House
Legislative
Analysis
Section

Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CON: OPERATING ROOMS

Senate Bill 1231 as passed by the Senate
First Analysis (12-9-98)

Sponsor: Sen. John J.H. Schwarz, M.D.
House Committee: Health Policy
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Michigan's certificate of need (CON) program provides regulatory control over the construction, conversion, and modernization of health facilities and also covers medical equipment and certain medical services. Under current CON standards, a hospital must obtain approval from the CON Commission before replacing one or more operating rooms. ("Replacing" refers to relocating an operating room to another room or location in the hospital.) Applicants proposing to replace an operating room must demonstrate that all existing and proposed operating rooms have been or will be used for at least a specified number of hours or surgical cases. Small hospitals located in federally designated rural counties that have only one or two operating rooms are exempt from the CON standards when replacing operating rooms.

Earlier this year, two small hospitals in nonrural counties, each with only two operating rooms, sought to replace their operating rooms, but could not meet the volume threshold for surgical cases (1,200 per room per year) or hours of use (1,600 hours per room per year). Under CON standards, the hospitals would either have to keep their operating rooms in the same location or would have to replace one and close the other, leaving only one operating room in service. Closing an existing operating room is seen as undesirable for several reasons. For those small hospitals that provide both emergency room services and obstetrical services, a potential conflict could arise if a woman in labor needed an emergency Caesarian-section but an accident victim was currently being operated on in the operating room, or vice versa. In such situations, minutes matter, and lives could be lost if patients could not receive timely treatment or were forced to be transferred to other hospitals. For some hospitals, the possible loss of life in such a scenario is unacceptable; for others, it may not be economically feasible to operate only one operating room. There are currently 15 hospitals in nonrural counties that have two operating rooms that would not meet the volume threshold for surgical cases or hours of use. For those hospitals, choosing to move an operating room to a new wing or facility would result in having to close one of the operating rooms. In light of this concern, the CON Commission adopted a new set of standards scheduled to take effect in mid-December of this year that would exempt a nonrural hospital replacing operating rooms from the CON standards as long as the hospital only has two operating rooms, has an emergency room, and has performed at least 1,200 surgical cases or 1,600 hours of use per year. Though the new commission rule would cut in half the required volume of surgical cases and hours of use, it is reported that at least 5 - 7 hospitals in nonrural areas would still face having to close one of their operating rooms if they moved to a new facility or moved the operating rooms to a new wing. This in turn could force a hospital to stop providing emergency services or obstetrical services in order to avoid a conflict in patient care. Therefore, legislation has been offered to grant small, nonrural hospitals an exemption from the CON volume thresholds if they have only two operating rooms and offer both emergency services and obstetrical services.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to exempt only those hospitals with exactly two operating rooms from certain certificate of need (CON) standards when replacing those operating rooms if the hospital provided both emergency room services and obstetrical services, and if the hospital were not replacing more than those two operating rooms. (The particular standards are contained in Section 6 of the "CON Review Standards For Surgical Services", approved by the CON Commission December 12, 1995. The CON Commission adopted revised standards for Section 6 on September 22, 1998 which will go into effect December 10, 1998.)

MCL 333.22209a

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would not allow a hospital to add an operating room without CON approval, and would only affect a small number of nonrural hospitals that have only two operating rooms and that offer both emergency and obstetrical services. The bill would merely allow the status quo to be preserved should a hospital relocate the operating rooms to a new wing or if the hospital built a new building. It would also give small nonrural hospitals parity with small rural hospitals. Small rural hospitals having one or two operating rooms are already exempt from the CON volume threshold for surgical cases and hours of use when replacing existing operating rooms. Yet, other small hospitals serving similar communities under similar conditions are held to different standards simply because they are located in counties that are not designated as a rural county. Many of these smaller hospitals are older. If it was decided that it would be more economical to replace a hospital rather than renovating the existing building, the hospital could face losing one of its operating rooms if it could not meet the threshold volume. For those hospitals that offer both emergency services and obstetrical services, a potentially dangerous situation would then be created, for it is conceivable that a woman could need an emergency C-section at the same time that an accident victim needing emergency surgery was brought in, or that multiple accident victims would need emergency care. In such situations, transferring a patient to another hospital may not be feasible, for some conditions require quick action before death occurs. Often, in cases of certain obstetrical complications or injuries such as severed arteries or internal bleeding, hospital personnel may only have a matter of minutes to save the life of the baby, mother, or injured person. The bill addresses a quality of care issue, as hospitals could be forced to choose between staying in older buildings and offering both emergency and obstetrical services or moving to newer facilities and having to limit the types of services offered.

Against:

The bill references a section of the CON Standards For Surgical Services that is about to be replaced in a few days. Therefore, the bill as written would do little. It would have to be amended to reference the standards adopted by the commission on September 22, 1998 in order for the bill's provisions to be effective.

Against:

Legislation is not a proper forum by which to decide such issues. The fact that the CON recently revised its rules is proof that the process works. When the new rules take effect in a few days, an additional seven hospitals will be able to replace their operating rooms without CON approval. According to committee testimony, it was decided by members of the commission to retain some volume requirements to ensure competency. As research has proven that the more times a doctor performs a specific procedure, the more proficient he or she becomes, it was felt that a higher level of safety and proficiency in surgical procedures would be maintained if a minimum number of surgical cases or hours of use were required. Reportedly, the 5 - 7 hospitals that would fall outside of the revised CON rules have not indicated an intention to replace their existing operating rooms. Therefore, since there apparently are no pending projects among these hospitals, there exists sufficient time for individuals to bring these concerns before the CON commission. If a workable solution cannot be found, then the issue could be brought back before the legislature for deliberation. For now, the bill simply is not needed as the new commission rules will meet the needs of those small hospitals currently undergoing building changes.

POSITIONS:

The Michigan Health and Hospital Association (MHA) supports the bill. (11-12-98)

The Michigan State Medical Society (MSMS) supports the bill. (12-8-98)

A representative of the Economic Alliance testified in opposition to the bill. (12-8-98)

A representative of Blue Cross and Blue Shield of Michigan testified in opposition to the bill. (12-8-98)

A representative of the Michigan Ambulatory Surgery Association testified in opposition to the bill. (12-8-98)

A representative of the Advocacy of Patient Providers testified in opposition to the bill. (12-8-98)

A representative of the Michigan State AFL-CIO testified in opposition to the bill. (12-8-98)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.