



HB 2350 - SB 2312

June 16, 2020

**SUMMARY OF ORIGINAL BILL:** Makes various changes to the certificate of need (CON) process for healthcare facilities and services.

Requires the Health Services Development Agency (HSDA) to develop criteria and standards to guide the agency when issuing certificates of need, that are evaluated and updated at least annually, and to seek input on the criteria and standards it is developing from: the Division of TennCare, or its successor; the Departments of Health (DOH), the Department of Mental Health and Substance Abuse Services (DMHSAS), and the Department of Intellectual and Developmental Disabilities (DIDD); the Health and Welfare Committee of the Senate; and the Health Committee of the House of Representatives.

Requires HSDA to conduct studies related to health care, including a needs assessment that must be updated at least annually and to submit a proposal to the General Assembly no later than October 1, 2020, detailing objectives, governance, costs, and implementation timeline of a state all payer claims database.

Exempts certain facilities and services from having to obtain a CON.

Allows the Commissioners of DOH, DMHSAS, and DIDD to submit written reports or statements and send representatives to testify before the agency to inform the agency with respect to applications.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

Net Impact – \$848,800/FY20-21 and Subsequent Years/  
Health Services Development Agency  
\$37,300/FY20-21 and Subsequent Years/General Fund

Decrease State Revenue – \$177,900/FY20-21 and Subsequent Years/

Department of Health

Increase State Expenditures –

\$296,500/FY20-21/Health Services Development Agency  
\$369,700/FY20-21/General Fund  
\$281,200/FY21-22 and Subsequent Years/  
Health Services Development Agency

\$364,300/FY21-22 and Subsequent Years/General Fund

Pursuant to Tenn. Code Ann. § 68-11-1623(b), the Health Services Development Agency (HSDA) is required to be self-sufficient. As of June 30, 2019, the HSDA's reserve fund balance was \$1,900,000. The Governor's FY20-21 proposed budget recommends \$1,300,000. The HSDA may increase fees for other certificate of need applicants in the future, if necessary, to remain self-sufficiency.

**SUMMARY OF AMENDMENTS (017063, 017955, 018765):** Amendment 017063

deletes and replaces language of the original bill such that the only substantive changes are:

- Defines “nursing home” and “nursing home bed”;
- Requires the criteria and standards the HSDA develops to be evaluated and updated not less than once every five years and developed by rule in accordance with the Uniform Administrative Procedures Act;
- Prevents health care institutions from: (1) adding beds of a category of service that they were not already providing; (2) redistributing beds to other facilities; and (3) establishing new beds at new satellite facilities;
- Eliminates CON requirement for replacement facilities;
- Requires a provider of positron emission tomography and an outpatient diagnostic center established without a CON to become certified by the American College of Radiology within two years of the date of licensure;
- Requires any home care organization providing services without a CON to be accredited by the Joint Commission, the Community Health Accreditation Partner, or the Accreditation Commission for Health Care;
- Clarifies home health agencies providing services to pediatric patients under the TennCare program may continue to serve those patients until they are 21 years of age;
- Allows an ambulatory surgical treatment center, free-standing emergency department, initiation of magnetic resonance imaging services or increasing the number of magnetic resonance imaging machines, initiation of positron emission tomography, or an outpatient diagnostic center in a county with a population in excess of 100,000 to be established without a CON.;
- Requires a county that, as of January 1, 2020, is designated as an economically distressed eligible county by the Department of Economic and Community Development, to also have no actively licensed hospital located within the county to be exempt from having to obtain a CON.

Amendment 017955 adds language that exempts a home care organization that is limited to providing home health services to patients under the care of a healthcare research institution from having to receive a CON. Requires the home care organization to be accredited by the Joint Commission, the Community Health Accreditation Partner, DNV GL Healthcare, or the Accreditation Commission for Health Care in order to qualify for the exception within 12 months of the date the home care organization is granted a license by the DOH.

Amendment 018765 adds language to the bill as amended by 017063 and 017955 that defines “micro mental health hospital” and creates a CON exemption for the establishment or operation of such hospital in any county with a population less than 150,000 according to the 2010 federal

census or any subsequent federal census. Prohibits any costs of contested cases and appeals from being assessed against any applicant for a CON who is defending the approval of the applicant's CON application. Extends the time frame, from seven days to 14 days, in which the Commissioner of Health and the Commissioner of Mental Health and Substance Abuse Services has to provide HSDA with aggregate data. Requires all fees and civil penalties to be paid by the HSDA or the collecting agency to the Treasurer and deposited in the General Fund and credited to a separate account for HSDA. Directs HSDA to prescribe fees by rule and requires they be in an amount that provides for the cost of administering the implementation and enforcement of the CON process. Updates the current fee schedule healthcare providers pay in Tenn. Code Ann. § 68-11-1625(f) and deposits such funds into the General Fund and credits to the HSDA's separate account.

