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SFA BILL ANALYSIS

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Senate Bills 787 through 791 (as introduced 10-24-01)
Senate Bill 802 (as introduced 10-24-01)
Sponsor: Senator Glenn D. Steil (Senate Bills 787, 790, & 802)
Senator Bill Bullard, Jr. (Senate Bill 788)
Senator Bev Hammerstrom (Senate Bill 789)
Senator Valde Garcia (Senate Bill 791)
Committee: Health Policy

Date Completed: 3-19-02

CONTENT

Senate Bill 787 would repeal Part 222 of the Public Health Code, which contains the certificate of need (CON) program, and would delete other provisions in the Code pertaining to certificates of need. Senate Bills 788, 789, 790, 791, and 802 would amend various statutes to remove provisions related to the CON program. Those bills are tie-barred to Senate Bill 787.

Senate Bill 787

Part 222 requires a person to obtain a certificate of need from the Department of Community Health (DCH) before acquiring an existing health facility or beginning operation of a health facility at a site not currently licensed for that type of facility; making a change in the bed capacity of a health facility (e.g., increasing licensed hospital, nursing home, or psychiatric beds); initiating, replacing, or expanding a covered clinical service (e.g., open heart surgery, magnetic resonance imager (MRI) services, or computerized tomography (CAT) scanner services); or making a covered capital expenditure ($2 million or more for a single project that involves a clinical service area, or $3 million or more for a single project that involves nonclinical service areas only, subject to adjustment of those amounts by the DCH). Part 222 provides for a CON Commission to approve, disapprove, and revise CON review standards used by the Department. In order to obtain a CON, an applicant must demonstrate that a proposed project will meet an unmet need in the area to be served.

In addition to repealing Part 222, the bill would repeal Section 20143, which provides that a license or certificate under Part 201 may not be issued unless the applicant is in compliance with Part 222. (Part 201 contains general provisions for health facilities and agencies.)

In addition, Section 20145 of the Code provides that, before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of $1 million or more, a person must obtain a construction permit from the DCH. The bill would retain that requirement but delete a provision under which a permit may not be issued unless the applicant holds a valid CON, if one is required for the project under Part 222.

The Code also authorizes the DCH to promulgate rules to require construction permits for projects other than those with a capital expenditure of $1 million or more. If a construction project requires a construction permit under the rules or because it involves a capital expenditure of at least $1 million, but does not require a CON, the DCH must require the

applicant to submit information considered necessary by the Department to assure that the capital expenditure for the project is not a covered capital expenditure as defined in Part 222. The bill would delete that requirement.

Currently, if a project requires a construction permit because it involves a capital expenditure of $1 million or more, but does not require a CON, the DCH must require the applicant to submit specific information along with the permit application. Under the bill, this information would have to be submitted in all cases in which a construction permit was required.

Section 20145 defines "capital expenditure" with reference to the definition in Part 222, excluding the cost of equipment that is not fixed equipment. The bill would delete the reference to Part 222 but incorporate the definition from that part in Section 20145.

Under the Code, a licensed hospital located in a nonurbanized area may apply to the DCH to delicense up to 50% of its licensed beds for up to five years. A hospital that is granted a temporary delicensure of beds may apply for an extension for up to five more years to the extent the hospital met requirements regarding alternative use of space during the initial period of delicensure. The bill would delete provisions under which the DCH must grant an extension unless the Department determines under Part 222 that there is a demonstrated need for the beds in the subarea in which the hospital is located; and, if the DCH does not grant an extension, the hospital must request relicensure or allow the beds to become permanently delicensed. Under the bill, if a hospital applied for an extension of temporary delicensure, the DCH would have to grant it to the extent the requirements for alternative use of space were met during the initial period of delicensure.

Currently, the DCH must continue to count temporarily delicensed beds in its bed inventory for purposes of determining hospital bed need under Part 222 in the subarea in which the beds are located. Under the bill, the DCH would have to continue to count temporarily delicensed beds *if* the Department continued to determine hospital bed need in the same manner as under Part 222. The bill also would delete a provision under which a hospital that is granted temporary delicensure of beds may not transfer them to another site or hospital without a CON.

