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BILL ANALYSIS

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Senate Bill 12 (as introduced 1-13-21)
Senate Bills 181 through 183 (as introduced 2-24-21)
Senate Bill 190 (as introduced 2-25-21)
Sponsor: Senator Dale W. Zorn (S.B. 12)
Senator Curtis S. VanderWall (S.B. 181 & 190)
Senator Lana Theis (S.B. 182)
Senator Michael D. MacDonald (S.B. 183)
Committee: Health Policy and Human Services

Date Completed: 3-10-21

CONTENT

Senate Bill 12 would amend Part 222 (Certificate of Need) of the Public Health Code to modify the definition of "covered clinical service".

Senate Bill 181 would amend Part 222 to modify the definitions of "change in bed capacity", "covered capital expenditure", and "covered clinical service".

Senate Bill 182 would amend Part 222 to do the following:

- **Increase the membership of the Certification of Need Commission to 13, and require the Commission to include two individuals representing the general public, one of whom would have to be from a county with a population of less than 40,000.**
- **Modify the requirements for members of the standard advisory committee appointed by the Commission.**

Senate Bill 183 would amend the Public Health Code to delete a provision prohibiting a hospital from transferring more than 35% of its licensed beds to another hospital or freestanding surgical outpatient facility more than once if it is located in a city that has a population of 750,000 or more.

Senate Bill 190 would amend the Mental Health Code to do the following:

- **Require, as a condition of licensing, a psychiatric hospital or psychiatric unit to public patients and to maintain 50% of beds available to public patients.**
- **Beginning June 1, 2021, require a psychiatric hospital and psychiatric unit to submit an annual report to the Department of Health and Human Services (DHHS) as a part of the application for license renewal certain data related to total patient days of care provided and total beds available during the previous calendar year.**
- **Allow the DHHS to use the annual report data or a DHHS investigation to determine if a psychiatric hospital or psychiatric unit maintained 50% of beds available to public patients.**

Senate Bills 181 through 183 are tie-barred to each other. Senate Bill 190 is tie-barred to Senate Bill 181.

Senate Bill 12

Under Part 222 of the Public Health Code, "covered clinical service" means, except as modified by the Certificate of Need Commission, one or more of the following:

-- Initiation or expansion of a neonatal intensive care services or special newborn nursing service; open heart surgery; or extrarenal organ transplantation.
-- Initiation, replacement, or expansion of extracorporeal shock wave lithotripsy; megavoltage radiation therapy; positron emission tomography; certain surgical services; a fixed and mobile magnetic resonance imager service; a fixed and mobile computerized tomography scanner service; or an air ambulance service.
-- Initiation or expansion of a specialized psychiatric program for children and adolescent patients utilizing licensed psychiatric beds.
-- Initiation, replacement, or expansion of a service not listed in the definition but designated as a covered clinical service by the Commission under the Code.

In addition, "covered clinical service" means the initiation, replacement, or expansion of cardiac catherization. The bill specifies that a cardiac catherization service would not include an outpatient service for which the Federal Centers for Medicare and Medicaid Services had approved a current procedural terminology (CPT) code as an outpatient service.

(Generally, CPT codes are a set of standardized medical codes that medical professionals use to describe procedures and services that they perform. These codes communicate accurate and consistent information between health providers, health institutions, insurance providers, among others. The American Medical Association created the codes in 1966 and continues to maintain the list annually. The Codes consist of five characters made up of numbers and letters. The Federal Centers for Medicare and Medicaid use CPT codes to designate approved services under Medicare and Medicaid health insurance plans.)

Senate Bill 181

Under Part 222 of the Public Health Code, "change in bed capacity" means one or more of the following:

-- An increase in licensed hospital beds.
-- An increase in licensed nursing home beds or hospital beds certified for long-term care.
-- A change from one licensed use to a different licensed use.
-- The physical relocation of beds from a licensed site to another geographic location.

In addition, "change in bed capacity" means an increase in licensed psychiatric beds. The bill would delete this provision.

Part 222 defines "covered capital expenditure" as a capital expenditure of $2.5 million or more, as adjusted annually by the DHHS 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 increase the threshold of a capital expenditure from $2.5 million to $10.0 million, adjusted annually.

