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BILL ANALYSIS

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Senate Bill 1073 (as introduced 9-16-14)
Sponsor: Senator Randy Richardville
Committee: Government Operations

Date Completed: 9-23-14

CONTENT

The bill would amend Part 222 of the Public Health Code, which governs the certificate of need (CON) program, to do the following:

-- Allow the relocation of hospital beds, without a CON, from a hospital to a freestanding surgical outpatient facility site that was within eight miles of the hospital and in a county with a population between 1.2 million and 1.5 million, and met other criteria.
-- Require the hospital to verify that it would continue to do the following at its current site: provide at least $10.0 million in uncompensated care annually, maintain at least 70 licensed beds, develop a medical education and job training program, and provide access to health care services.
-- Require the construction of a new facility site, if applicable, to begin within 12 months after the bill's effective date.
-- Add two public members to the CON Commission, and require one of the public members to be the chairperson of the Commission.
-- Require the Commission to evaluate all CON review standards to determine if they allowed for actual approval of an application.
-- Require the Commission to express plainly in the CON review standards if it determined that a service would be capped at a specific number of providers.
-- Require voting on all motions before CON advisory committees to be documented by roll call vote and recorded in the minutes.
-- Delete a provision regarding recommendations on the revision of CON application fees, if revenue from the fees does not meet a certain standard.

Relocation of Hospital Beds

Part 222 requires a person to obtain a CON in order to do any of the following:

-- Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility.
-- Make a change in the bed capacity of a health facility.
-- Initiate, replace, or expand a covered clinical service.
-- Make a covered capital expenditure.

If the relocation of hospital beds does not result in an increase of licensed beds within the health service area, however, a CON is not required under certain circumstances.

Under this provision, the bill would allow a hospital to physically relocate licensed beds from the hospital to a licensed freestanding surgical outpatient facility site without a CON if the facility satisfied each of the following criteria:

-- It was owned by, was under common control of, or had ownership in common with the hospital seeking to relocate its licensed beds.
-- It was licensed before January 1, 2010.
-- It provided 24-hour urgent or emergency care services at that site.
-- It provided at least four different covered clinical services at that site.
-- It was located within an eight-mile radius of the hospital.
-- It was located in a county with a population of between 1.2 million and 1.5 million.

Also, if applicable, construction of a new facility site would have to begin within 12 months after the bill's effective date.

In addition, the hospital seeking to relocate licensed beds would have to give the Department of Community Health (DCH) written verification that it would continue to do all of the following at its current site:

-- Provide at least $10.0 million in uncompensated care annually.
-- Maintain at least 70 licensed beds.
-- Develop a medical education and job training program in cooperation with a local public school district, a local intermediate school district, a local community college, or a public higher education institution.
-- Provide access to health care services.

The health care services would include, but not be limited to, primary care services, pediatric services, prenatal services, inpatient and outpatient surgical services, oncology services, cardiac services, emergency medical services, chronic disease prevention and treatment services focused on obesity, infant mortality, and smoking cessation, mental health services, substance abuse services, diagnostic services, rehabilitation services, physical therapy services, occupational therapy services, geriatric health care services, and dialysis services.

The relocated licensed beds could not be included as new beds in a hospital or as a new hospital under the CON review standards for hospital beds. In addition, services at the new site would not be considered an initiation, replacement, or expansion of covered clinical services for purposes of the requirement to obtain a CON, if those services were provided at the existing hospital site at the time the licensed beds were relocated to the new site.

CON Commission

Part 222 created the CON Commission in the DCH. The Commission consists of 11 members appointed by the Governor with the advice and consent of the Senate. The bill would increase the CON Commission to 13 members. The two additional members would have to represent the general public, and be appointed by the Governor within 30 days after the bill's effective date.

The bill would require one of the two public members to be designated by the Governor as the chairperson. (Currently, the Commission elects a chairperson and a vice-chairperson.) If the Commission's agenda presented a conflict of interest for the chairperson, the vice-chairperson would have to lead the discussion.

(The bill would define "public member" as a member of the general public who is not a licensee or registrant under Article 15 (Occupations) or Article 17 (Facilities and Agencies) of the Code, is a resident of this State, is at least 18 years old, does not have an ownership

interest in or a contractual relationship with a health facility, does not have a material financial interest in the provision of health services, and has not had such an interest within the 12 months immediately before his or her appointment to the Commission.)

Currently, the Governor may not appoint more than six members from the same major political party and must appoint five members from another major political party. Under the bill, the Governor could not appoint more than seven members from the same major political party and would have to appoint six from another major political party.

Part 222 requires the DCH to provide at least two full-time administrative employees, secretarial staff, and other staff necessary to allow the Commission to exercise its powers and duties. The bill would require, instead, that the DCH provide sufficient staff to support the work of the Commission.

