

## Department of Planning and Budget

### 2020 Fiscal Impact Statement

**1. Bill Number:** SB764

|                        |                                       |                                     |                                    |
|------------------------|---------------------------------------|-------------------------------------|------------------------------------|
| <b>House of Origin</b> | <input type="checkbox"/> Introduced   | <input type="checkbox"/> Substitute | <input type="checkbox"/> Engrossed |
| <b>Second House</b>    | <input type="checkbox"/> In Committee | <input type="checkbox"/> Substitute | <input type="checkbox"/> Enrolled  |

**2. Patron:** Barker

**3. Committee:** Education and Health

**4. Title:** Certificate of public need.

- 5. Summary:** Revises the Medical Care Facilities Certificate of Public Need Program. The bill (i) removes from the list of reviewable medical care facilities specialized centers or clinics or that portion of a physician's office developed for the provision of lithotripsy, magnetic source imaging, or nuclear medicine imaging; (ii) removes from the definition of "project" introduction into an existing medical care facility of any new lithotripsy, magnetic source imaging, or obstetrical service that the facility has never provided or has not provided in the previous 12 months and addition by an existing medical care facility of any medical equipment for the provision of lithotripsy and magnetic source imaging; (iii) creates a new process for registration of projects exempted from the definition of project by the bill; (iv) renames the State Medical Facilities Plan as the State Health Services Plan and establishes a State Health Services Plan task force to provide recommendations related to the content of the State Health Services Plan; (v) clarifies the content of the application for a certificate; (vi) reduces the timeline for a person to be made party to the case for good cause from 80 calendar days to four days following completion of the review and submission of recommendations related to an application; (vii) requires the Commissioner of Health to condition issuance of a certificate upon the agreement of the applicant to provide care to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. and permits the Commissioner to condition the issuance of a certificate on the agreement of the applicant to provide specialty medical services or to pay assessments or make contributions into the Health Care Coverage Assessment Fund, in addition to existing options for conditioning certificates; (viii) requires every certificate holder to develop a financial assistance policy that includes specific eligibility criteria and procedures for applying for charity care, which shall be provided to a patient at the time of admission or discharge or at the time services are provided, included with any billing statements sent to uninsured patients, posted conspicuously in public areas of the medical care facility for which the certificate was issued and posted on a website maintained by the certificate holder; (ix) eliminates that a person willfully fail, refuse, or neglect to comply with a plan of correction to be subject to a civil penalty so that any failure, refusal, or neglecting to comply with a plan of correction may subject the person to a civil penalty; and (x) provides that the Commissioner may consider any changes in the circumstances of the certificate

holder resulting from changes in the financing or delivery of health care services, including changes to the Commonwealth's program of medical assistance services, and any other specific circumstances of the certificate holder when determining whether conditions imposed on a certificate continue to be appropriate.

The bill also (a) directs the Department of Health to develop recommendations to reduce the duration of the average review cycle for applications for certificates of public need to not more than 120 days and to report on its recommendations to the Governor and the General Assembly no later than December 1, 2020, and (b) directs the Secretary of Health and Human Resources to implement a system to ensure that data needed to evaluate whether an application for a certificate is consistent with the State Health Services Plan is timely and reliable; to make all public records pertaining to applications for certificates and the review process available in real time in a searchable, digital format online; to make an inventory of capacity authorized by certificates of public need, both operational and not yet operational, available in a digital format online; and to establish a public education and outreach program designed to improve public awareness of the certificate of public need process and the public's role in such process by January 1, 2021.

**6. Budget Amendment Necessary:** Yes, item 300.

**7. Fiscal Impact Estimates:** Preliminary, see item 8.

**7a. Expenditure Impact:**

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2021               | \$827,936      | 4.0 FTE          | 01000       |
| 2021               | (\$45,469)     |                  | 02601       |
| 2022               | \$372,836      | 4.0 FTE          | 01000       |
| 2022               | (\$45,469)     |                  | 02601       |
| 2023               | \$327,367      | 4.0 FTE          | 02601       |
| 2024               | \$327,367      | 4.0 FTE          | 02601       |
| 2025               | \$327,367      | 4.0 FTE          | 02601       |

**7b. Revenue Impact:**

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Fund</i> |
|--------------------|----------------|-------------|
| 2021               | (\$45,469)     | 02601       |
| 2022               | (\$45,469)     | 02601       |

