



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 1269 (as introduced 9-12-12)  
Sponsor: Senator Mike Kowall  
Committee: Economic Development

Date Completed: 9-13-12

**CONTENT**

**The bill would amend Part 222 of the Public Health Code, which governs the certificate of need (CON) program, to do the following:**

- **Allow the relocation of hospital beds to a new freestanding surgical outpatient facility that met certain criteria, without a CON.**
- **Delete a restriction on the relocation of hospital beds that does not increase the number of beds within a health services area.**
- **Add two public members to the CON Commission, and require one of the public members to be the chairperson of the Commission.**
- **Require the Commission to evaluate all CON review standards to determine if they allowed for actual approval of an application.**
- **Require the Commission to express plainly in the CON review standards if it determined that a service would be capped at a specific number of providers.**
- **Require voting on all motions before CON advisory committees to be documented by roll call vote and recorded in the minutes.**
- **Delete a provision regarding recommendations on the revision of CON application fees, if revenue from the fees does not meet a certain standard.**
- **Require the joint legislative committee, which reviews CON issues, to meet quarterly.**

**The bill also would repeal a section that requires the Commission to develop standards for regional CON review agencies in each review area.**

Relocation of Hospital Beds

Part 222 requires a person to obtain a CON in order to do any of the following:

- Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility.
- Make a change in the bed capacity of a health facility.
- Initiate, replace, or expand a covered clinical service.
- Make a covered capital expenditure.

If the relocation of hospital beds does not result in an increase of licensed beds within the health service area, however, a CON is not required under certain circumstances.

Under this provision, the bill would allow a hospital to relocate licensed beds a freestanding surgical outpatient facility without a CON if the facility satisfied each of the following criteria:

- It was owned by, was under common control of, or had an ownership in common with the hospital seeking to relocate licensed beds.
- It was licensed before January 1, 2010.
- It provided 24-hour urgent or emergency care services at that site.
- It provided at least four different covered clinical services at that site.
- It was located within an eight-mile radius of the hospital seeking to relocate licensed beds.
- It was located in a county with a population of 1.2 million or more.

Also, construction of the new facility would have to begin within 12 months after the bill's effective date.

The bill specifies that services at the new site would not be considered an initiation, replacement, or expansion of covered clinical services, if those services were provided at the new site at the time of relocation of beds and in buildings that were physically connected.

Currently, despite the exceptions to the requirement for a CON, no licensed beds may be physically relocated if at least seven members of the CON Commission determine that relocation of licensed beds could cause great harm and detriment to the access and delivery of health care to the public and the relocation should not occur without a certificate. The bill would delete that restriction.

### CON Commission

Part 222 created the CON Commission in the Department of Community Health (DCH). The Commission consists of 11 members appointed by the Governor with the advice and consent of the Senate. The bill would increase the CON Commission to 13 members.

The Governor may not appoint more than six members from the same major political party and must appoint five members from another major political party. The bill would refer to five members from "other major political parties".

Currently, the Commission must consist of the following 11 members:

- Two individuals representing hospitals.
- One individual representing physicians licensed to practice medicine.
- One individual representing physicians licensed to practice osteopathic medicine and surgery.
- One licensed physician representing a school of medicine or osteopathic medicine.
- One individual representing nursing homes.
- One individual representing nurses.
- One individual representing a company that is self-insured for health coverage.
- One individual representing a company that is not self-insured for health coverage.
- One individual representing Blue Cross Blue Shield of Michigan.
- One individual representing organized labor unions in Michigan.

The bill would add two public members to the Commission. (The bill would define "public member" as a member of the general public who is not a licensee or registrant under Article 15 (Occupations) or Article 17 (Facilities and Agencies) of the Code, is a resident of this State, is at least 18 years old, does not have an ownership interest in or a contractual relationship with a health facility, does not have a material financial interest in the provision of health services, and has not had such an interest within the 12 months immediately before being appointed to the Commission.)

Part 222 requires the Commission annually to elect a chairperson. The bill specifies that the person elected would have to be a public member of the Commission.

Under the bill, if the Commission's agenda included a conflict of interest for the chairperson, the vice-chairperson of the Commission would have to lead the discussion.

Part 222 requires the DCH to furnish administrative services to the Commission and have charge of the Commission's offices, records, and accounts. The DCH also must provide at least two full-time administrative employees, secretarial staff, and other staff necessary to allow the proper exercise of the powers and duties of the Commission. The bill would require, instead, that the DCH provide sufficient staff to support the work of the Commission.

