

## Chapter 505

(Senate Bill 593)

AN ACT concerning

### Health Facilities – Freestanding Medical Facilities – Rates

FOR the purpose of requiring the Maryland Medical Assistance Program to pay certain rates for certain ~~emergency~~ hospital services; specifying that certain emergency services include services provided at certain facilities for the purposes of hospital rate setting; requiring the Health Services Cost Review Commission to set rates for hospital services provided at certain freestanding medical facilities; altering the circumstances under which the Department of Health and Mental Hygiene must issue a license to a freestanding medical facility; requiring certain payors to pay ~~claims submitted by freestanding medical facilities at~~ rates set by the Commission for ~~emergency~~ hospital services provided at certain freestanding medical facilities; repealing certain provisions of law requiring the Maryland Health Care Commission to propose certain regulations; altering certain definitions; declaring the intent of the General Assembly; requiring the Health Services Cost Review Commission to report to the General Assembly on or before a certain date on rates established under this Act; requiring the Maryland Health Care Commission, in consultation with the Health Services Cost Review Commission, to conduct a certain study and report the results of its study to certain committees of the General Assembly on or before a certain date; prohibiting freestanding medical facilities from being established after a certain date without a certificate of need issued by the Maryland Health Care Commission; requiring the Maryland Health Care Commission to consider certain data in establishing certain criteria and standards for issuing a certain certificate of need; requiring the Health Services Cost Review Commission to set certain rates applicable to certain payors for certain ~~emergency~~ hospital services; and generally relating to freestanding medical facilities.

~~BY repealing and reenacting, without amendments,  
Article – Health – General  
Section 19–201(a), (b), and (c)  
Annotated Code of Maryland  
(2009 Replacement Volume)~~

BY repealing and reenacting, with amendments,  
Article – Health – General  
Section ~~15–105(d)~~, 19–114, 19–201(d), 19–211, 19–3A–03, and 19–3A–07  
Annotated Code of Maryland  
(2009 Replacement Volume)

BY repealing

Article – Health – General  
Section 19–131  
Annotated Code of Maryland  
(2009 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Health – General  
Section 19–201(a), (b), and (c)  
Annotated Code of Maryland  
(2009 Replacement Volume)

## BY adding to

Article – Health – General  
 Section 15–105(g) and 19–3A–08  
 Annotated Code of Maryland  
 (2009 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Health – General**15–105.

~~(d) (1) The Department shall adopt regulations for the reimbursement of specialty outpatient treatment and diagnostic services rendered to Program recipients at a freestanding clinic owned and operated by a hospital that is under a capitation agreement approved by the Health Services Cost Review Commission.~~

~~(2) (i) Except as provided in [subparagraph] SUBPARAGRAPHS (ii) AND (iii) of this paragraph, the reimbursement rate under paragraph (1) of this subsection shall be set according to Medicare standards and principles for retrospective cost reimbursement as described in 42 C.F.R. Part 413 or on the basis of charges, whichever is less.~~

~~(ii) The reimbursement rate for a hospital that has transferred outpatient oncology, diagnostic, rehabilitative, and digestive disease services to an off-site facility prior to January 1, 1999 shall be set according to the rates approved by the Health Services Cost Review Commission if:~~

~~1. The transfer of services was due to zoning restrictions at the hospital campus;~~

~~2. The off-site facility is surveyed as part of the hospital for purposes of accreditation by the Joint Commission on Accreditation of Healthcare Organizations; and~~

~~3. The hospital notifies the Health Services Cost Review Commission in writing by July 1, 1999 that the hospital would like the services provided at the off-site facility subject to Title 19, Subtitle 2 of this article.~~

~~(H) (G) THE PROGRAM SHALL PAY THE RATES SET BY THE HEALTH SERVICES COST REVIEW COMMISSION FOR EMERGENCY SERVICES HOSPITAL SERVICES, AS DEFINED IN § 19-201 OF THIS ARTICLE, PROVIDED AT:~~

~~1. A FREESTANDING MEDICAL FACILITY PILOT PROJECT AUTHORIZED UNDER § 19-3A-07 OF THIS ARTICLE PRIOR TO JANUARY 1, 2008; AND~~

~~2. A FREESTANDING MEDICAL FACILITY ISSUED A CERTIFICATE OF NEED BY THE MARYLAND HEALTH CARE COMMISSION AFTER JULY 1, 2015.~~

19-114.