In addition, the bill would delete provisions that do the following:

-- Prohibit the DCH from denying, limiting, suspending, or revoking a license on the basis of an applicant's or licensee's failure to show a need for a health facility or agency, unless the facility or agency has not obtained a CON required by Part 222.
-- Include failure to comply with Part 222 as a ground for sanctions against a licensee or certificate holder or for denial of an application.
-- Establish fees for a CON.
-- Specify that applications for facility licensure or certification because of transfer of ownership may not be acted upon until satisfactory evidence of compliance with Part 222 is provided.
-- Specify that the provisions of Part 222 applicable to hospitals also apply to a rural community hospital and to a hospital designated by the DCH under Federal law as an essential access community hospital or a rural primary care hospital.
-- Require the Rural Health Center (established in conjunction with Michigan State University) to designate a CON ombudsman.

Senate Bill 788

The bill would repeal Section 8t of Public Act 47 of 1945, which authorizes two or more municipalities to incorporate a hospital authority for the purpose of owning, building, maintaining, and operating a community hospital. Section 8t requires a hospital authority to obtain a certificate of need before spending funds to expand facilities or bonding to construct

or purchase facilities.

Senate Bill 789

The bill would amend the Administrative Procedures Act to delete provisions that exempt the following from the definition of "rule" after their approval by the Certificate of Need Commission or the Statewide Health Coordinating Council:

-- The designation, deletion, or revision of covered medical equipment and covered clinical services.
-- Certificate of need review standards.
-- Data reporting requirements and criteria for determining health facility viability.
-- Standards used by the DCH in designating a regional CON review agency.
-- The modification of a 100 licensed bed limitation for short-term nursing care programs set forth in Part 222 of the Public Health Code.

The bill also would delete a requirement that the *Michigan Register* contain the items listed above.

Senate Bill 790

The bill would amend the Nonprofit Health Care Corporation Reform Act, which regulates Blue Cross and Blue Shield of Michigan (BCBSM), to delete a requirement that a health care facility meet all statutory requirements for a CON in order to qualify for participation and reimbursement. The bill also would delete a requirement that a provider have obtained a CON, if applicable, in order to contract with BCBSM for the provision of inpatient, intermediate, and outpatient care to adolescent substance abuse patients.

Senate Bill 791

The bill would repeal Section 47 of the Hospital Finance Authority Act, which requires a State or local authority, before adopting a resolution authorizing the issuance of bonds or notes, to obtain a CON or to secure a determination that a CON is not necessary for a project.

Senate Bill 802

The bill would amend the definition of "institutional health services" in the Michigan Health Planning and Health Policy Development Act. Currently, that term means the health services provided through health care facilities and health maintenance organizations (HMOs) as defined under a section of the Social Security Act or the State CON program. The bill would refer, instead, to health services provided through health care facilities and HMOs as defined under Federal law.

MCL 333.2612 et al. (S.B. 787)
331.8t (S.B. 788)
24.207 & 24.208 (S.B. 789)
550.1401 & 550.1414a (S.B. 790)
331.77 (S.B. 791)
325.2004 (S.B. 802)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

In terms of direct costs, the State would save $220,000, which is the amount of GF/GP funding that is used to support the operation of the CON program. A less measurable, but distinct impact would result from the elimination of the fees that health care providers must pay to seek a CON. The base fee is $750 for each CON application, and an additional fee of $3,500 is required for projects costing in excess of $1,500,000. In theory, any change in costs for a health care provider eventually will work its way into the reimbursement system. Given this, one might argue that there also would be additional savings to the system because the costs to a health care provider of obtaining a CON are more than just the required fees. A greater amount of costs comes from hiring consultants and similar entities that might be necessary to prove that a provider should have a CON approved. While there is probably some merit to this argument, any health care provider contemplating a large capital project most likely would hire a consultant to do a feasibility study of the project in the first place.

Nevertheless, the overall potential fiscal impact on the State and any payer of health care services in this State is indeterminate though almost certainly negative. This is based on the premise that most health care providers in Michigan compete for patients on the basis of services offered and not price (as one can observe from advertisements on billboards and in the broadcast media). Without the regulatory constraint of CON on the amount and type of services that are available, each health care provider would have the option of providing whatever services it chose if the provider believed that this would bring in additional patients. While this may have a seeming appeal to those who might have an immediate need (in terms of travel or location) for these services, the mere existence of these services would not necessarily mean that they would be provided in an efficient or effective (real quality) manner.

In addition, a recently completed and exhaustive review of CON in the State of Maryland, "An Analysis and Evaluation of Certificate of Need Regulation in Maryland", concluded that the state's elimination of CON could result in the development of specialty hospitals (e.g., cardiac hospitals) and the relocation of acute care hospitals from urban centers to areas of the state with growing suburban regions.

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