H.658

Introduced by Representatives Marcotte of Coventry, Acinapura of Brandon, Andrews of Rutland City, Bissonnette of Winooski, Branagan of Georgia, Clerkin of Hartford, Consejo of Sheldon, Dickinson of St. Albans Town, Donovan of Burlington, Higley of Lowell, Johnson of South Hero, Keenan of St. Albans City, Kilmartin of Newport City, Kitzmiller of Montpelier, Komline of Dorset, Larson of Burlington, Leriche of Hardwick, Lewis of Derby, Maier of Middlebury, Malcolm of Pawlet, McAllister of Highgate, Morley of Barton, Nease of Johnson, Potter of Clarendon, Reis of St. Johnsbury, Rodgers of Glover, Shand of Weathersfield, Smith of Mendon, Stevens of Shoreham, Turner of Milton, Wheeler of Derby and Wilson of Manchester

Referred to Committee on

Date:

Subject: Health care; home health services; temporary moratorium on certificates of need

Statement of purpose: This bill proposes to create a work group to look at the granting of certificates of need for home health agencies and to impose a temporary moratorium on issuance of certificates of need for home health agencies.

An act relating to certificates of need for home health agencies

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) The existing home health system is currently providing high levels of service to the Medicare, Medicaid, private insurance, and private pay populations in need of home health services at one of the lowest average costs per visit in the nation. It provides a comprehensive array of services reaching every town in the state, which are generally well coordinated with other community health care providers and social service agencies. It appears that the existing system has the commitment and present capacity to provide universal access to medically necessary home health services for all Vermonters regardless of ability to pay or location of residence.

(2) Vermont is a very rural state, with a population thinly distributed throughout the state, posing special challenges in the delivery of home health services.

(3) Some have expressed concerns about whether there is sufficient market demand to financially support two home health agencies in every area of the state and whether the current regulatory framework effectively ensures that all home health agencies are subject to the same regulatory requirements.

(4) Vermont, as the rest of the nation, is facing extraordinarily difficult and fiscally challenging times; significant cuts in Medicare and Medicaid rates for home care have already taken place and even greater cuts are looming, all requiring even greater reliance on community resources and ingenuity to do more with less.

(5) Vermont's certificate of need law as it applies to new home health services may benefit from the following:

(A) an objective definition of need and the ability of such need to financially support additional home health agencies;

(B) more objective criteria by which to measure the impact of any project on existing service providers and the populations they serve; and

(C) objective criteria to measure unnecessary duplication of services that would increase the costs to the system.

(6) A temporary suspension on the creation of new home health agencies is warranted for the following reasons:

(A) to measure the impact of recent changes that have already been made in the system; and

(B) to allow time for the state to consider changes to the certificate of need law and engage in long-term planning in this complex and increasingly important area of health care services.

Sec. 2. CERTIFICATE OF NEED WORK GROUP; MORATORIUM

(a) The commissioners of banking, insurance, securities, and health care administration and of disabilities, aging, and independent living shall convene a work group comprising:

(1) representatives of Vermont's existing Medicare-certified home health agencies, including:

(A) at least one for-profit home health agency; and

(B) at least two nonprofit home health agencies, one of which serves a population base of fewer than 35,000 residents and another of which serves a population base of 35,000 residents or more; and

(2) other interested parties.

(b) The work group shall develop objective criteria for certificate of need (CON) decisions regarding home health services, including hospice. The work group shall meet at least four times per year. At a minimum, the work group shall:

(1) establish a definition of need;

(2) develop a method for measuring the impact of any proposed project on existing service providers and the populations they serve;

(3) identify standards by which to measure unnecessary duplication of services that would increase the costs to the health care system and the state; and

(4) determine whether any additional standards to govern the approval of new home health agencies or the offering of home health services should be adopted, including whether changes should be made to the health resource allocation plan regarding home health services, including hospice.

(c) The commissioners shall report the work group's recommendations to the house committee on health care and the senate committee on health and welfare by January 15, 2013.

(d) Notwithstanding any other provision of law, no CON shall be granted for the offering of home health services, which includes hospice, or for a new home health agency during the period beginning on the effective date of this act and continuing through December 31, 2014, or until the general assembly lifts the moratorium after considering and acting on the work group's recommendations as it deems appropriate, whichever occurs first.

(e) Notwithstanding the moratorium established in subsection (d) of this section, a CON application for a new home health agency may be considered and granted during the moratorium if the commissioners of banking, insurance, securities, and health care administration and of disabilities, aging, and independent living have each first certified that a serious and substantial lack of access to home health services exists in a particular county and the agencies presently serving that county have been given notice and a reasonable opportunity to either challenge that certification or remediate the problem.

(f) Nothing in this section shall be construed to prevent existing home health agencies from seeking approval from the department of banking, insurance, securities, and health care administration or of disabilities, aging, and independent living to expand or contract their designated geographical regions or from merging.

(g) Nothing in this section shall be construed to prevent the commissioner of banking, insurance, securities, and health care administration from granting a certificate of need to a home health agency that had filed a letter of intent or had a certificate of need application pending prior to the effective date of this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.