

# Department of Planning and Budget

## 2016 Fiscal Impact Statement

**1. Bill Number:** HB350H1

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

**2. Patron:** Byron

**3. Committee:** Health, Welfare and Institutions

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

**5. Summary:** The substitute bill:

- 1) amends § 2.2-4006 of the Administrative Process Act by exempting amendments to the State Medical Facilities Plan (SMFP) adopted by the Board of Health, provided the Board of Health provides a Notice of Intended Regulatory Action, provides notice and receives comment as provided in § 2.2-4007.03 and conducts at least one public hearing on the proposed amendments;
- 2) amends § 32.1-102.1 of the Code of Virginia to: a) include a definition of charity care for the purposes of the Certificate of Public Need (COPN) program; b) remove sanitariums, mental hospitals, facilities for individuals with intellectual disability, psychiatric hospitals for treatment of individuals with substance abuse, and specialized centers or clinics providing lithotripsy, magnetic source imaging (MSI) and nuclear medicine imaging from the definition of “medical care facility”; c) make the exception of intermediate care facilities for individuals with intellectual disability universal rather than limited to those with less than 12 beds; d) remove the introduction of lithotripsy, MSI, psychiatric services, nuclear medicine imaging, and substance abuse treatment from the definition of “project”; and e) remove the conversion of psychiatric beds, and the addition of lithotripsy and MSI equipment from the definition of “project”.
- 3) amends § 32.1-102.2 of the Code of Virginia related to the Board of Health’s regulations governing the COPN program to: require the creation of an expedited 45-day application and review process for projects determined to be uncontested and to present minimal health planning impacts, provided the applicant agrees to comply with quality assurance and charity care requirements established by the Board of Health; require the creation of an expedited 120-day application and review process for any projects determined to be uncontested and present minimal health planning impacts that require a greater level of scrutiny than the 45-day review period but do not require a full review, provided the applicant agrees to comply with quality assurance and charity care requirements established by the Board of Health; and require the Board create provisions within regulation related to conditioning the approval of a COPN upon the agreement of the applicant to provide a level of care at a reduced rate to indigents, facilitate the development and operation of primary medical care services in medically underserved areas and quality assurance requirements established by the Board.

- 4) amends § 32.1-102.2:1 of the Code of Virginia related to the SMFP Task Force to: a) create the SMFP Advisory Council to advise the Board of Health on the content of the SMFP; b) establish the requirements of the membership of the Advisory Council to include 13 members from different stakeholder groups and the Commissioner of Health; c) require the Commissioner to serve as chairman of the Advisory Council; d) require the Advisory Council to meet quarterly; e) require that Advisory Council members be reimbursed for reasonable and necessary expenses; and f) require the Department staff the Advisory Council.
- 5) creates § 32.1-102.2:2 related to the powers and duties of the SMFP Advisory Council which include: a) to develop by November 1, 2016, recommendations for a comprehensive SMFP including how to integrate the goals of the State Health Improvement Plan; b) to engage the services of private consultants to assist the Council in carrying out its duties, or experts with professional competence in the subject matter of the SMFP; c) to review annually the SMFP and update the plan at least every two years; d) ensure the availability and accessibility of quality health services within Virginia; e) ensure the elimination of barriers to access; and f) 30 days prior to action on recommendations of the Advisory Council the Council shall submit the action for public comment, public comments shall be submitted to the Commissioner, the Commissioner will determine if a public hearing is necessary, then the Council shall either approve or disapprove the recommendations, recommendations are to be considered and approved by the Board of Health.
- 6) amends § 32.1-102.3 of the Code of Virginia to state that applications which are consistent with the SMFP shall be approved by the Commissioner with the SMFP the sole consideration;
- 7) amends § 32.1-102.4 of the Code of Virginia to state that care provided to indigents shall be valued based on provider reimbursement methodology utilized by the Department of Medical Assistance Services for reimbursements under Medicaid;
- 8) amends § 32.1-102.6 of the Code of Virginia to clarify that an application submitted for review shall be considered complete when all relevant sections of the application form have substantive responses. The amending language clarifies that nothing prevents the Department from seeking additional information from the applicant or other sources. Further, § 32.1-102.6 is amended by requiring the posting of notice of applications on the Department's website to solicit public comment. The bill also requires a public hearing only if requested or in the event of competing applications or from a request from the public. Finally, § 32.1-102.6 of the Code is amended to shorten the time to file a good cause petition;
- 9) creates § 32.1-102.14 which requires that the Virginia Department of Health develop a website to make information and materials related to the COPN program available to the public in order to increase transparency, which shall include electronic filing and posting of letters of intent;
- 10) creates § 32.1-122.23 and § 32.1-122.24 of the Code of Virginia which creates a permitting process for deregulated projects. The Department may collect fees set by the Board of Health for permit applications. The Commissioner may condition permits in a manner similar to COPNs and can condition that a permit holder comply with quality care standards established by the Board via regulations. Section 32.1-122.24 states that the Board shall adopt regulations which shall provide quality of care standards, a list of national accrediting organizations, requirements for monitoring compliance, and procedures for the issuance and revocation of permits. Finally Section 32.1-122.24 states that the Commissioner

