

## HOSPITAL MORTGAGE INSURANCE ACT OF 2003

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MARCH 6, 2003.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. OXLEY, from the Committee on Financial Services,  
submitted the following

### R E P O R T

[To accompany H.R. 659]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 659) to amend section 242 of the National Housing Act regarding the requirements for mortgage insurance under such Act for hospitals, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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### PURPOSE AND SUMMARY

H.R. 659, the Hospital Mortgage Insurance Act of 2003, will amend section 242 of the National Housing Act (12 U.S.C. 1715z-7) to respond to changes in State laws in order to ensure that hospitals will not be automatically prevented from applying for FHA mortgage insurance. This provision permits the Department of

Housing and Urban Development (HUD) to establish an alternate method for hospitals to demonstrate the need and feasibility of their proposed projects in those States where State evaluation processes no longer exist.

#### BACKGROUND AND NEED FOR LEGISLATION

Hospitals face significant financial challenges when providing care to patients who are covered by Medicare and Medicaid. At the same time, improvements in technology and health care knowledge necessitate capital improvements such as additions and renovations to existing buildings. It is generally accepted that modern health care facilities would improve the quality of life and the health of the population.

In an effort to assist States to provide modern health care facilities, Congress enacted section 242 of the National Housing Act in 1968. Section 242 permits FHA to insure mortgages of hospital sponsors used to finance the replacement, modernization and rehabilitation of inefficient existing facilities. Low interest rate costs attributable to FHA insured financing, as well as the development of more cost-efficient facilities substantially reduces both provider and Federal and State reimbursement.

To be eligible for section 242 financing, a hospital must obtain a certificate of need (CON) from a designated State agency, or in the absence of CON authority, a State commissioned feasibility study. In addition, the hospital needs to demonstrate that there are reasonable State or local minimum licensing and operating standards in effect.

The Certificate of Need program was established in 1968 by Congress to control the number of hospital beds and expenditures. When the Federal Certificate of Need program began, forty-nine States enacted legislation for a Certificate of Need program; Louisiana was the only State that did not.

However, as a result of continuing Federal policy encouraging deregulation, CON authority has “sunset” in some States. In fact, over the last 20 years, at least 18 States have repealed their Certificate of Need programs. The problem has been further compounded by at least two other factors. In some States retaining CON authority, some projects will not qualify for the Certificate of Need process. In others, the relevant State agency often lacks the authority to commission alternative feasibility studies.

H.R. 659 would address problems in States where section 242 mortgage insurance for hospitals is not available. The legislation would also:

- Allow uniform eligibility criteria to be established to safeguard FHA insurance funds while generating additional insurance premium revenues;
- Complement the cost reduction goals of Federal regulations;
- Significantly reduce the cost to providers of complying with expensive, pre-deregulation CON eligibility requirements; and,
- Provide major economic stimulus to State and local communities, as well as construction and permanent employment opportunities.

In the 107th Congress, provisions similar to H.R. 659 were included in H.R. 3995, the Housing Affordability Act for America. H.R. 3995 was considered and approved by the Committee on Financial Services. However, H.R. 3995 was not considered by the full House.

#### HEARINGS

No hearings were held on this legislation in the 108th Congress.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on February 13, 2003, and ordered H.R. 659, the Hospital Mortgage Insurance Act of 2003, reported to the House with a favorable recommendation by a voice vote, a quorum being present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The legislation will ensure that hospitals in every State are able to submit adequate information to demonstrate eligibility for FHA mortgage insurance. HUD will ensure that minimum standards for licensure and operations exist and will be applied satisfactorily and develop guidelines for documenting need and feasibility for the hospital. In cases where the State continues to issue a Certificate of Need, in addition to other requirements that may be established by the Secretary, the applicant is required to show evidence of prior approval under that program.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 27, 2003.*

Hon. MICHAEL G. OXLEY,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 659, the Hospital Mortgage Insurance Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*H.R. 659—Hospital Mortgage Insurance Act of 2003*

CBO estimates that implementing H.R. 659 would increase off-setting collections (a credit against discretionary spending) by \$2 million to \$3 million a year. Enacting the bill would not affect direct spending or revenues.

