

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: HB1680

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: Orrock

3. Committee: Health, Welfare and Institutions

4. Title: Certificate of public need; changes to Medical Care Facilities Certificate of Public Need Program.

5. Summary: Makes changes to the Medical Care Facilities Certificate of Public Need Program. The bill (i) removes specialized centers or clinics or that portion of a physician's office developed for the provision of lithotripsy, magnetic source imaging (MSI), or nuclear medicine imaging 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) removes additions of operating rooms at an existing hospital or at any medical care facility when each operating room to be added will be utilized solely for surgical procedures for which the average number of such surgeries performed in hospitals in the Commonwealth during the previous three years was less than 0.1 percent of the total number of all surgeries performed in the Commonwealth during the same period from the list of projects for which a certificate is required; (v) eliminates the requirement for a certificate of public need for certain projects involving mental hospitals or psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse; (vi) adds any facility that has common ownership with an affiliated licensed hospital located within 35 miles of the facility and that includes, as part of the facility, a dedicated emergency department as defined in 42 C.F.R. § 489.24(b) that is subject to the requirements of the federal Emergency Medical Treatment and Labor Act to the list of medical care facilities for which a certificate of public need is required; (vii) limits the definition of "project" to those undertaken by a medical care facility other than a medical care facility that has common ownership with an affiliated licensed hospital located within 35 miles of the facility and that includes, as part of the facility, a dedicated emergency department as defined in 42 C.F.R. § 489.24(b) that is subject to the requirements of the federal Emergency Medical Treatment and Labor Act when the project is undertaken within 10 miles of a general hospital and projects undertaken by a medical care facility that has common ownership with an affiliated licensed hospital located within 35 miles of the facility

and that includes, as part of the facility, a dedicated emergency department as defined in 42 C.F.R. § 489.24(b) that is subject to the requirements of the federal Emergency Medical Treatment and Labor Act regardless of where the project is undertaken; (viii) creates a new process for registration of projects exempted from the definition of project by the bill; (ix) establishes an expedited 45-day review process for applicants for projects determined to be uncontested or to present limited health planning impacts; (x) 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; (xi) clarifies the content of the application for a certificate; (xii) 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; (xiii) requires the State Health Commissioner to approve an application that is consistent with the State Health Services Plan unless the State Health Commissioner determines that, upon consideration of certain factors, the application should not be approved; and (xiv) makes review by a regional health planning agency optional for the application.

The bill also (a) delays the effective date of clauses (i) through (xiv) until July 1, 2020, (b) directs the Board of Health to review the geographic area around a general hospital within which a certificate of public need is required to undertake a project set forth in the definition of "project," determine whether the distance identified is appropriate, and, if the Board finds that the distance is not appropriate, develop recommendations for an alternative distance or other measure for determine the scope of the area around a general hospital within which a certificate of public need shall be required to undertake a project, and report such recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by October 1, 2019; (c) directs the Department 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, 2019; (d) 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 care 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, 2019; (e) directs the Secretary of Health and Human Resources to convene a group of stakeholders to study and make recommendations related to the appropriate authority of the State Health Commissioner to impose additional conditions on certificates; (f) 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; (g) directs the State Health Commissioner to develop an analytical

framework to guide the work of the State Health Services Plan Advisory Council; and (h) directs the Secretary of Health and Human Resources convene a work group composed of stakeholders to study and make recommendations for the creation of a multi-member panel to review decisions of the State Health Commissioner denying issuance of a certificate of public need for a proposed project and report his findings to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2019.

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>
2018			
2019			
2020	\$166,063	1	General
2021	\$166,063	1	General
2022	\$29,250	1	Nongeneral
2023	\$29,250	1	Nongeneral
2024	\$29,250	1	Nongeneral

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2018		
2019		
2020	(207,884)	Nongeneral
2021	(207,884)	Nongeneral
2022	\$237,134	Nongeneral
2023	\$237,134	Nongeneral
2024	\$237,134	Nongeneral

8. Fiscal Implications: This bill would have a fiscal impact on the Commonwealth.

Virginia Department of Health:

The provisions of the bill would exempt approximately 15 project applications from Certificate of Public Need (COPN) review per year, which is 21 percent of the total annual application volume for the COPN program. The 15 projects include, 1 COPN application for lithotripsy each year for the past 4 years, 1 COPN application for nuclear medicine imaging across the past four years, the average of 4 COPN applications for psychiatric facilities a year, and 11 applications for additional operating rooms in general hospitals and non-nursing home beds. The fees associated with the loss of these projects is estimated to be an average of \$207,884 per year.

The bill shifts the focus to an expedited application and review process of 45 days for non-contested projects and projects that present limited health planning impacts. In addition, the

bill has an enactment clause that VDH shall reduce the duration for the average review cycle from 260 days down to 120 days after receiving the letter of intent. This is a 46 percent reduction in average review time while only reducing the number of applications by 21 percent, therefore additional staff may be necessary in order to review applications within the proposed timeframe.

The bill allows the Board of Health to set fees for program application and registration, which would offset the loss in revenue created by the exemption for application. However, the bill would take effect July 1, 2019 while the new regulations reflecting the new fee schedule would not be effective for approximately 18 months after that. The \$207,844 loss in revenue would need to be offset for the first 18 months from the general fund to continue normal operations within the COPN program. The department estimates that a fee range of \$500 to \$1000 would be sufficient to cover the costs of review program applications and registrations.

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. Assuming the expenses incurred by the Council would be similar to those of the 15 member Board of Health, it is estimated that the annual cost of the Council would be approximately \$5,098 for travel, \$2,257 for lodging, \$1,221 for meals, and \$1,425 for miscellaneous expenses. This brings the projected total cost of the Council to roughly \$10,000 each year.

The bill provides for the use of private consultants. In the experience of the Office of Licensure and Certification, private consultants with expertise in healthcare and public health administration average \$300 per hour and 80 hours is sufficient for 3 months. If the department decides to use a consultant, the overall expense is approximately \$96,000 annually.

The bill indicates that COPN public hearings become optional. At this time it cannot be determined which public hearings would be held and which would not so a fiscal impact cannot be estimated. However, hearings average a cost of \$486, so with a total of 71 projects in 2018, a reduction in public hearings by 50 percent would decrease expenditures by \$17,937.

Additionally the bill requires an analytical framework that incorporates review of the State Health Services Plan to support the State Health Services Plan Advisory Council in its duties. The analytical framework shall include an evaluation of whether the COPN program is meeting the needs of the indigent and uninsured, protecting the public health, promoting academic medical centers and teaching hospitals, ensuring the availability of essential health care services in the Commonwealth and is aligned with the State Health Improvement Plan. The analytical framework shall consider the approach utilized in past COPN Annual Reports; including a recurrent three-year schedule for analysis of all project categories with procedures

for analysis of at least three project categories per year and include stakeholder involvement and public comment. While the specific role of VDH is not clearly delineated with respect to each of these studies, it is assumed the COPN program will be involved at some level in all.

Therefore, to meet the provisions of the bill, one Project Review Analyst would be necessary at an annual cost of \$78,000, which includes salary and benefits. Once the Board sets the fee level, expenses for the program will be offset by additional fee revenue.

Department of Medical Assistance Services:

While it is assumed that COPN legislation 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 the proposed legislation. Under any scenario, it is unlikely that any COPN change would have a direct fiscal impact in the 2018-2020 biennium 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 until after 2022 and, even then, such costs would be difficult to estimate based on the unknowns associated with multiple COPN process and coverage changes and the rapidly evolving nature of the healthcare system.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.