

# Legislative Analysis



## MAKING CERTIFICATE OF NEED INFORMATION AVAILABLE TO THE PUBLIC

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**House Bill 5074 as reported from committee**  
**Sponsor: Rep. Bronna Kahle**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5075 as reported from committee**  
**Sponsor: Rep. David LaGrand**

**House Bill 5076 as reported from committee**  
**Sponsor: Rep. Andrew W. Beeler**

**House Bill 5077 as reported from committee**  
**Sponsor: Rep. Sara Cambensy**

**Committee: Health Policy**  
**Complete to 2-1-22**

### SUMMARY:

House Bills 5074 to 5077 would amend Part 222 (Certificates of Need) of the Public Health Code to require that certificate of need (CON) reports, proposed review standards, meeting agendas and other information be made available to the public at specified time intervals. The CON program exists to ensure that only needed, cost-effective, and quality health services and facilities are developed in Michigan.

#### House Bill 5074

Currently under the code, the CON commission determines what qualifies as covered clinical services and also develops, approves, disapproves, and revises CON review standards that apply to covered clinical services, changes in bed capacity, and making covered capital expenditures, among other things. At least 30 days before final action is taken on review standards, the commission must conduct a public hearing and the chairperson must submit the proposed action and a summary of the expected impact to each member of the joint legislative committee with oversight over CON.

The bill would provide that, if the commission proposes to develop, approve, disapprove, or revise CON review standards, it would have to make the proposed review standards available to the public at least 30 days before conducting the public hearing. The bill also would remove a provision that requires the joint legislative committee to promptly review the proposed action and submit its recommendations and concerns to the commission.

Next, under current law, the commission chairperson must submit the proposed final action and a summary of the expected impact to the governor and each member of the joint committee. Under the bill, that would have to take place within 30 days following the public hearing and the chairperson would also have to submit a copy of all written and recorded public testimony.

MCL 333.22215

### **House Bill 5075**

The bill would require the joint legislative committee with oversight over CON to hold an annual hearing to review all of the following regarding the commission:

- Action taken in the preceding year.
- Proposed actions.
- Impact on access to, and quality and cost of, care.
- Any other relevant information.

Current law also requires the joint committee to review the commission's recommendations on the revision of CON application fees and to submit a written report to the legislature about implementation costs and recommendations.

The bill would require the legislature to make that report available to the public within 30 days after receiving it.

MCL 333.22219

### **House Bill 5076**

Currently, the Department of Health and Human Services (DHHS) must perform a number of CON-related duties, including rule promulgation, administering CON review standards, and annually reporting to the commission on the performance of DHHS's duties, the costs of implementing Part 222, and the application fees collected in the preceding fiscal year.

The bill would add that DHHS must make these annual reports publicly available within 7 days of presentation to the commission.

MCL 333.22221

### **House Bill 5077**

Under current law, DHHS must make available the times and places of commission meetings and keep minutes of the meetings and a record of actions of the commission.

The bill would expand upon these requirements and specify time intervals for their completion. DHHS would have to make the times and places of commission meetings available at least 7 days before the meeting, along with the meeting agenda and any other written material the commission will reference during the meeting.

Additionally, DHHS would have to do all of the following for each meeting:

- Keep minutes and, within 72 hours after approval by the commission, make the minutes publicly available.
- Create a transcript and make the transcript available within 7 calendar days after the meeting is adjourned.
- Maintain a record of the actions of the commission and make a summary of the actions available to the public within 7 days after the meeting is adjourned.
- Make any audio or video recording of a meeting or public hearing of the commission publicly available within 7 calendar days after the meeting or hearing.

MCL 333.22213

## **FISCAL IMPACT:**

Under House Bills 5074 to 5077, DHHS would have additional administrative responsibilities to meet new requirements and timelines for public access to documents, meeting materials, and reports related to the Certificate of Need (CON) Commission. House Bill 5077 also removes language specifying that two administrative personnel must be employed for administrative services. The administrative costs of DHHS to provide services to support the CON Commission may be modestly increased to meet the requirements of the bills, but it is likely that the costs can be absorbed within the current DHHS CON budget and available CON program revenue.

The FY 2021-22 CON program budget is \$2.8 million, which is almost entirely funded from fees charged pursuant to statute for CON regulatory services.

## **POSITIONS:**

The following entities indicated support for the bills (10-14-21):

- Mackinac Center for Public Policy
- Michigan Manufacturers Association
- Michigan Ambulatory Surgery Association

The Department of Health and Human Services indicated a neutral position on HBs 5074 and 5076 and opposition to HB 5077. (10-14-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.