H.R. 659 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under the National Housing Act, the Federal Housing Administration (FHA) of the U.S. Department of Housing and Urban Development (HUD) offers to insure private loans used to finance the modernization and rehabilitation of certain hospital facilities. To qualify for such insurance, hospitals must obtain a certificate of need (CON) issued from a designated state agency. The CON determines whether or not the hospital applying for the loan meets certain eligibility requirements necessary for receipt of the FHA loan guarantee. If a state has no CON process in place, the state must commission or conduct an independent feasibility study in lieu of the CON. According to FHA, 24 states currently do not have a CON process in place and, many of these states do not have the fiscal and managerial means to support a feasibility study on their own.

H.R. 659 would give HUD the authority to establish a process for determining the need and feasibility for a hospital's proposed project, thus eliminating the requirement for states to provide a feasibility study where no CON procedure exists. To the extent that additional hospitals would obtain loan insurance under this bill,

CBO estimates that FHA could earn additional offsetting collections (which are recorded as a reduction in discretionary spending). Under current law, FHA guarantees of hospital mortgages result in net offsetting collections to the federal government because the credit subsidy is estimated to be negative. That is, guarantee fees for new mortgages more than offset the costs of expected defaults, resulting in net collections from the loan guarantee program.

CBO expects that H.R. 659's change to the application process would create some increase in demand for the hospital insurance program, especially in the 24 states without a CON process. According to FHA, this program currently insures 64 mortgages with a combined outstanding principal balance of about \$4 billion. Only four mortgages out of those 64 are located in non-CON states. Based on information from industry sources, CBO expects that the need for capital improvements in hospitals will continue to grow as hospitals are increasingly under pressure to acquire state-of-the-art equipment and expand services. In addition, since 2000 this program has generated about \$2 million in offsetting collections per year. CBO estimates that enacting this legislation would result in \$2 million to \$3 million of additional collections each year. Such offsetting collections are contingent on enactment of appropriation bills, which establish the authority to make such loan guarantees by specifying commitment levels. Thus, enactment of H.R. 659 would not affect direct spending or revenues.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and interstate commerce).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section establishes the short title of the bill, the “Hospital Mortgage Insurance act of 2003”.

*Section 2. Standards for determining need and feasibility for hospitals*

This section amends section 242(d) of the National Housing Act (12 U.S.C. 1715z–7) to require hospitals applying for FHA mortgage insurance to meet State or local licensure and operation requirements; and, in cases where there is no State Certificate of Need program, it authorizes the HUD Secretary to establish a process for determining the need and feasibility for the hospital’s proposed projects.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 242 OF THE NATIONAL HOUSING ACT**

## MORTGAGE INSURANCE FOR HOSPITALS

SEC. 242. (a) \* \* \*

\* \* \* \* \*

(d) In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to the following conditions:

(1) \* \* \*

\* \* \* \* \*

[(4) The Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act for the State in which is located the hospital covered by the mortgage, a certification that (A) there is a need for such hospital, and (B) there are in force in such State or the political subdivision of the State in which the proposed hospital would be located reasonable minimum standards of licensure and methods of operation for hospitals. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any hospital located in the State for which mortgage insurance is provided under this section. If no such State agency exists, or if the State agency exists but is not empowered to provide a certification that there is a need for the hospital as set forth in clause (A) of the first sentence, the Secretary shall not insure any mortgage under this section unless (A) the State in which the hospital is located has conducted or commissioned and paid for the preparation of an inde-

pendent study of market need and feasibility that (i) is prepared in accordance with the principles established by the American Institute of Certified Public Accountants; (ii) assesses, on a marketwide basis, the impact of the proposed hospital on, and its relationship to, other health care facilities and services, the percentage of excess beds, demographic projections, alternative health care delivery systems, and the reimbursement structure of the hospital; (iii) is addressed to and is acceptable to the Secretary in form and substance; and (iv) in the event the State does not prepare the study, is prepared by a financial consultant selected by the State and approved by the Secretary; and (B) the State complies with the other provisions of this paragraph that would otherwise be required to be met by a State agency designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. The proposed mortgagor may reimburse the State for the cost of the independent feasibility study required in the preceding sentence.】

*(4)(A) The Secretary shall require satisfactory evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.*

*(B) The Secretary shall establish the means for determining need and feasibility for the hospital. If the State has an official procedure for determining need for hospitals, the Secretary shall also require that such procedure be followed before the application for insurance is submitted, and the application shall document that need has also been established under that procedure.*

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