Under Part 222, "covered clinical service", except as modified by the Certificate of Need Commission, means one or more of the following:

-- The initiation or expansion of neonatal intensive care services or special newborn nursing services; open heart surgery; or extrarenal organ transplantation.
-- Initiation, replacement, or expansion of a service not listed in the definition but designated by the Commission as a covered clinical service.
-- Initiation, replacement, or expansion of extracorporeal shock wave lithotripsy; megavoltage radiation therapy; positron emission tomography; certain surgical services; a fixed and mobile magnetic resonance imager service; a fixed and mobile computerized tomography scanner service; or an air ambulance service.

Under the bill, "covered clinical service" would include initiation, replacement, or expansion of air ambulance services until June 1, 2021.

"Covered clinical service" also means the initiation or expansion of a specialized psychiatric program for children and adolescent patients utilizing licensed psychiatric beds. The bill would delete this provision.

Senate Bill 182

The Public Health Code creates the Certificate of Need Commission in the Department of Licensing and Regulatory Affairs and requires the Governor to appoint 11 members to the Commission with the advice and consent of the Senate. Under the bill, the Commission would consist of 13 members.

Currently, the Commission consists of the following members:

-- Two individuals representing hospitals.
-- One individual representing physicians licensed under Part 170 (Medicine) of the Code.
-- One individual representing physicians licensed under Part 175 (Osteopathic Medicine and Surgery) of the Code.
-- One individual who is a physician licensed under Part 170 or Part 175 representing a school of medicine or osteopathic medicine.
-- One individual representing nursing homes.
-- One individual representing nurses.
-- One individual representing a company that is self-insured for health coverage.
-- One individual representing a company that is not self-insured for health coverage.
-- One individual representing a nonprofit healthcare corporation operating under the Nonprofit Health Care Corporation Reform Act or a nonprofit mutual disability insurer into which a nonprofit health care corporation has merged as provided in the Insurance Code.
-- One individual representing organized labor unions in the State.

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

Generally, the Commission must develop, approve, disapprove, or revise certificate of need review standards that establish for purpose of the Code the need for the initiation, replacement, or expansion of covered clinical services, the acquisition or beginning of a health facility, making changes in bed capacity, or making covered capital expenditures, among other things.

If the Commission determines it necessary, it may appoint a standard advisory committee to assist in the development of proposed certificate of need review standards. The Code requires the committee to include all of the following:

-- Experts with professional competence in the subject matter of the proposed standard, who must constitute a two-thirds majority of the committee.
-- Representatives of health care provider organizations concerned with licensed health facilities or licensed health professions.
-- Representatives of organizations concerned with health care consumers and the purchasers and payers of health care services.

Under the bill, the standard advisory committee would have to include all of the following:

-- Experts with professional competence in the subject matter of the proposed standard, who must constitute at least two-thirds majority of the committee.
-- At least one representative of health care provider organizations concerned with licensed health facilities or licensed health professions.
-- At least one representative of organizations concerned with health care consumers or the purchasers or payers of health care services.

Senate Bill 183

Under the Public Health Code, subject to exceptions and if the relocation does not result in an increase of licensed beds within that health service area, a certificate of need is not required for any of the following:

-- The physical relocation of licensed beds from a hospital site licensed under Part 215 (Hospitals) to another hospital site licensed under the same license as the hospital seeking to transfer the beds if both hospitals are located within a two-mile radius of each other.
-- The physical relocation of licensed beds from a hospital site licensed under Part 215 to a freestanding surgical outpatient facility licensed under Part 215 if that freestanding surgical outpatient facility satisfies certain criteria on December 2, 2002.
-- The physical relocation of licensed beds from a hospital licensed under Part 215 to another hospital licensed under Part 215 within the same health services area if the hospital receiving the licensed beds is owned by, is under the control of, or has a common parent the hospital seeking to relocate its licensed beds.

Before relocating beds to a hospital site licensed to a freestanding surgical outpatient facility, the hospital seeking to relocate its beds must provide the information requested by the Department of Licensing and Regulatory Affairs (LARA) to allow LARA to verify the number of licensed beds that were staffed an available for patient care at that hospital as of December 2, 2002.

A hospital may transfer not more than 35% of its licensed beds to another hospital or freestanding surgical outpatient facility not more than one time if the hospital seeking to relocate its licensed beds or another hospital owned by, under common control of, or having as a common parent the hospital seeking to relocate its licensed beds is located in a city that has a population of 750,000 or more. The bill would delete this provision.

Senate Bill 190

Under the Mental Health Code, a person may not construct, establish, or maintain a psychiatric hospital or psychiatric unit or use those terms without first obtaining a license. The Director of the DHHS must require an applicant or licensee to disclose certain information. If approved, a license generally may not be granted for longer than one year after the date of issuance.

