Legislative Analysis

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CERTIFICATES OF NEED

Senate Bills 669, 672, and 673 as enrolled
Sponsor: Sen. Curtis S. VanderWall

Senate Bill 671 as enrolled
Sponsor: Sen. Lana Theis

1st House Committee: Health Policy
2nd House Committee: Ways and Means
Senate Committee: Health Policy and Human Services
Complete to 4-11-21 ***(Pocket vetoed 1-5-21)***

SUMMARY:

Senate Bill 669 would amend the Public Health Code to remove a limit on certain types of transfers between hospitals and freestanding surgical outpatient facilities.

Under current law, a hospital does not have to obtain a ***certificate of need*** (CON), but must provide certain information to the Department of Licensing and Regulatory Affairs (LARA), before relocating beds from a hospital to a freestanding surgical outpatient facility under certain specific conditions. Additionally, such a hospital cannot transfer more than 35% of its licensed beds to another hospital or freestanding surgical outpatient facility more than one time under these provisions if the hospital (or another hospital under common control with the hospital) is located in a city with a population of 750,000 or more.[1]

The bill would remove the provision that now limits those transfers for a hospital located in a city of that size.

> ***Certificate of need*** is defined in the code as a certificate issued under Part 222 (Certificates of Need) authorizing a new health facility, a change in bed capacity, the initiation, replacement, or expansion of a covered clinical service, or a covered capital expenditure that is issued in accordance with Part 222.

Generally, a person cannot acquire an existing health facility or begin operation of a health facility at an unlicensed site without first obtaining a CON. Under the bill, this provision would not apply if the health facility being acquired or operated is located in a county with a population of 40,000 or less and either is a psychiatric hospital or operates a special psychiatric program for children and adolescent patients.

MCL 333.20145 et seq.

Senate Bill 671 would amend the Public Health Code to modify the composition of the Certificate of Need (CON) Commission and require a report on access to inpatient psychiatric beds in rural areas. The CON program exists to ensure that only needed, cost-effective, and

[1] Note: No Michigan city currently has a population of 750,000 or more. This provision presumably applied only to Detroit, which has an estimated population of 670,031. See https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,MI/PST045219

quality health services and facilities are developed in Michigan. Currently, the commission comprises 11 members, representing entities such as hospitals, physicians, nurses, and companies that are self-insured and not self-insured.

The bill would add two individuals representing the general public, one of whom would have to be from a county with a population of less than 40,000.

The bill would also add a reporting requirement to the current requirement that the commission consider how a restriction would affect the acquisition of or availability of health services. By January 1, 2020, the commission would have to direct the Department of Health and Human Services (DHHS) to prepare and submit a report on access to inpatient psychiatric beds in counties with a population of 40,000 or less based on the most recent federal decennial census. The report would have to identify key factors impacting that access. Within 30 days of receiving the report, the commission would have to provide a copy to the House and Senate Health Policy committees.

Additionally, the bill would remove a requirement that, within six months of the appointment and confirmation of six additional members, the commission develop standards for use of certain hospital beds. Those members were added by 2002 PA 619.[2]

MCL 333.22211 and 333.22215

Senate Bill 672 would amend Part 222 (Certificates of Need) of the Public Health Code to raise the threshold amount for capital expenditures to be considered covered capital expenditures to $10.0 million and modify two definitions regarding psychiatric beds.

Currently under the code, a person must obtain a construction permit from the Department of Licensing and Regulatory Affairs (LARA) when working on certain health facility projects with a capital expenditure of $1.0 million or more, and other projects as LARA determines necessary to protect the public health, safety, and welfare. If a project requires a construction permit for either of these reasons but does not require a ***certificate of need*** (CON), LARA must require the applicant to submit information LARA deems necessary to assure that the capital expenditure for the project is not a ***covered capital expenditure***.

> ***Certificate of need*** is defined in the code as a certificate issued under Part 222 (Certificates of Need) authorizing a new health facility, a change in bed capacity, the initiation, replacement, or expansion of a covered clinical service, or a covered capital expenditure that is issued in accordance with Part 222.
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> ***Covered capital expenditure*** is defined as a capital expenditure of $2.5 million or more, as adjusted annually by the Department of Health and Human Services (DHHS),[3] by a person for a health facility for a single project, excluding the cost of nonfixed medical equipment, that includes or involves the acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of a clinical service area.

