

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: HB 2337

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: O'Bannon**3. Committee:** Health, Welfare and Institutions.**4. Title:** Certificates of public need.

5. Summary: Creates a two-phase process to sunset certificate of public need (COPN) requirements for many categories of medical care facilities and projects, with the requirement for a certificate of public need (i) for all medical care facilities other than nursing homes, rehabilitation hospitals and beds, imaging centers, organ or tissue transplant services, certain open heart surgery services, certain neonatal services, and certain medical care facilities located in a locality with a population density of at least 200 people per square mile as reported by the United States Bureau of the Census in the 2010 census report that is contiguous with at least one other locality with such population density, or has a population of at least 75,000 people repealed effective July 1, 2017, and (ii) imaging centers repealed effective January 1, 2018. The bill also creates a new permitting process for categories of facilities and projects exempted from the certificate of public need process that requires the Commissioner of Health to issue a permit but requires the Commissioner to condition a permit (a) on the agreement of the applicant to provide a specified level of care at a reduced rate to indigents, accept patients requiring specialized care, or facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area and (b) on compliance of the applicant with quality of care standards. The bill also eliminates regional health planning agencies and makes numerous changes to the COPN process for facilities and projects that will still be subject to the requirement of a certificate. The bill contains technical amendments.

6. Budget Amendment Necessary: See item 8.**7. Fiscal Impact Estimates:** Preliminary; see item 8.**8. Fiscal Implications:**Department of Health

This bill would have a fiscal impact on the Commonwealth, however the total fiscal impact cannot be determined at this time. The Division of Certificate of Public Need at the Department of Health (VDH) reviews an average of 54 certificates of public need (COPN)

requests per year. The provisions of the bill would eliminate 49 projects from COPN review annually, and result in the loss of \$576,818 in COPN fees associated with those projects.

The bill creates a new permitting process that states that the Commissioner shall issue permits within 30 days of application receipt and condition permits in a manner similar to the Certificate of Public Need program. Since permits must be issued within 30 days of receipt, it is reasonable to assume that the numbers of permits may exceed the average of 54 COPN projects, which previously required one COPN review each year. Based on the experiences of other states, removing the COPN review process as a barrier to development has resulted in an increase in the number of projects overall, all requiring permit review and monitoring.

VDH estimates that existing COPN program staff can absorb the workload associated with establishing the new permitting provisions of the bill in 2018. The bill calls for implementation of the permitting process to occur over a six-month period from July 1, 2017 to January 1, 2018. It is likely that no COPN applications related to the 49 project categories exempted will be filed after July 1, 2017. This means that \$576,818 in fees eliminated by this bill would need to be supplanted with general funds in 2018 to maintain the COPN program at current staffing levels and establish the permitting process.

Once the permitting process is established, the new work load generated is estimated to be double the current workload. The provisions of the bill would require an additional two positions in 2019 for monitoring and enforcing compliance with the charity care and quality of care standards mandated for permit holders, and to process the expedited 45 and 120 day COPN reviews. The additional cost in 2019 and beyond would be \$78,000 (salary plus benefits) per position annually, for a total of \$156,000. The provisions of the bill allow the Board of Health to set a fee for the new permitting process. Assuming that VDH implements a permitting fee at a level sufficient to cover the costs of the permitting process, there should be no general fund impact in 2019 and beyond.

However, VDH is required to develop a website that will include an automated mechanism to make Letters of Intent and other COPN information available to the public as per provisions of the bill; it is unclear whether fee revenue can be used to develop the website or if general fund is needed. 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 still necessary as the bill establishes a limited timeframe for posting information, posting project reviews, and reviewing public comments. An additional position would be needed to oversee the website at an estimated cost of \$78,000 (salary plus benefits) annually, plus \$36,000 annually for online storage.

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 and there are differences between specific legislation. 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 on 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 HB2337 will lead to an increase in the Commonwealth's health care capacity (i.e. number of medical scanning machines, outpatient surgery centers, operating rooms, hospital beds, etc.). Utilization of scanning machines is likely to increase in the 2018-2020 biennium; however, the agency does not expect substantial cost increases as in general Medicaid members do not significantly utilize these services. There could also be increases in cost per unit in hospitals and Medicaid reimbursable capital expenditures, both of which would start to affect hospital operating reimbursements after 2020.

9. Specific Agency or Political Subdivisions Affected: Department of Health and the Department of Medical Assistance Services.

10. Technical Amendment Necessary: No.

11. Other Comments: None.