Under the bill, as a condition of licensing, a psychiatric hospital or psychiatric unit would have to accept public patients and would have to maintain 50% of beds available to public patients.

(Under Public Act 285 of 2020, which will take effect on March 24, 2021, "public patient" means an individual approved for mental health services by a community mental health services program. The term includes an individual who is admitted as a patient under Sections 423, 429, or 438 of the Code. Section 423 specifies that a hospital designated by the DHHS or by a community health services program must hospitalize an individual presented to the hospital pending receipt of a clinical certificate by a psychiatrist stating that the individual requires treatment. Section 429 provides that certain hospitals contracted with community health services as required by the Code must receive and detain an individual presented for examination, for not more than 24 hours, under certain circumstances related to a peace officer's detaining and delivering a person to a hospital under a petition, a physician's clinical certificate, or a court order. Section 438 specifies that if a court determines that an individual requires immediate assessment because the individual presents a substantial risk of significant physical or mental harm to himself or herself in the near future, or substantial harm to others, the court can order a peace officer to take the individual into protective custody and deliver the individual to a contracted hospital for screening.)

Beginning June 1, 2021, a psychiatric hospital and psychiatric unit would have to submit an annual report to the DHHS as a part of the application for license renewal. The DHHS could develop the annual report format. The annual report would have to include data on all of the following:

-- Total patient days of care provided to public patients during the previous calendar year.
-- Total beds available during the previous calendar year.
-- Total patient days of care during the previous calendar year.

The DHHS could use the annual report data or a DHHS investigation to determine if a psychiatric hospital or psychiatric unit maintained 50% of beds available to public patients.

MCL 333.22203 (S.B. 12)
333.22203 (S.B. 181)
333.22211 & 333.22215 (S.B. 182)
333.20145 et al. (S.B. 183)
330.1137 (S.B. 190)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 12

The bill would exempt outpatient cardiac catheterization services from the certificate of need (CON) process. This exemption likely would lead to greater availability of and greater demand for those services. On the other hand, greater availability of services in an arguably less expensive setting could shift costs from more expensive providers. This ties to a general question in many CON discussions (related in particular to outpatient services) whether the greater availability and demand for less regulated services increases costs more than the shift of clients to a less expensive setting reduces costs. There is no consensus on this front. It is safe to say that the net change in cost for this kind of service likely would be marginal. As such, the bill would have an indeterminate marginal impact on Medicaid and public employee health insurance costs.

Senate Bills 181 & 190

Senate Bill 181 would raise the certificate of need cap for clinical service projects from $2.5 million to $10.0 million. The bill also would exempt air ambulance services and specialized psychiatric programs for children and adolescents from the CON process. The bill would have minimal fiscal impact.

The increase in the cap would appear to have minimal fiscal impact as the CON process is focused on larger scale expansions and the cap would still exist for those expansions.

There is evidence from other states (such as an Iowa Attorney General's opinion) that the Federal Aviation Act regulates air ambulance services and bars states from implementing statutes overriding Federal law and regulation on aviation services. It appears that the intent of the air ambulance exemption is to bring State CON law in line with Federal law. As such the air ambulance change would not have a fiscal impact except for a small reduction in CON fee revenue.

Under Senate Bills 181 and 190, the exemption for specialized psychiatric programs for children and adolescents and the requirement that a psychiatric hospital or psychiatric unit maintain 50% of available beds for public patients would clearly lead to an increase in the number of licensed psychiatric beds and thus make more beds available for Community Mental Health Services Program (CMHSP) clients. The costs of placing an individual in a private psychiatric hospital bed are paid by the CMHSP; however, the cost of that placement must be compared to the cost of providing services in the community. Shifting a person from community services to a private psychiatric bed likely would lead to a marginal increase in costs in the short term, but more intensive treatment would lead to lower long-term costs for services to many clients. Furthermore, the greater availability of private psychiatric beds for CMHSP clients could lead to the shifting of individuals from lengthy stays in more expensive State psychiatric facilities to shorter term placements in private beds, leading to a net savings. The research on those questions has not led to a definitive answer as to whether greater availability of private psychiatric beds increases or decreases net costs. As such, the fiscal impact of this provision is indeterminate but likely would not be significant.

The Department also would incur minor administrative costs to develop a form for the submission of data required under Senate Bill 190.

Senate Bills 182 & 183

The bills would have no fiscal impact on State or local government.

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