### **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

**Increase State Revenue –**

**Net Impact – \$1,249,300/FY20-21 and Subsequent Years/  
Health Services Development Agency**

**Decrease State Revenue – \$177,900/FY20-21 and Subsequent Years/**

**Department of Health**

**Increase State Expenditures –**

**\$296,500/FY20-21/Health Services Development Agency**

**\$281,200/FY21-22 and Subsequent Years/**

**Health Services Development Agency**

**Other Fiscal Impact – The Department of Health will reallocate resources and reclassify positions as needed to meet the initial requirements of the proposed legislation. The additional funds required by the department in future years to accommodate the reallocation of resources and meet the requirements of the proposed legislation are unquantifiable at this time.**

**Pursuant to Tenn. Code Ann. § 68-11-1623(b), the Health Services Development Agency (HSDA) is required to be self-sufficient. As of June 30, 2019, the HSDA's reserve fund balance was \$1,900,000. The Governor's FY20-21 proposed budget recommends \$1,300,000. The HSDA may increase fees for other certificate of need applicants in the future, if necessary, to remain self-sufficiency.**

Assumptions for the bill as amended:

*Department of Health*

- The DOH collected \$177,925 in fees for licenses from health care providers used for purposes of supporting the state health planning division in FY18-19.

- The proposed legislation increases the fee schedule and redirects the revenue from the licensing fees to the HSDA; however the DOH is responsible for collecting the fees.
- As a result, the DOH will experience a decrease in state revenue estimated to be \$177,925 in FY20-21 and subsequent years.
- The Department of Health will need additional resources to meet the requirements of the proposed legislation in an efficient and timely manner.
- In the short term, it is assumed the DOH will reallocate existing resources and reclassify positions as needed to meet the requirements of the bill.
- In out years, DOH will need additional funds and positions to accommodate for the reallocation of resources and continue to meet the requirements of the proposed legislation.
- An exact amount of resources and funds is unquantifiable due to a number of unknown factors as to how the proposed legislation will impact the state's health care facilities landscape and the timing of such impacts.

*Health Services and Development Agency*

- The recurring increase in state revenue to the HSDA due to increasing licensure fees for healthcare providers and transferring total fee proceeds to an HSDA account is estimated to be \$1,756,252 in FY20-21 and subsequent years.
- The HSDA will reduce the current CON application fees from \$5.75 per \$1,000 of project costs with a minimum of \$15,000 and a maximum of \$95,000 to \$2.25 per \$1,000 of project costs with a minimum of \$3,000 and a maximum of \$45,000.
- Under the current fee structure, the average CON fee collections from FY16-17 through FY18-19 were \$1,465,903.
- This amount represents a higher than typical average of collections; therefore, this analysis assumes this average is 30 percent higher than the projected amount to be collected.
- CON fee collections are estimated to be \$1,127,618 ( $\$1,465,903 / 1.3$ ) in FY20-21 and subsequent years under current law.
- Using the reduced fee schedule that HSDA will adopt upon passage of this legislation, the average CON fee collections from FY16-17 through FY18-19 would have been \$571,864.
- Adjusting for the higher than average collections during that time-frame, CON fee collections, after the planned reduction in fees, are estimated to be \$439,895 ( $\$571,864 / 1.3$ ) in FY20-21 and subsequent years.
- The elimination of certain CON project types will result in fewer applications being filed with HSDA. It is estimated the HSDA will experience an annual loss of \$180,810 in application fees based on the new fee schedule.
- The recurring decrease in state revenue associated with a reduction in CON fees is estimated to be \$506,913 ( $\$1,127,618 - \$439,895 - \$180,810$ ).
- The total net increase in state revenue to the HSDA is estimated to be \$1,249,339 ( $\$1,756,252 - \$506,913$ ) in FY20-21 and subsequent years.
- The HSDA cannot accommodate the proposed legislation within existing resources and will need to reclassify two existing positions and hire three new positions to accommodate the added requirements of the proposed legislation.

- The one-time increase in state expenditures is estimated to be \$15,292 for computer and work stations.
- The recurring increase in state expenditures is estimated to be \$281,208 (\$215,256 salaries + \$55,452 benefits + \$7,000 supplies + \$3,500 membership fees) in FY20-21 and subsequent years.

*Department of Mental Health and Substance Abuse Services*

- According to DMHSAS, the proposed legislation will result in very few exceptions to requiring a CON for residential substitution – based treatment centers for opiate addiction.
- Any fiscal impact is estimated to be not significant.

*Division of TennCare*

- The proposed legislation deletes Tenn. Code Ann. § 68-11-1621 which establishes criteria for issuance of CON for new nursing home beds regardless of site, including conversion of any beds to licensed nursing home beds.
- No CON requests have been denied under this section of code in several years; therefore, any fiscal impact is estimated to be not significant.

*Total Fiscal Impact*

- The recurring net increase in state revenue to the HSDA is estimated to be \$1,249,339 in FY20-21 and subsequent years.
- The total recurring decrease in state revenue to the DOH is estimated to be \$177,925 in FY20-21 and subsequent years.
- The total increase in state expenditures to the HSDA is estimated to be \$296,500 (\$281,208 + \$15,292) in FY20-21 and \$281,208 in FY21-22 and subsequent years.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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