[2] House Fiscal Agency analysis of 2002 PA 619 (SB 1436): http://www.legislature.mi.gov/documents/2001-2002/billanalysis/House/pdf/2002-HFA-1436-x5.pdf

[3] The adjusted threshold amount for 2020 is $3,375,000. See MDHHS - Capital Expenditure Threshold for 2020 (michigan.gov)

The bill would raise the threshold for a capital expenditure to be considered a covered capital expenditure to $10.0 million or more, adjusted annually.

Under the code, a person cannot make a ***change in bed capacity*** of a health facility or initiate, replace, or expand a ***covered clinical service*** without first obtaining a certificate of need.

Currently, the term ***change in bed capacity*** means one of the following:

- An increase in licensed hospital beds.
- An increase in licensed nursing home beds or hospital beds certified for long-term care.
- An increase in licensed psychiatric beds.

The bill would amend the third category so that it would include an increase in licensed psychiatric beds if the increase was at a location in a county that had a population of more than 40,000. according to the most recent federal decennial census.

Additionally, ***covered clinical service*** under the code currently includes services such as certain neonatal services, open heart surgery, and certain radiation and surgery services. The bill would amend one of the categories—initiation or expansion of a specialized psychiatric program for children and adolescent patients utilizing licensed psychiatric beds—so that it would apply in a county that had a population of more than 40,000, according to the most recent federal decennial census.

The bill would also remove initiation, replacement, or expansion of air ambulance services from the "covered clinical service" category, beginning June 1, 2021.

MCL 333.22203

Senate Bill 673 would amend Chapter 1 (Department of Mental Health) of the Mental Health Code to require that a psychiatric hospital or psychiatric unit accept ***public patients*** and maintain 50% of the beds for public patients as a condition of licensure.

> ***Public patient*** would mean a person approved for mental health services by a community mental health services program (CMHSP). Public patient would include a person admitted as a patient pending certification by a psychiatrist, a person being detained pending examination, or a person under court-ordered hospitalization because he or she is deemed a risk to self or others.

Under the bill, beginning June 1, 2021, a psychiatric hospital or psychiatric unit would have to submit an annual report to the Department of Health and Human Services (DHHS) as part of the application for license renewal. The report would have to include data from the previous calendar year on all of the following:

- Total patient days of care provided to public patients.
- Total beds available.
- Total patient days of care.

DHHS could use the report or a departmental investigation to determine whether a psychiatric hospital or psychiatric unit maintains 50% of beds available to public patients.

MCL 330.1100c, 330.1137, and 330.1137b

FISCAL IMPACT:

Senate Bill 669 would be unlikely to have an appreciable fiscal impact on LARA or DHHS.

Senate Bill 671 would have modest fiscal implications for the Department of Health and Human Services to support two additional members of the certificate of need commission, and to report on inpatient psychiatric bed access by 2026. The costs can be fully supported within existing appropriations. Program costs are funded with CON fee revenue.

Senate Bill 672 would have fiscal implications for the certificate of need (CON) program under DHHS. CON services and related costs would be reduced, as well as revenue to the CON program. Current fees for a CON for a covered capital expenditure may be from $8,000 to $15,000, and for a CON related to psychiatric beds may be from $3,000 to $15,000. The bill may also have fiscal implications for health care costs in Michigan, which are indeterminate. Currently the CON program is funded at $2.8 million and is solely supported by revenue from CON fees. The FY 2019 CON Annual Activity Report shows the total number of approved CONs for covered capital expenditure projects ranged from 32 to 65 from 2015-2019, and the total number of approved CONs for changes in bed capacity projects (for all beds) ranged from 26 to 42 from 2015-2019.

Senate Bill 673 would not have an immediate fiscal impact on the state and local units of government (specifically the 46 CMHSPs), but could increase costs by an indeterminate amount to the degree in which additional beds become available to the CMHSPs, and to the degree in which the CMHSPs utilize these beds. Any additional inpatient utilization costs would be partially offset with lower emergency department utilization and lower outpatient/community services utilization.

Section 308 of the Mental Health Code requires the state, subject to appropriations, to pay 90% of the net CMHSP costs.

Pocket veto 1-5-21:

If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the legislative session, the bill does not take effect and is said to have been "pocket vetoed." The term dates from the nineteenth century and is based on the metaphor of putting a bill in one's pocket instead of either signing it into law or returning it unsigned as a regular veto. Unlike a regular veto, a pocket veto does not oblige the governor to provide the legislature with his or her objections to the bill.

Senate Bills 669, 671, 672, and 673 were pocket vetoed on January 5, 2021, when they were still unsigned 14 days after being presented to the governor on December 22, 2020. The legislature adjourned *sine die* (without day) to end the legislative session on December 23.

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