

SENATE BILL 707

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By: **Senator Middleton**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Freestanding Medical Facilities – Certificate of Need, Rates, and Definition**

3 FOR the purpose of exempting from certain certificate of need requirements the conversion
4 of a certain hospital to a freestanding medical facility in accordance with certain
5 requirements; altering the requirements for a public informational hearing for a
6 hospital that files a notice of its proposed closing; requiring a certain hospital to hold
7 a public informational hearing if the hospital requests an exemption from certificate
8 of need requirements to convert to a freestanding medical facility; requiring the
9 Maryland Health Care Commission to establish by regulation requirements for
10 certain public informational hearings; requiring, for a hospital seeking to close,
11 partially close, or convert to a freestanding medical facility, that the regulations
12 require the hospital to address certain items at a public informational hearing;
13 requiring a hospital to provide a written summary of a public informational hearing
14 within a certain period of time to certain individuals, entities, and legislative
15 committees; clarifying the circumstances in which a certificate of need is required to
16 establish or operate a freestanding medical facility; authorizing the Commission to
17 approve a site for a freestanding medical facility that is not on a certain site, under
18 certain circumstances; altering the services provided at a freestanding medical
19 facility that may be considered hospital services for purposes of rate-setting;
20 requiring a freestanding medical facility to have a certain license, instead of a
21 certificate of need, to obtain certain rates; altering the definition of “freestanding
22 medical facility” to require a facility to meet the requirements for provider-based
23 status under a certain certification and to exempt, from the requirement that the
24 facility be physically separate from a hospital or hospital grounds, a freestanding
25 medical facility established as a result of a certain hospital conversion; requiring the
26 Department of Health and Mental Hygiene to issue a license to a freestanding
27 medical facility that receives an exemption from obtaining a certificate of need; and
28 generally relating to freestanding medical facilities.

29 BY repealing and reenacting, without amendments,
30 Article – Health – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 19–120(j)(1) and (k)(1)
 2 Annotated Code of Maryland
 3 (2015 Replacement Volume)

4 BY repealing and reenacting, with amendments,
 5 Article – Health – General
 6 Section 19–120(j)(2)(iv), (k)(6)(viii) and (ix) and (7), and (l), 19–201(d), 19–211(c),
 7 19–3A–01, 19–3A–03, and 19–3A–08
 8 Annotated Code of Maryland
 9 (2015 Replacement Volume)

10 BY adding to
 11 Article – Health – General
 12 Section 19–120(k)(6)(x) and (o)
 13 Annotated Code of Maryland
 14 (2015 Replacement Volume)

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

17 **Article – Health – General**

18 19–120.

19 (j) (1) A certificate of need is required before the type or scope of any health
 20 care service is changed if the health care service is offered:

21 (i) By a health care facility;

22 (ii) In space that is leased from a health care facility; or

23 (iii) In space that is on land leased from a health care facility.

24 (2) This subsection does not apply if:

25 (iv) 1. At least 45 days before increasing or decreasing the
 26 volume of one or more health care services, written notice of intent to change the volume of
 27 health care services is filed with the Commission;

28 2. The Commission in its sole discretion finds that the
 29 proposed change:

30 A. Is pursuant to [the]:

31 I. **THE** consolidation or merger of two or more health care
 32 facilities[, the];

1 **II. THE conversion of a health care facility or part of a facility**
2 to a nonhealth-related use[, or the];

3 **III. THE conversion of a hospital to a limited service hospital;**
4 **OR**

5 **IV. THE CONVERSION OF A LICENSED GENERAL**
6 **HOSPITAL TO A FREESTANDING MEDICAL FACILITY IN ACCORDANCE WITH**
7 **SUBSECTION (O)(3) OF THIS SECTION;**

8 B. Is not inconsistent with the State health plan or the
9 institution-specific plan developed and adopted by the Commission;

10 C. Will result in the delivery of more efficient and effective
11 health care services; and

12 D. Is in the public interest; and

13 3. Within 45 days of receiving notice under item 1 of this
14 item, the Commission notifies the health care facility of its finding.

15 (k) (1) A certificate of need is required before any of the following capital
16 expenditures are made by or on behalf of a hospital:

17 (i) Any expenditure that, under generally accepted accounting
18 principles, is not properly chargeable as an operating or maintenance expense, if:

19 1. The expenditure is made as part of an acquisition,
20 improvement, or expansion, and, after adjustment for inflation as provided in the
21 regulations of the Commission, the total expenditure, including the cost of each study,
22 survey, design, plan, working drawing, specification, and other essential activity, is more
23 than \$10,000,000;

24 2. The expenditure is made as part of a replacement of any
25 plant and equipment of the hospital and is more than \$10,000,000 after adjustment for
26 inflation as provided in the regulations of the Commission;

27 3. The expenditure results in a substantial change in the bed
28 capacity of the hospital; or

29 4. The expenditure results in the establishment of a new
30 medical service in a hospital that would require a certificate of need under subsection (i) of
31 this section; or

32 (ii) Any expenditure that is made to lease or, by comparable
33 arrangement, obtain any plant or equipment for the hospital, if:

1 1. The expenditure is made as part of an acquisition,
2 improvement, or expansion, and, after adjustment for inflation as provided in the rules and
3 regulations of the Commission, the total expenditure, including the cost of each study,
4 survey, design, plan, working drawing, specification, and other essential activity, is more
5 than \$10,000,000;

6 2. The expenditure is made as part of a replacement of any
7 plant and equipment and is more than \$10,000,000 after adjustment for inflation as
8 provided in the regulations of the Commission;

9 3. The expenditure results in a substantial change in the bed
10 capacity of the hospital; or

11 4. The expenditure results in the establishment of a new
12 medical service in a hospital that would require a certificate of need under subsection (i) of
13 this section.