**8. Fiscal Implications:**

**Virginia Department of Health:** It is estimated that the average number of projects each year that would be removed from COPN review would be 5.6 based on historical trends over the last five years (28 projects were reviewed over the last 5 years). Over the last 5 years 257 project decisions were made in the COPN program for an average of 51.4 project decisions per year. The average application fee for these projects is \$8,119.46 per application. The fees associated with the loss of these projects is estimated to be an average of \$45,469 per year, which the agency cannot absorb if it is to maintain its current staffing level. The Virginia

Department of Health (VDH) believes that it will need to maintain current staffing levels in order to maintain COPN operations. The bill adds requirements for monitoring, which will offset some of the reduction in workload associated with the exemption of certain projects.

Additionally, the administration of the COPN program is just one component within the Office of Licensure and Certification (OLC). The OLC acts as the agent for VDH in administering five state licensing programs such as nursing facilities, home care organizations and hospice programs. In addition, the OLC administers the state's certification and registration programs for Managed Care Health Insurance Plans licensees (MCHIPs) and Private Review Agents (PRAs) and is the state survey agency for Medicare and Medicaid.

The most visible activities conducted by the OLC are its inspection programs, which are used to satisfy both state licensure and Medicare/Medicaid requirements. In addition to regulatory compliance inspections, the OLC investigates consumer complaints regarding the quality of health care services received.

With the reduction in fee revenue, VDH indicates that either current staffing levels necessary to perform other functions within OLC and COPN would have to be reduced or general fund support would be needed to maintain the remaining activities. A third option would be to raise fees on remaining activities, although the time frame to do so may be lengthy. The expenditure table in section 7a assumes the agency absorbs the loss of fee revenues and takes no position on the agency's decision whether or not to effect staff reductions.

The bill directs the Board of Health to convene a State Health Services Plan Task Force to create the State Health Services Plan, which must be updated every 2 years and reviewed annually, and the creation process and project review process must be posted on the VDH's website. The current requirement is for a review to occur once every four years, however, due to a lack of resources, the review schedule is not being met. To meet the requirement that a review take place every two years, an additional 2.0 FTEs would be needed. The cost for two positions would be \$187,769 (including fringe benefits, phone, and VITA costs) per year.

The bill includes requirements for electronic submission of COPN applications, to clarify the timeline for the filing of a good cause petition, to require solicitation of public comment and posting a public summary of the project on a VDH website, and to require public hearings only in certain circumstances. Based on costs from a similar project at the Board of Accountancy, it would cost \$455,100 to develop an electronic submission system for COPN applications. This would also decrease the expenditures for public hearings by an estimated \$2,703.

The provisions in the enactment clauses require that the Secretary of Health and Human Resources ensure that COPN data is timely and available, that all relevant COPN documents are available in a real time searchable digital format, and that an inventory of capacity authorized by COPN is available in a digital format. It is assumed, however, that the Department of Health will perform these tasks. The costs for the Department of Health to assume these responsibilities are reflected in section 7a. Monitoring and maintenance would

require 1.0 FTE with an annual salary of \$93,885 (including fringe benefits, phone, and VITA costs). There is an additional enactment clause that would require the establishment of a public education and outreach program about the COPN program, which would require 1.0 FTE with an annual salary of \$93,885 (including fringe benefits, phone, and VITA costs).

**Department of Medical Assistance Services:** While it is assumed that legislation impacting Virginia's Certificate of Public Need (COPN) law may have fiscal implications for the Department of Medical Assistance Services (DMAS), as one of the largest purchasers of health care services in Virginia, there is insufficient data to provide a definitive estimate of the cost impact of most proposed COPN legislation. Under any scenario, it is unlikely that most COPN changes would have a direct fiscal impact on Medicaid in the biennium in which it is proposed due to the time needed for implementation and the delayed recognition of costs in Medicaid payment rates. Any significant costs are not likely to occur for three to five years and, even then, such costs would be difficult to estimate based on the unknowns associated with multiple COPN processes and coverage changes and the rapidly evolving nature of the healthcare system.

- 9. Specific Agency or Political Subdivisions Affected:** The Virginia Department of Health, the Department of Medical Assistance Services, the Secretary of Health and Human Resources, and the Virginia Hospital and Healthcare Association.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** HB879, introduced by Delegate Sickles, is a companion bill.