(a) In this Part II of this subtitle the following words have the meanings indicated.

(b) (1) "Ambulatory surgical facility" means any center, service, office, facility, or office of one or more health care practitioners or a group practice, as defined in § 1-301 of the Health Occupations Article, that:

(i) Has two or more operating rooms;

(ii) Operates primarily for the purpose of providing surgical services to patients who do not require overnight hospitalization; and

(iii) Seeks reimbursement from payors as an ambulatory surgical facility.

(2) For purposes of this subtitle, the office of one or more health care practitioners or a group practice with two operating rooms may be exempt from the certificate of need requirements under this subtitle if the Commission finds, in its sole discretion, that:

(i) A second operating room is necessary to promote the efficiency, safety, and quality of the surgical services offered; and

(ii) The office meets the criteria for exemption from the certificate of need requirements as an ambulatory surgical facility in accordance with regulations adopted by the Commission.

(c) “Certificate of need” means a certification of public need issued by the Commission under this Part II of this subtitle for a health care project.

(d) (1) “Health care facility” means:

(i) A hospital, as defined in § 19–301 of this title;

(ii) A limited service hospital, as defined in § 19–301 of this title;

(iii) A related institution, as defined in § 19–301 of this title;

(iv) An ambulatory surgical facility;

(v) An inpatient facility that is organized primarily to help in the rehabilitation of disabled individuals, through an integrated program of medical and other services provided under competent professional supervision;

(vi) A home health agency, as defined in § 19–401 of this title;

(vii) A hospice, as defined in § 19–901 of this title;

**(VIII) A FREESTANDING MEDICAL FACILITY, AS DEFINED IN § 19–3A–01 OF THIS TITLE; and**

[(viii)] (IX) Any other health institution, service, or program for which this Part II of this subtitle requires a certificate of need.

(2) “Health care facility” does not include:

(i) A hospital or related institution that is operated, or is listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts;

(ii) For the purpose of providing an exemption from a certificate of need under § 19–120 of this subtitle, a facility to provide comprehensive care constructed by a provider of continuing care, as defined in § 10–401 of the Human Services Article, if:

1. Except as provided under § 19–123 of this subtitle, the facility is for the exclusive use of the provider’s subscribers who have executed continuing care agreements and paid entrance fees that are at least equal to the lowest entrance fee charged for an independent living unit or an assisted living unit

before entering the continuing care community, regardless of the level of care needed by the subscribers at the time of admission;

2. The facility is located on the campus of the continuing care community; and

3. The number of comprehensive care nursing beds in the community does not exceed:

A. 24 percent of the number of independent living units in a community having less than 300 independent living units; or

B. 20 percent of the number of independent living units in a community having 300 or more independent living units;

(iii) Except for a facility to provide kidney transplant services or programs, a kidney disease treatment facility, as defined by rule or regulation of the United States Department of Health and Human Services;

(iv) Except for kidney transplant services or programs, the kidney disease treatment stations and services provided by or on behalf of a hospital or related institution; or

(v) The office of one or more individuals licensed to practice dentistry under Title 4 of the Health Occupations Article, for the purposes of practicing dentistry.

(e) “Health care practitioner” means any individual who is licensed, certified, or otherwise authorized under the Health Occupations Article to provide health care services.

(f) “Health service area” means an area of this State that the Governor designates as appropriate for planning and developing of health services.

(g) “Local health planning agency” means the health department of a jurisdiction or a body designated by the local health department to perform health planning functions.

(h) “State health plan” means the State health plan for facilities and services.

[19–131.

(a) On or before July 1, 2008, the Commission, in consultation with the Health Services Cost Review Commission and the Department of Health and Mental Hygiene, shall propose emergency regulations to establish a review process to approve

facilities in the State that may seek licensure as a freestanding medical facility, as provided in Subtitle 3A of this title.

