Illinois Health and Hospital Association

July 24, 2019

Synopsis: This memo summarizes compromise legislation affecting the Certificate of Need (CON) and Certificate of Exemption (COE) processes. Public Act 101-0083 (SB 1739) reflects a compromise worked out by IHA, Health Facilities and Services Review Board HFSRB) staff and legislative sponsors, which makes significant improvements to the originally introduced legislation that would have undone many streamlining provisions that IHA had successfully advocated for in 2015. SB 1739 was signed into law by Governor Pritzker on July 16.

Key Changes: Under the agreement, P.A. 101-0083, which is effective immediately, makes the following changes to the Health Facilities Planning Act:

- Requires a CON, rather than a COE, to close a healthcare facility;
- Retains the provisions of the COE process for discontinuing a category of service, but caps the number of discontinuations of a category of service that a hospital may make to once in a six-month period. Any further service discontinuations in the same time period would require a CON;
- Extends the publication of notice period of a completed change of ownership (CHOW) application from one day to three consecutive days in a local newspaper;
- Codifies into statute that the HFSRB may defer an application to close a healthcare facility if there is pending litigation. The length of deferral is capped at six months from the initial deferral by HFSRB. Additionally HFSRB must be a named party in the lawsuit or there must be an allegation of fraud in the application for this provision to be triggered;
- Authorizes the HFSRB to elect a vice chair who is to serve as chair of the board when the chair is not available. This provision will assist in streamlining certain processes, including, but not limited to, approvals of COE applications, permit renewals, permit extensions, and alterations; and
- Codifies the practice of HFSRB staff issuing advisory opinions, a resource utilized by hospitals when determining the necessity of a CON or COE permit.

Onerous Regulatory Requirements Avoided: While many of these changes may be unwelcomed, through IHA's advocacy efforts, even greater regulatory burdens were avoided. Legislative sponsors, responding to the closure of Westlake Hospital in Melrose Park, had initially introduced legislation that would have rescinded all of the modernization provisions IHA had helped to enact in 2015, including a provision significantly streamlining the change of ownership (CHOW) process. Eliminating this provision would have delayed approval of such transactions and increased transaction costs. Other proposed provisions would have required the HFSRB to defer pending applications for both facility closures and service discontinuations if any type of lawsuit was pending, inviting frivolous lawsuits to keep facilities or service lines open that are no longer viable. Additionally, initial proposals would have given the governor unprecedented authority to override decisions of the HFSRB to approve applications to discontinue a healthcare facility or category of service.

P.A. 101-0083 makes no substantive changes to the CHOW process, limits the deferral process for pending litigation and gives the Governor no authority to override the actions of the HFSRB.

IHA appreciates the prompt member feedback on the CON/COE process and those issues most important to the hospital community. This feedback was instrumental in shaping our advocacy efforts in negotiating this legislation.

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