may refuse to issue a permit if he determines that the project for which the permit is sought would be detrimental to the provision of health services in underserved areas of the Commonwealth;

11) has 2 additional enactment clauses that stipulate that the Secretary of Health and Human Resource shall review requirements for charity care; and that the Department of Health shall work with Virginia Health information to develop a data collection process.

**6. Budget Amendment Necessary:** Yes.

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

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2017	\$820,128	3	0100
2018	\$345,000	3	0200
2019	\$345,000	3	0200
2020	\$345,000	3	0200
2021	\$345,000	3	0200
2022	\$345,000	3	0200

**7b. Revenue Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2017	(\$455,128)	0200
2018	\$800,128	0200
2019	\$800,128	0200
2020	\$800,128	0200
2021	\$800,128	0200
2022	\$800,128	0200

**8. Fiscal Implications:** The total fiscal impact of this bill cannot be determined and any fiscal implications are preliminary.

Department of Health

The provisions of this bill would eliminate 39 projects requiring COPN reviews annually and \$455,128 in annual fee revenue associated with those reviews. The general fund would incur costs in FY 2017 to support existing COPN staff at current levels to address the increased workload, the addition of one professional position to maintain the new website, the addition of two COPN professional positions, and a consultant to support the State Medical Facilities Plan (SMFP) Advisory Council. It is estimated that the total general fund cost meeting the provisions of the bill in FY 2017 would be \$758,600. The revenue generated by permit fees should be sufficient to cover the costs of the program starting FY 2018. While other states may have existing permitting processes, there is no readily available data with which to compare this proposal. Further study is needed before reasonable estimates may be made concerning the fiscal impact of the permitting practices proposed in this bill.

The number of mental hospital projects which are exempted from COPN review by this bill is estimated to be approximately five projects annually. The average fee revenue associated with these five projects is approximately \$61,528. The average number of magnetic source imagining (MSI), nuclear medicine and lithotripsy projects which would be exempted from review is two projects annually. The fees lost from these equipment projects would be approximately \$3,600 annually. Historically, about 60 percent of the projects will conform to the SMFP and receive automatic approval under this bill. With an average of 54 projects reviewed annually, the number of automatic approvals would be approximately 32 projects. Therefore this leaves an average of about 15 projects remaining to review annually as seven projects would be exempt and 32 would receive automatic approvals. The fees lost from this provision would amount to approximately \$390,000 a year. The total fees eliminated by the bill amount to \$455,128 in FY 2017 and thereafter.

The agency estimates that 1.5 project review analysts (PRA) and an administrative support position could manage the 15 remaining projects, as well as provide assistance with the studies that will be conducted by the Secretary of Health and Human Resources and Virginia Health Information. The agency has stated that existing COPN program staff would be capable of achieving compliance with the bill. However, two positions would be needed to address the new work load generated by the permit process (anticipated to be nearly double the current workload), monitoring and enforcing compliance with the charity care and quality of care standards mandated for permit holders, the expedited 45 and 120 day COPN review process, provide consultant services to the SMFP Advisory Council, and the daily management of the COPN data on the VDH website. The agency has estimated \$78,000 per staff member for a total of \$156,000.

