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Senate Bill 669 (Substitute S-1)
Sponsor: Senator Curtis S. VanderWall
Committee: Health Policy and Human Services

Date Completed: 2-20-20

CONTENT

The bill would amend the Public Health Code to do the following:

- **Delete a requirement to obtain a certificate of need for a covered capital expenditure.**
- **Delete a requirement that the Certificate of Need Commission develop, approve, disapprove, or revise certificate of need review standards related to the need for making covered capital expenditures.**
- **Modify a requirement for a health maintenance organization to obtain a certificate of need for certain hospital or health facility projects.**
- **Delete the definition of "covered capital expenditure".**
- **Modify the definition of "certificate of need".**
- **Delete a provision that prohibits a hospital from transferring no more than 35% of its licensed beds to another hospital or freestanding surgical outpatient facility not more than one time if certain common control requirements were met.**

Certificate of Need Definition

Under the Code, "certificate of need" means a certificate issued under Part 222 (Certificate of Need) of the Code authorizing a new health facility, a change in bed capacity, the initiation, replacement, or expansion of a covered clinical service, or a covered capital expenditure issued in accordance with Part 222. Under the bill, "certificate of need" would mean a certificate issued under Part 222 authorizing a new health facility, a change in bed capacity, or the initiation, replacement, or expansion of a covered clinical service.

Covered Capital Expenditures

Under the Code, before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of \$1.0 million or more, a person must obtain a construction permit from the Department of Licensing and Regulatory Affairs (LARA). The Department may not issue the permit unless the applicant holds a valid certificate of need if the Code requires a certificate for the project. The Department also may promulgate rules to require construction permits for projects other than those described above to protect the public health, safety, and welfare.

If a project requires a construction permit as described above, but does not require a certificate of need under Part 222, LARA must require the applicant to submit information it

considers necessary to assure that the capital expenditure for the project is not a "covered capital expenditure" as that term is defined in Section 22203(9) of the Code: a capital expenditure of \$2.5 million or more, as adjusted annually by LARA, by a person for a health facility for a single project, excluding the cost of nonfixed medical equipment that include or involves the acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of a clinical service area. The bill would delete this provision and the definition of "covered capital expenditure".

The Code requires LARA to annually adjust the \$2.5 million threshold set forth in the definition of "covered capital expenditure" by an amount that the State Treasurer determines to reflect the annual percentage change in the Consumer Price Index, using data from the immediately preceding period of July 1 to June 30. The bill would delete this provision.

Part 222 prohibits a person from doing any of the following without first obtaining a certificate of need:

- Acquiring an existing health facility or begin operation of a health facility at a site that is not currently listed for that type of health facility.
- Making a change in the bed capacity of a health facility.
- Initiating, replacing, or expanding a covered clinical service.

A person also may not make a covered capital expenditure without first obtaining a certificate of need. The bill would delete this provision.

Certificate of Need Commission; Covered Capital Expenditures

The Code establishes the Certificate of Need Commission and prescribes its membership, powers, and duties. Among other things, the Code requires the Commission to develop, approve, disapprove, or revise certificate of need review standards that establish for the Code's purpose the need for the following:

- The initiation, replacement, or expansion of covered clinical services.
- The acquisition or beginning the operation of a health facility.
- Making changes in bed capacity.

In addition, the Code requires the Commission to develop, approve, disapprove, or revise the review standards for the Code's purpose the need for making covered capital expenditures. The bill would delete this provision.

The Code prohibits the Commission from developing, approving, or revising a certificate of need review standard that requires the payment of money or goods or the provision of services unrelated to the proposed project as a condition that a person must satisfy in seeking a certificate of need for the following:

- The initiation, replacement, or expansion of covered clinical services.
- The acquisition or beginning the operation of a health facility.
- Making changes in bed capacity.

The Commission also may not develop, approve, or revise a certificate of need review standard that requires the payment of money or goods or the provision of services unrelated to the proposed project as a condition that a person must satisfy in seeking a certificate of need for making a covered capital expenditure. The bill would delete this provision.

Certificate of Need for a Health Maintenance Organization

The Code requires a health maintenance organization to obtain a certificate of need for, among other things, the acquisition of, purchase of, new construction of, modernization of, replacement of, or addition to a hospital or other health facility providing inpatient service if a covered capital expenditure is required. The bill would delete the language referring to a covered capital expenditure

The Code specifies that a covered capital expenditure that is not intended principally to serve the needs of the enrollees of the health maintenance organization, as LARA determines, that a health maintenance organization proposes to undertake is subject to the Code. The bill would delete this provision.

Bed Relocation

Subject to certain provisions of the Code and if the relocation does not result in an increase in licensed beds within the health service area, a certificate of need is not required for the physical relocation of licensed beds from a hospital licensed under the Code to a freestanding surgical outpatient facility licensed under the Code if the facility satisfies certain criteria related to ownership, licensure, and services provided. Before relocating the beds, the hospital seeking to relocate them must provide certain information requested by LARA.

In addition, a hospital must transfer no more than 35% of its licensed beds to another hospital or freestanding surgical outpatient facility not more than one time if the hospital seeking to relocate its licensed beds or another hospital owned by, under common control of, or having as a common parent the hospital seeking to relocate its beds is located in a city that has a population of 750,000 or more. The bill would eliminate this provision.

MCL 333.20145 et al.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would remove the requirement for a certificate of need for capital expenditures related to construction or conversions of health facilities. As the capital expenditures almost always are used to finance expansions of facilities and those expansions themselves require a certificate of need, the bill would have no meaningful fiscal impact.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.