Commission Responsibilities

The responsibilities of the CON Commission include considering the impact of a proposed restriction on the acquisition or availability of covered clinical services on the quality, availability, and cost of health services in the State. The bill would add a requirement that the Commission evaluate all CON review standards to determine if the language allowed for actual approval of an application. If the Commission determined that a service would be capped at a specific number of providers, the Commission would have to express that determination plainly in the review standards.

Part 222 also requires the Commission to appoint standard advisory committees to assist in the development of proposed CON review standards, if the Commission considers it necessary. An advisory committee must complete its duties and submit its recommendations to the Commission within six months, unless the Commission specifies a shorter period of time when the committee is appointed. The bill would require voting on all motions before the committees to be documented by a roll call vote and be recorded in the minutes.

CON Application Fees

The DCH is required to report to the Commission annually regarding the costs to the Department of implementing Part 222 and the CON application fees collected in the immediately preceding State fiscal year. If these reports indicate that collected CON application fees have not been within 10% of three-quarters of the cost to the DCH of implementing Part 222, the Commission must make recommendations regarding the revision of those fees so that they equal approximately three-quarters of the DCH's cost. The bill would delete that provision.

MCL 333.22201 et al. Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would allow for the building of a hospital near Clarkston by authorizing licensed hospital beds to be shifted from Pontiac, which is 10 miles away. Two key potential fiscal impacts would involve State and local expenditures on health care services and State and local tax revenue.

The State's Medicaid program represents the most significant expenditure by government on health care services. The shifting of beds from one location to another would not affect Medicaid caseloads. There is no reason to believe that demand for Medicaid services would be affected by a change in location for a limited number of hospital beds. Movement of beds

could result in a change of where Medicaid clients seek services, but that would not have an impact on total expenditures. It has been noted that differences in cost structures among hospitals could lead to greater or lesser costs at a new facility, but since Medicaid reimbursements would not be affected by this, it would have no fiscal impact on the State.

While there has been some discussion about creation of jobs, due to spin-off jobs and possible increases in tax revenue, a shift of beds would lead to a shift of jobs (and any spin-off jobs) from one location to another. To the extent that patients chose to go to the new hospital rather than other area hospitals owned by other entities, the gain in jobs and spin-off jobs related to the new hospital would be offset by similar losses tied to the other hospitals. There is little reason to expect a significant change in tax revenue upon the opening of a new hospital, other than the potential property tax revenue increase in the Village of Clarkston or Independence Township less the potential property tax revenue loss in Pontiac.

Construction of the facility would lead to jobs. However, the money spent on that construction otherwise could be spent on different endeavors (the opportunity cost), such as upgrading the present facility, which likely would create jobs either directly or indirectly. Therefore, it is difficult to conclude that there would be a significant increase in income and sales tax revenue, even short-term, if the bill passed. Advocates have noted that the building would likely be financed through bonding, which would mean the initial funding for construction would come from outside sources. However, the debt service would have to be paid, which would lead to opportunity cost issues with whatever revenue would be directed to cover that debt service. While there certainly could be some initial economic benefit from bond-financed construction, there also would be longer-term reduced availability of resources due to the debt service.

In a similar vein, some opponents have expressed concern about an increase in health care costs, based on a belief that movement in hospital beds from one location to another would lead to greater demand for health care services. This does not appear to be a significant issue either. The reasons a person is placed in a hospital have less to do with location and more to do with his or her medical needs, especially in an area such as Oakland County where there are already thousands of hospital beds available. This is especially true given that the beds would be moved less than ten miles.

Therefore, while one cannot state that these aspects of the bill would have no fiscal impact, it is the view of the Senate Fiscal Agency that the impact would be marginal, both on the tax revenue side and the medical expenditure side. (The latter would affect State and local governments as employers providing health insurance to employees.) There would not be any fiscal impact on the State's Medicaid program.

In addition, although the bill itself would have no fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), allowing the opportunity for a new hospital to be built would create some new revenue and costs for LARA. Assuming a hospital was built, the bill would have a negative fiscal impact on LARA, as the costs of plan review, inspections, and licensure would exceed the revenue generated by fees charged to the hospital and Federal grants that would likely be received.

For construction plan review, the Bureau of Fire Services (BFS) would receive a fee based on the construction cost of the project, as annually provided for in the LARA budget bill. Additionally, the BFS would receive an $8 per-bed fee for periodic operation and maintenance inspections. The Bureau of Health Care Services (BHCS) would receive fees for licensure of the new hospital at the rate of $8.28 per bed, as well as some Federal revenue as it is assumed the hospital would participate in the Federal Medicare and Medicaid programs. All of these fees have been at their current rates for a number of years, and

while the Federal grants for Medicaid/Medicare inspections would help cover some of the BHCS's costs, both bureaus receive annual General Fund/General Purpose (GF/GP) appropriations to cover the shortfalls in fee revenue from these and other fees. While the bill would not require a new hospital to be built, if one were, which is a reasonable assumption, it would result in both new revenue and costs, but the costs would exceed revenue by an indeterminate amount, and those excess costs would be borne by current LARA GF/GP appropriations.

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