(b) The regulations shall include:

(1) A process to identify areas of the State in which a freestanding medical facility could meet health care service delivery needs;

(2) A process for submitting and acting on applications;

(3) Criteria for evaluating and approving applications, including:

(i) Documentation that the proposed freestanding medical facility will meet the licensure requirements of Subtitle 3A of this title;

(ii) The efficiency and effectiveness of the proposed freestanding medical facility in meeting the health care needs of the health planning region;

(iii) The types of equipment and level of staffing specified, in relation to the services the freestanding medical facility proposes to provide; and

(iv) Costs to both public and private payers; and

(4) Appropriate notice and opportunity for a hearing and judicial review, in accordance with the Administrative Procedure Act.

(c) A facility that is approved under this section to seek licensure as a freestanding medical facility shall provide to the Commission information, as specified by the Commission, on the configuration, location, operation, and utilization, including patient-level utilization, of the freestanding medical facility.

(d) A freestanding medical facility pilot project is exempt from the review process in subsections (a) and (b) of this section.]

19–201.

(a) In this subtitle the following words have the meanings indicated.

(b) “Commission” means the State Health Services Cost Review Commission.

(c) “Facility” means, whether operated for a profit or not:

(1) Any hospital; or

(2) Any related institution.

(d) (1) “Hospital services” means:

(i) Inpatient hospital services as enumerated in Medicare Regulation 42 C.F.R. § 409.10, as amended;

(ii) Emergency services, **INCLUDING SERVICES PROVIDED AT ~~FREESTANDING MEDICAL FACILITIES AND FREESTANDING~~**;

**1. FREESTANDING MEDICAL FACILITY PILOT PROJECTS ~~LICENSED~~ AUTHORIZED UNDER SUBTITLE 3A OF THIS TITLE, PRIOR TO JANUARY 1, 2008; AND**

**2. A FREESTANDING MEDICAL FACILITY ISSUED A CERTIFICATE OF NEED BY THE MARYLAND HEALTH CARE COMMISSION AFTER JULY 1, 2015;**

(iii) Outpatient services provided at the hospital; and

(iv) Identified physician services for which a facility has Commission–approved rates on June 30, 1985.

(2) “Hospital services” does not include:

(i) Outpatient renal dialysis services; or

(ii) Outpatient services provided at a limited service hospital as defined in § 19–301 of this title, except for emergency services.

19–211.

(a) (1) Except for a facility that is operated or is listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts, the Commission has jurisdiction over hospital services offered by or through all facilities.

(2) The jurisdiction of the Commission over any identified physician service shall terminate for a facility on the request of the facility.

(3) The rate approved for an identified physician service may not exceed the rate on June 30, 1985, adjusted by an appropriate index of inflation.

(b) The Commission may not set rates for related institutions until:

(1) State law authorizes the State Medical Assistance Program to reimburse related institutions at Commission rates; and

(2) The United States Department of Health and Human Services agrees to accept Commission rates as a method of providing federal financial participation in the State Medical Assistance Program.

**(C) THE COMMISSION SHALL SET RATES FOR HOSPITAL SERVICES PROVIDED AT ~~A FREESTANDING MEDICAL FACILITY LICENSED UNDER SUBTITLE 3A OF THIS TITLE, INCLUDING AT A:~~**

**(1) A FREESTANDING MEDICAL FACILITY PILOT PROJECT ESTABLISHED UNDER ~~§ 19-3A-07~~ AUTHORIZED UNDER SUBTITLE 3A OF THIS TITLE PRIOR TO JANUARY 1, 2008; AND**

**(2) A FREESTANDING MEDICAL FACILITY ISSUED A CERTIFICATE OF NEED BY THE MARYLAND HEALTH CARE COMMISSION AFTER JULY 1, 2015.**

19-3A-03.