The bill requires VDH to develop a website to make Letters of Intent and other COPN information available to the public. In order to meet the provisions of the bill, the agency would require general fund assistance in FY 2017 to staff and operate an online, real time, searchable library of COPN material, which is estimated to be \$114,000 annually. This estimate includes \$78,000 for one new professional staff position, which includes benefits, plus \$36,000 a year for online storage. There is a one-time cost to create the website, which is estimated to be \$20,000. Daily management and oversight of the website is necessary as the bill has certain criteria that trigger a limited timeframe for the position and review of the project. Therefore, when the Letter of Intent for a project is received in the mail, it will need to be uploaded to the web by close of business that day. The total general fund cost for the website is approximately \$134,000 from the general fund in FY 2017 and \$114,000 annually thereafter from permit fees.

The bill also provides no funding mechanism to establish or support the 13 member SMFP Advisory Council which is tasked with employing the services of private consultants to assist the Council in reviewing the SMFP annually and updating the plan at least every two years. It is estimated the cost of a consultant would be \$75,000 annually. The general fund would incur costs in FY 2017 as permit fees pay would not be sufficient enough to cover such costs until FY 2018.

Total General Fund Costs in FY 2017:

Fees Lost

- Replace lost fee revenue from Mental Health Projects - \$61,528
- Replace lost fee revenue from MSI, Nuclear Medicine and Lithotripsy projects - \$3,600
- Replace lost fees from Automatic Approvals Based on Conformance to SMFP - \$390,000

Costs

- Website Development and Maintenance - \$134,000; \$114,000\* in ongoing costs
- SMFP Advisory Council Private Sector Consultant - \$75,000\*
- Two professional COPN staff - \$156,000\*
- TOTAL COSTS- \$820,128; \*\$345,000 ongoing costs

Revenue from permit fees collected starting FY 2018 replace the need for GF support:

- Replace lost fee revenue from Mental Health Projects - \$61,528
- Replace lost fee revenue from MSI, Nuclear Medicine and Lithotripsy projects - \$3,600
- Replace lost fee revenue from Automatic Approvals Based on Conformance to SMFP - \$390,000
- Website Maintenance - \$114,000 (website development is a one-time cost needed in FY 2017)
- SMFP Advisory Council Private Sector Consultant - \$75,000
- Add two professional staff - \$156,000
- TOTAL - \$800,128

As previously stated the bill charges the Board of Health with the responsibility of establishing fees to support the program. If a minimum of 100 permits are issued, and the average cost to maintain the COPN program is approximately \$800,128 annually, the average permit fee would have to be approximately \$8,001 to make up for the fees lost, and sustain the program at the current staffing level.

Department of Medical Assistance Services

Any substantive changes to Certificate of Public Need (COPN) requirements are likely to have an impact on the cost of health care; however, analysis varies widely as to the ultimate impact COPN requirements have on these costs. While it is assumed that COPN legislation may have fiscal implications for the Department of Medical Assistance Services (DMAS), there is insufficient data to provide a definitive estimate. Under any scenario, it is unlikely that any COPN change would have a direct fiscal impact in the 2016-2018 biennium due to the time needed for capital planning and the delayed recognition of costs in Medicaid payment rates. Any significant costs are not likely to occur until after 2020 and, even then, such costs would be difficult to estimate based the unknowns associated with COPN changes and the rapidly evolving nature of the health care system.

While a specific fiscal impact cannot be determined, the agency believes that the provisions of this bill will lead to an increase in the Commonwealth's health care capacity and demand (i.e. number of medical scanning machines, outpatient surgery centers, operating rooms, hospital beds, etc.). Utilization of scanning machines and ambulatory surgery centers is likely to increase in the 2016-2018 biennium; however the agency does not expect substantial cost increases as in general Medicaid members do not significantly utilize these services. There also could be increases in cost per unit in hospitals and Medicaid reimbursable capital expenditures, both of which would start to affect hospital operating reimbursements beginning in FY 2019.

**9. Specific Agency or Political Subdivisions Affected:** Department of Health and Department of Medical Assistance Service.

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

**11. Other Comments:** None.