

CERTIFICATE OF NEED PROGRAM



Telephone: (517) 373-8080
Facsimile: (517) 373-5874
www.house.state.mi.us/hfa

FISCAL ANALYSIS

Mitchell Bean, Director
124 N. Capitol Avenue
4-N HOB Lansing, MI

SENATE BILL 1436 AS ENROLLED

Sponsor: Sen. John J. H. Schwarz
House Committee: Health Policy

ENROLLED ANALYSIS - 1/13/03

Analyst(s): Margaret Alston

SUMMARY

Enacted Senate Bill 1436, Public Act 619 of 2002, amends the Public Health Code by modifying several provisions, adding two provisions, and repealing a section related to the Certificate of Need (CON) program, a program enacted to ensure that only needed, cost-effective, and quality health services and facilities are developed in the state.

The enacted bill increases the capital expenditure threshold from \$2.0 million to \$2.5 million at which a health facility must obtain a CON before improving, constructing, or replacing a clinical service area. The capital expenditure threshold of \$3.0 million for a nonclinical service area was eliminated from the Public Health Code.

The enacted bill modifies the definition of a covered clinical service in which the initiation, replacement, or expansion of a partial hospitalization psychiatric program services will no longer be considered one.

The enacted bill specifies conditions in which a CON will not be required. For instance, the physical relocation of licensed hospital beds to another licensed hospital site will not require a CON if both hospitals are located within a 2-mile radius of each other and the relocation does not result in an increase of licensed beds within that health service area. Furthermore, the physical relocation of licensed hospital beds to a licensed surgical outpatient facility will not require a CON, if by December 2, 2002, the facility meets the following criteria: is owned by the hospital seeking the relocation, licensed prior to January 1, 2002, provides 24-hour emergency care services, provides at least 4 different covered clinical services at the site, and the relocation does not result in an increase of licensed beds within that health service area. Before the licensed hospital beds are relocated, certain information must be provided to the Department of Consumer and Industry Services. No licensed hospital beds can be physically relocated if 7 or more members of the Certificate of Need Commission determine that the relocation may cause great harm and detriment to the delivery of health care to the public.

The enacted bill also permits an applicant seeking a CON for the relocation or replacement of an existing health facility to file a single, consolidated CON application if the project does not result in increased beds or the initiation, expansion, or replacement of covered clinical services. A person relocating or replacing an existing health facility is subject to the applicable CON review standards in effect on the date of the relocation or replacement of the facility.

The enacted bill changes the composition of the CON Commission from 5 to 11 members which includes: two individuals representing hospitals; one individual representing licensed physicians engaged in the practice of medicine; one individual representing licensed physicians engaged in the practice of osteopathic medicine and surgery; one individual who is a licensed physician representing the School of Medicine or Osteopathic Medicine; one individual representing nursing homes; one individual representing nurses; one individual representing a self-insured company for health coverage; one individual representing a company that is not self-insured for health coverage; one individual representing a nonprofit health care corporation; and one individual representing organized labor unions in Michigan. The members are appointed by the Governor with the advice and consent of the Senate. The Governor is prohibited from appointing more than 6 members from the same political party, and required to appoint 5 members from another major political party.

The enacted bill adds certain requirements for the Department of Community Health such as providing 2 full-time administrative employees and 2 full-time professional employees to allow the CON Commission to carry out its powers and duties. The Department is also required to make available a brief summary of the actions taken by the Commission.

Furthermore, the Department is required, rather than permitted, to monitor compliance with all CONs issued. If a recipient

of a CON is not in compliance with the terms of the CON, the Department is required (rather than permitted) to take further actions such as revoke or suspend the CON or impose a civil fine. The Department is also required to prepare and publish monthly reports, rather than annual reports, of CON reviews conducted.

Under the enacted bill, the CON Commission is required to revise all CON review standards to include a requirement that each applicant participate in Title XIX of the Social Security Act (Medicaid) by January 1, 2004, except for the nursing home and hospital long-term care unit bed review standards. The requirements related to the appointment of Ad Hoc Advisory Committees by the Commission in the development and submission of proposed CON review standards were changed in which the Commission will instead appoint Standard Advisory Committees, if deemed necessary. If a Standard Advisory Committee is not appointed by the CON Commission, the Commission is able to submit a request to the Department to engage the services of private consultants or to contract with private organizations for professional and technical assistance in carrying out some of the Commission duties and functions. Furthermore, the Commission is required to revise CON review standards governing the increase of licensed hospital beds, the physical relocation of licensed hospital beds, and the replacement of licensed hospital beds within 6 months after the appointment and confirmation of the 6 additional Commission members.

The enacted bill adds a new section to the Public Health Code creating a Joint Legislative Committee to focus on proposed actions of the CON Commission regarding the CON program and standards. The Joint Committee consists of 6 members that include the Chairpersons, Vice-Chairpersons, and Minority Vice-Chairpersons of the House and Senate Health Policy Committees. The Committee is permitted to administer oaths, subpoena witnesses, and examine reports and papers of an applicant. The Committee is required to review the CON Commission recommendations regarding the revision of CON application fees. The Committee is also allowed to develop a plan for the revision of the CON program.

The enacted bill add new provisions to the Public Health Code on a person seeking to initiate, expand, replace, relocate, or acquire a fixed magnetic resonance imager service unit within a county that has a population of no more than 160,000, but not at least 2 fixed magnetic resonance imager units within the county. Prior to these actions being taken, a person is permitted to file a letter of intent with the Department to initiate, expand, replace, relocate or acquire a fixed magnetic resonance imager unit within that county instead of obtaining a CON. If this information is verified, the Department is required to send a written acknowledgment to the person approving the initiation, expansion, replacement, relocation, or acquisition of a fixed or mobile magnetic resonance imager unit. A person seeking to do the above is required to be a nonprofit organization accessible to all patients and a participant in the Medicaid program.

In the FY 2002-03 appropriations act for the Department of Community Health (Public Act 519 of 2002), 13.0 FTE positions, \$944,800 Gross, and \$222,900 GF/GP are authorized for the administration of the CON program. These authorized funds and staff appear to be sufficient to cover additional costs related to administering the CON program.

The fiscal impact of other changes to the CON program such as increasing the capital expenditure thresholds for clinical service areas, eliminating the capital expenditure thresholds for nonclinical service areas, removing partial hospitalization psychiatric program services from the definition of a covered clinical service, specifying conditions under which a CON will not be required, and requiring CON applicants to participate in the Medicaid program (except for the nursing home and hospital long-term care unit bed review standards) is indeterminate. It is difficult to ascertain whether or not these changes will result in a more cost-effective way of providing quality health services and facilities.