(a) The Department shall issue a license to a freestanding medical facility that:

(1) Meets the licensure requirements under this subtitle; and

(2) [Receives] AFTER JULY 1, 2015, RECEIVES A CERTIFICATE OF NEED [approval] from the Maryland Health Care Commission ISSUED under [the regulations required under § 19-131] § 19-120 of this title.

(b) A freestanding medical facility that uses in its title or advertising the word “emergency” or other language indicating to the public that medical treatment for immediately life-threatening medical conditions exist at that facility shall be licensed by the Department before it may operate in this State.

(c) Notwithstanding subsection (a)(2) of this section, the Department may not require a freestanding medical facility pilot project to be approved by the Maryland Health Care Commission as a condition of licensure.

19-3A-07.

(a) There are two freestanding medical facility pilot projects that shall operate in two jurisdictions in the State.

(b) The Department shall issue a freestanding medical facility license to:

(1) One freestanding medical facility pilot project if:

(i) The freestanding medical facility pilot project is established by, and will operate administratively as part of, an acute care general hospital;

(ii) The acute care general hospital is part of a merged asset system with all of its existing Maryland acute care general hospitals located in a single jurisdiction;

(iii) There are not more than 5 acute care general hospitals in the jurisdiction;

(iv) One or more of the existing acute care general hospitals in the merged asset system has an emergency department volume of 75,000 or more visits for the 12 months ending June 30, 2004;

(v) The freestanding medical facility pilot project will operate in Montgomery County;

(vi) The capital expenditure to implement the freestanding medical facility pilot project otherwise meets the requirements of § 19–120(k)(6)(viii) of this title; and

(vii) The freestanding medical facility pilot project meets the requirements under § 19–3A–02(b) of this subtitle; and

(2) One freestanding medical facility pilot project if:

(i) The freestanding medical facility pilot project is established by, and will operate administratively as part of, an acute care general hospital located in Talbot County;

(ii) The freestanding medical facility pilot project will operate in Queen Anne's County;

(iii) The capital expenditure to implement the freestanding medical facility pilot project otherwise meets the requirements of § 19–120(k)(6)(viii) of this title; and

(iv) The freestanding medical facility pilot project meets the requirements under § 19–3A–02(b) of this subtitle.

(c) (1) A freestanding medical facility pilot project shall provide to the Maryland Health Care Commission information, as specified by the Commission, on the configuration, location, operation, and utilization, including patient-level utilization, of the pilot project.

(2) A certificate of need is not required for a freestanding medical facility pilot project.

[(d) (1) This subsection applies to:

(i) Individual, group, or blanket health insurance policies and contracts delivered or issued for delivery in the State by insurers, nonprofit health service plans, health maintenance organizations; and

(ii) Medicaid managed care organizations.

(2) An entity subject to this subsection shall pay the claim for covered services submitted by a freestanding medical facility pilot project at rates consistent with the contract between the entity and the freestanding medical facility pilot project.

(e) The Maryland Medical Assistance Program shall pay a fee-for-service claim submitted by a freestanding medical facility pilot project at a rate at least equal to the rate paid by Medicare.]

[(f) (D) The provisions of §§ 19-3A-01 through 19-3A-06 of this subtitle shall apply to a freestanding medical facility pilot project.

#### **19-3A-08.**

**(A) THIS SECTION APPLIES TO ALL PAYORS SUBJECT TO THE ~~JURISDICTION RATE-SETTING AUTHORITY~~ OF THE HEALTH SERVICES COST REVIEW COMMISSION, INCLUDING:**

~~**(1) INDIVIDUAL, GROUP, OR BLANKET HEALTH INSURANCE POLICIES AND CONTRACTS DELIVERED OR ISSUED FOR DELIVERY IN THE STATE BY INSURERS, NONPROFIT HEALTH SERVICE PLANS, AND HEALTH MAINTENANCE ORGANIZATIONS;**~~

**(1) INSURERS, NONPROFIT HEALTH SERVICE PLANS, AND HEALTH MAINTENANCE ORGANIZATIONS THAT DELIVER OR ISSUE FOR DELIVERY INDIVIDUAL, GROUP, OR BLANKET HEALTH INSURANCE POLICIES AND CONTRACTS IN THE STATE;**