### Commission Responsibilities

The responsibilities of the CON Commission include considering the impact of a proposed restriction on the acquisition or availability of covered clinical services on the quality, availability, and cost of health services in the State. The bill would add a requirement that the Commission evaluate all CON review standards to determine if the language allowed for actual approval of an application. If the Commission determined that a service would be capped at a specific number of providers, the Commission would have to express that determination plainly in the review standards.

Part 222 also requires the Commission to appoint standard advisory committees to assist in the development of proposed CON review standards, if the Commission considers it necessary. An advisory committee must complete its duties and submit its recommendations to the Commission within six months, unless the Commission specifies a shorter period of time when the committee is appointed. The bill would require voting on all motions before the committees to be documented by a roll call vote and be recorded in the minutes.

### CON Application Fees

The DCH is required to report to the Commission annually regarding the costs to the Department of implementing Part 222 and the CON application fees collected in the immediately preceding State fiscal year. If these reports indicate that collected CON application fees have not been within 10% of three-quarters of the cost to the DCH of implementing Part 222, the Commission must make recommendations regarding the revision of those fees so that the fees equal approximately three-quarters of the DCH's cost. The bill would delete that provision.

### Joint Legislative Committee

Part 222 requires a joint legislative committee to focus on proposed actions of the Commission regarding the CON program and standards and to review other CON issues. The joint committee consists of six members: the chairperson, vice chairperson, and minority vice chairperson of the Senate and House Health Policy Committees. The joint committee must review the recommendations made by the Commission regarding the revision of the CON application fees and submit a written report to the Legislature outlining the costs to the DCH to implement the program, the amount of fees collected, and its recommendation regarding the revision of those fees. The bill would require the joint committee to meet quarterly for those purposes.

### Repeal

Section 22226 of the Code requires the CON Commission to develop standards for the designation by the DCH of a regional CON review agency for each review area to develop

advisory recommendations for proposed projects. The DCH, with the concurrence of the Commission, must designate a person to be a regional CON agency for a specific review area. Section 22226 also identifies certain requirements that a regional CON review agency must meet and procedures it must follow. "Review area" means a geographic area established for a health systems agency or a geographic area otherwise established by the Commission for a regional CON review agency.

The bill would repeal Section 22226.

MCL 333.22203 et al.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would allow for the building of a hospital near Clarkston by shifting licensed hospital beds from Pontiac. Two key potential fiscal impacts would involve State and local expenditures on health care services and State and local tax revenue.

The State's Medicaid program represents the most significant expenditure by government on health care services. The shifting of beds from one location to another would not affect Medicaid caseloads. There is no reason to believe that demand for Medicaid services would be affected by a change in location for a limited number of hospital beds. Movement of beds could result in a change of where Medicaid clients seek services, but that would not have an impact on total expenditures.

While there has been some discussion about creation of jobs, with spin-off jobs and increases in tax revenue, a shift of beds would lead to a shift of jobs (and any spin-off jobs) from one location to another. There is little reason to expect a significant change in tax revenue upon the opening of the hospital. Construction of the facility would lead to jobs. However, the money spent on that construction could have been spent on other endeavors (the opportunity cost), such as upgrading the present facility, which likely would have created jobs either directly or indirectly. Therefore, it is difficult to conclude that there would be a significant increase in tax revenue, even short-term, if the bill passed.

The bill likely would have a slightly negative fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). Certain aspects of the construction of health facilities are overseen by the Bureau of Fire Services, Bureau of Construction Codes, and Bureau of Health Systems in LARA. These services are provided for fees paid by the contractor or entity responsible for construction of the facility. These fees, along with Federal sources, General Fund/General Purpose revenue, and other restricted funds, constitute the bulk of operating revenue for all three Bureaus. In some cases, however, the fees paid are not sufficient to cover the costs of providing the services. For instance, in FY 2011-12, approximately 20% of funding for the Bureau of Health Systems came from General Fund/General Purpose revenue while only 8% came from various fees charged by the Bureau. In the Bureau of Fire Services, approximately 47% of its FY 2011-12 funding came from the Liquor Purchase Revolving Fund, which is a General Fund/General Purpose equivalent, while 38% came from fees.

To the extent that the bill would allow additional health facilities to be constructed, those three Bureaus in LARA could experience additional uncompensated costs, which would be borne by existing Department resources.

Fiscal Analyst: Steve Angelotti  
Josh Sefton

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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.