Legislative Analysis

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CERTIFICATES OF NEED

Senate Bill 181 and 190 (S-1) as passed by the Senate
Sponsor: Sen. Curtis S. VanderWall

Senate Bill 182 as passed by the Senate
Sponsor: Sen. Lana Theis

Senate Bill 183 as passed by the Senate
Sponsor: Sen. Michael D. MacDonald

House Committee: Health Policy
Senate Committee: Health Policy and Human Services
Complete to 6-15-22

SUMMARY:

Senate Bill 181 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 considers 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 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.
>
> ***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),[1] 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.

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.

[1] The adjusted threshold amount for 2022 is $3,492,500. See https://www.michigan.gov/mdhhs/doing-business/providers/certificateofneed/whatsnew/capital-expenditure-threshold-for-2021

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 delete an increase in licensed psychiatric beds from the above definition. 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 eliminate one of the categories—initiation or expansion of a specialized psychiatric program for children and adolescent patients utilizing licensed psychiatric beds.

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

MCL 333.22203

Senate Bill 182 would amend the Public Health Code to modify the composition of the Certificate of Need Commission. The CON program exists to ensure that only needed, cost-effective, and quality health services and facilities are developed in Michigan. Currently, the commission includes 11 members, representing entities such as hospitals, physicians, nurses, and companies that are both 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.

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 183 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, but must provide certain information to 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

[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

under common control with the hospital) is located in a city with a population of 750,000 or more.[3]

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

MCL 333.20145 et seq.

Senate Bill 190 would amend 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.

Under the bill, beginning June 1, 2021, a psychiatric hospital and psychiatric unit would have to submit an annual report to 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 330.1137 and proposed 330.1137b

Senate Bills 181, 182, and 183 are all tie-barred to each other, and Senate Bill 190 is tie-barred to Senate Bill 181. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

BACKGROUND:

Senate Bills 181, 182, 183, and 190 are similar to Senate Bills 669, 671, 672, and 673 of the 2019-20 legislative session. Those bills passed both houses and were enrolled, but were pocket vetoed by the governor.[4]

FISCAL IMPACT:

Senate Bill 181 would have fiscal implications for the certificate of need program under the Department of Health and Human Services. 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

[3] No Michigan city currently has a population of 750,000 or more. This provision once applied only to Detroit, which in the 2020 census had a population of 672,351.

[4] 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." 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 presented to the governor on December 22, 2020, but were pocket vetoed when they were still unsigned 14 days later, on January 5, 2021. The legislature adjourned *sine die* ("without day') on December 23, 2020, to end the legislative session.

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 2021 CON Annual Activity Report shows the total number of approved CONs for covered capital expenditure projects ranged from 32 to 65 from 2017-2021, and the total number of approved CONs for changes in bed capacity projects (for all beds) ranged from 26 to 136 from 2017-2021.

Senate Bill 182 would have modest fiscal implications for the Department of Health and Human Services to support two additional members of the Certificate of Need Commission.

Senate Bill 183 would not have a fiscal impact on the Department of Health and Human Services.

Senate Bill 190 would not have an immediate fiscal impact on the state and local units of governments (specifically the 46 CMHSPs), but could increase state and CMHSP 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 could 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.

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