**(2) MANAGED CARE ORGANIZATIONS, AS DEFINED IN § 15-101 OF THIS ARTICLE; AND**

**(3) THE MARYLAND MEDICAL ASSISTANCE PROGRAM ESTABLISHED UNDER TITLE 15, SUBTITLE 1 OF THIS ARTICLE.**

**(B) A PAYOR SUBJECT TO THIS SECTION SHALL PAY ~~A CLAIM SUBMITTED BY A FREESTANDING MEDICAL FACILITY LICENSED UNDER THIS SUBTITLE, INCLUDING A FREESTANDING MEDICAL FACILITY PILOT PROJECT ESTABLISHED UNDER § 19-3A-07 OF THIS SUBTITLE,~~ AT RATES SET BY THE HEALTH SERVICES COST REVIEW COMMISSION UNDER SUBTITLE 2 OF THIS TITLE FOR EMERGENCY HOSPITAL SERVICES PROVIDED AT:**

**(1) A FREESTANDING MEDICAL FACILITY PILOT PROJECT AUTHORIZED UNDER THIS SUBTITLE PRIOR TO JANUARY 1, 2008; AND**

**(2) A FREESTANDING MEDICAL FACILITY ISSUED A CERTIFICATE OF NEED BY THE MARYLAND HEALTH CARE COMMISSION AFTER JULY 1, 2015.**

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that emergency services provided by a freestanding medical facilities and facility issued a certificate of need by the Maryland Health Care Commission after July 1, 2015, and by freestanding medical facility pilot projects authorized under § 19-3A-07 of the Health – General Article, as enacted by Section 1 of this Act, prior to January 1, 2008, be considered hospital services by all payors, including the federal Medicare program.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2010, the Health Services Cost Review Commission shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the rates that the Commission has established for ~~freestanding medical facilities and~~ freestanding medical facility pilot projects under this Act and the methodology for establishing those rates.

SECTION 4. AND BE IT FURTHER ENACTED, That:

(a) (1) The Maryland Health Care Commission, in consultation with the Health Services Cost Review Commission, shall conduct a study of the effect of the rates established for freestanding medical facility pilot projects by the Health Services Cost Review Commission under § 19-211(c) of the Health – General Article, as enacted by Section 1 of this Act.

(2) The study shall review the effect of the rates for a period of 2 full years after the rates become effective.

(3) On or before December 31, 2014, the Maryland Health Care Commission shall report the results of its study, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Health and Government Operations Committee.

(b) The Maryland Health Care Commission shall consider the data in the report required under subsection (a) of this section and other pertinent data in

establishing review criteria and standards for issuing a certificate of need required to establish a freestanding medical facility in the State after July 1, 2015.

(c) ~~After July 1, 2015, a~~ An additional freestanding medical facility may not be established in the State without a certificate of need issued after July 1, 2015, by the Maryland Health Care Commission.

SECTION 5. AND BE IT FURTHER ENACTED, That the Health Services Cost Review Commission shall set rates that apply to all payors, effective October 1, 2010, for ~~emergency services~~ hospital services, as defined in § 19-201 of the Health – General Article, as enacted by Section 1 of this Act, provided at a freestanding medical facility pilot project described in § 19-3A-07(b)(2) of the Health – General Article, as enacted by Section 1 of this Act, in a manner that does not result in a fiscal impact on the fiscal year 2011 State budget.

SECTION 6. AND BE IT FURTHER ENACTED, That the Health Services Cost Review Commission shall set rates that apply to all payors, effective July 1, 2011, for ~~emergency services~~ hospital services, as defined in § 19-201 of the Health – General Article, as enacted by Section 1 of this Act, provided at:

(1) a freestanding medical facility ~~other than a freestanding medical facility pilot project~~ licensed prior to July 1, 2007; and

(2) a freestanding medical facility pilot project described in § 19-3A-07(b)(1) of the Health – General Article, as enacted by Section 1 of this Act.

SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~ June 1, 2010.

**Approved by the Governor, May 20, 2010.**