlines for MHCC staff to accelerate its work, limits the ability of interested parties to delay CON reviews, and reduces 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 service lines of medical-surgical, 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 the CON statute by converting the psychiatric beds to other service lines without CON review.

HB 735 will not address the barriers to creating sufficient quality behavioral health services in the State. 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. Instead, this bill creates a loophole for adding non-psychiatric bed capacity that tends to be more favorably reimbursed. CON is still needed for establishing or adding new psychiatric bed capacity.

Finally, legislation was passed in the 2024 legislative session to establish the *Maryland Emergency Department Wait Time Reduction Commission* that is charged with identifying the root causes of prolonged emergency department wait times in Maryland and develop strategies and initiatives for State and local agencies, hospitals, and health care providers to reduce wait times. This builds on prior work that assessed behavioral health

emergency department wait times and recommend service improvements, a report that was submitted in 2022.² The work of the *Emergency Department Wait Time Reduction Commission* includes assessment and collaboration on behavioral health, post-acute and primary care. Two reports, November 2025 and November 2026, are due to the Governor and the General Assembly on the Commission's activities, findings, and recommendations, including an update on the development, implementation, and impact of the recommended policies and programs to improve ED wait times.

MHCC urges the Committee to reject HB 735 for the compelling reasons stated above and we ask for an unfavorable report on HB 735.

² [https://dlslibrary.state.md.us/publications/Exec/MDH/HSCRC/HB1121,2020Ch29\(2021\)_2022.pdf](https://dlslibrary.state.md.us/publications/Exec/MDH/HSCRC/HB1121,2020Ch29(2021)_2022.pdf)

