

Department of Planning and Budget

2017 Fiscal Impact Statement

1. Bill Number: SB 1566

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

2. Patron: Dunnivant

3. Committee: Education and Health

4. Title: Certificate of public need; reports.

5. Summary: Makes changes to the Medical Care Facilities Certificate of Public Need Program. The bill (i) removes psychiatric facilities, specialized centers or clinics or that portion of a physician's office developed for the provision of ambulatory or outpatient surgery, lithotripsy, magnetic source imaging (MSI), or nuclear medicine imaging, and certain specialized centers or clinics or portions of hospitals for the provision of neonatal special care services from the list of reviewable medical care facilities; (ii) provides that establishment of a medical care facility to replace an existing medical care facility with the same primary service area does not constitute a project; (iii) removes 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 (MSI) from the definition of project; (iv) creates a new process for registration of projects exempted from the definition of project by the bill; (v) establishes an expedited 45-day review process for applicants for projects determined to be uncontested or to present limited health planning impacts; (vi) renames the State Medical Facilities Plan as the State Health Services Plan and establishes a State Health Services Plan Advisory Council to provide recommendations related to the content of the State Health Services Plan; (vii) clarifies the content of the application for a certificate; and (viii) 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.

The bill also (a) directs the Secretary of Health and Human Resources to review charity care services delivered throughout the Commonwealth and recommend changes to the definition of charity and to the types of charity care requirements imposed on various health care services and report to the Governor and the General Assembly by December 1, 2017; (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 make charity care conditions, charity care compliance reporting status, and details on the exact amount of charity care provided or contributed and to whom it was provided or contributed available in a digital format online; (c) directs the Commissioner of Health to develop an analytical framework to guide the work of the State Health Services Plan Advisory Council; and (d) directs the Joint Commission on Health Care to develop specific recommendations for eliminating differences in the certificate of public need review process from one region to another and report on the recommendations to the Chairmen of the House Health, Welfare and Institutions and Senate Education and Health Committees by December 1, 2017.

6. **Budget Amendment Necessary:** See item 8.
7. **Fiscal Impact Estimates:** Preliminary, see item 8.
8. **Fiscal Implications:** The fiscal implications this bill would have on the Commonwealth are preliminary.

Department of Health

The Office of Licensure and Certification (OLC) estimate that approximately 2 projects per year will be exempted from COPN review by this bill. This exemption will result in the loss of approximately \$4,075 in annual revenues. The remaining revenues should be sufficient to cover costs of the ongoing workload.

The bill requires a registration process for those projects exempted from the COPN review. Registration shall include charity care conditions, the requirement that the registrant obtain accreditation from a nationally recognized accrediting organization, and report utilization and other data to the Board of Health. Determining whether a project is exempt and must be registered under this bill will require the implementation of separate review and monitoring processes, as well as procedures for eligibility determination and revocation. In addition, COPN staff time will have to be devoted to enforcing compliance by registrants with their respective requirements for accreditation, periodic reporting of their utilization, as well as the charity care conditions established for each registrant.

The bill renames the State Medical Facilities Plan to the State Health Services Plan and establishes a State Health Services Plan Advisory Council (the Council), which is responsible for making recommendations to the Board of Health related to the content of the State Health Services Plan. It is assumed the COPN program will pay for the expenses incurred by the new Council. That estimate is based on the agency's experience in supporting the 15-member Board of Health, whose annual costs include approximately \$5,098 for travel, \$2,257 for lodging, \$1,221 for meals, and \$1,425 for miscellaneous expenses for a total cost of the Council to roughly \$10,000 each year.

The bill requires a number of studies to be conducted by the Secretary of Health and Human Resources, the Commissioner of Health, and the Joint Commission on Health Care. The

additional workload would require managing data, maintaining records and inventory online, charity care condition monitoring, staffing, and responding to the State Health Services Plan Advisory Council. Current COPN staffing level is not sufficient to absorb all of these additional duties and be able to ensure compliance with COPN project review timeframes. This is a critical component of the COPN process as noncompliance results in automatic project approval.

To handle the additional workload, the agency estimates a minimum of 2 Project Review Analysts would be needed, at an annual cost of \$78,000 per position (salary and benefits), or \$156,000 to handle the new workload on a yearly basis. However, further study is needed to best determine what the costs and the need for additional COPN staffing might be. Since the bill allows the Board of Health to establish fees via regulation to support COPN activities without restrictions, it is assumed the Board may adjust the fees to pay for the new registration program, support of the Council, and the new COPN website.

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 2021 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.

The agency does not believe that the provisions of SB 1566 will have any costs because it is not expected to have a significant impact on health care capacity. It is assumed that the COPN services removed by the bill would have otherwise been approved under the current process.

Secretary of Health and Human Resources

There are a number of other proposals that require deliverables from the Office of the Secretary of Health and Human Resources such as studies and work groups. As this number grows, the likelihood that the Office can absorb such costs declines. An impact cannot be determined at this time.

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.