14 (6) This subsection does not apply to:

15 (viii) A capital expenditure by a hospital, as defined in § 19–301 of this
16 title, for a project in excess of \$10,000,000 for construction or renovation that:

17 1. May be related to patient care;

18 2. Does not require, over the entire period or schedule of debt
19 service associated with the project, a total cumulative increase in patient charges or
20 hospital rates of more than \$1,500,000 for the capital costs associated with the project as
21 determined by the Commission, after consultation with the Health Services Cost Review
22 Commission;

23 3. At least 45 days before the proposed expenditure is made,
24 the hospital notifies the Commission;

25 4. A. Within 45 days of receipt of the relevant financial
26 information, the Commission makes the financial determination required under item 2 of
27 this item; or

28 B. The Commission has not made the financial
29 determination required under item 2 of this item within 60 days of the receipt of the
30 relevant financial information; and

31 5. The relevant financial information to be submitted by the
32 hospital is defined in regulations adopted by the Commission, after consultation with the
33 Health Services Cost Review Commission; [or]

1 (ix) A plant donated to a hospital, as defined in § 19–301 of this title,
2 that does not require a cumulative increase in patient charges or hospital rates of more
3 than \$1,500,000 for capital costs associated with the donated plant as determined by the
4 Commission, after consultation with the Health Services Cost Review Commission, if:

5 1. At least 45 days before the proposed donation is made, the
6 hospital notifies the Commission;

7 2. A. Within 45 days of receipt of the relevant financial
8 information, the Commission makes the financial determination required under this item
9 (ix) of this paragraph; or

10 B. The Commission has not made the financial
11 determination required under this item (ix) of this paragraph within 60 days of the receipt
12 of the relevant financial information; and

13 3. The relevant financial information to be submitted by the
14 hospital is defined in regulations adopted by the Commission after consultation with the
15 Health Services Cost Review Commission; **OR**

16 **(X) A CAPITAL EXPENDITURE MADE AS PART OF A CONVERSION**
17 **OF A LICENSED GENERAL HOSPITAL TO A FREESTANDING MEDICAL FACILITY IN**
18 **ACCORDANCE WITH SUBSECTION (O)(3) OF THIS SECTION.**

19 (7) Paragraph (6)(vi), (vii), (viii), [and] (ix), **AND (X)** of this subsection may
20 not be construed to permit a facility to offer a new health care service for which a certificate
21 of need is otherwise required.

22 (1) (1) A certificate of need is not required to close any health care facility or
23 part of a health care facility if at least 45 days before the closing or partial closing of the
24 health care facility, including a State hospital, a person proposing to close all or part of the
25 health care facility files notice of the proposed closing or partial closing with the
26 Commission.

27 (2) A hospital [located in a county with fewer than three hospitals that files
28 a notice of its proposed closing or partial closing with the Commission] shall hold a public
29 informational hearing in the county where the hospital is located **IF THE HOSPITAL:**

30 **(I) FILES A NOTICE OF THE PROPOSED CLOSING OF THE**
31 **HOSPITAL WITH THE COMMISSION;**

32 **(II) REQUESTS AN EXEMPTION FROM THE COMMISSION UNDER**
33 **SUBSECTION (O)(3) OF THIS SECTION TO CONVERT TO A FREESTANDING MEDICAL**
34 **FACILITY; OR**

1 **(III) IS LOCATED IN A COUNTY WITH FEWER THAN THREE**
2 **HOSPITALS AND FILES A NOTICE OF THE PARTIAL CLOSING OF THE HOSPITAL WITH**
3 **THE COMMISSION.**

4 (3) The Commission may require a health care facility other than a hospital
5 described in paragraph (2) of this subsection that files notice of its proposed closing or
6 partial closing to hold a public informational hearing in the county where the health care
7 facility is located.

8 (4) A public informational hearing required under paragraph (2) or (3) of
9 this subsection shall be held by the health care facility, in consultation with the
10 Commission, within 30 days after [the]:

11 **(I) THE health care facility files WITH THE COMMISSION a notice**
12 **of its proposed closing or partial closing [with the Commission]; OR**

13 **(II) THE HOSPITAL FILES WITH THE COMMISSION A NOTICE OF**
14 **INTENT TO CONVERT TO A FREESTANDING MEDICAL FACILITY.**

15 **(5) (I) THE COMMISSION SHALL ESTABLISH BY REGULATION**
16 **REQUIREMENTS FOR A PUBLIC INFORMATIONAL HEARING REQUIRED UNDER**
17 **PARAGRAPH (2) OR (3) OF THIS SUBSECTION.**

18 **(II) FOR A HOSPITAL PROPOSING TO CLOSE, PARTIALLY CLOSE,**
19 **OR CONVERT TO A FREESTANDING MEDICAL FACILITY, THE REGULATIONS SHALL**
20 **REQUIRE THE HOSPITAL TO ADDRESS:**

21 1. **THE REASONS FOR THE CLOSURE, PARTIAL CLOSURE,**
22 **OR CONVERSION;**

23 2. **THE PLAN FOR TRANSITIONING ACUTE CARE**
24 **SERVICES PREVIOUSLY PROVIDED BY THE HOSPITAL TO RESIDENTS OF THE**
25 **HOSPITAL SERVICE AREA;**

26 3. **THE PLAN FOR ADDRESSING THE HEALTH CARE**
27 **NEEDS OF THE RESIDENTS OF THE HOSPITAL SERVICE AREA;**

28 4. **THE PLAN FOR RETRAINING AND PLACING**
29 **DISPLACED EMPLOYEES;**

30 5. **THE PLAN FOR THE HOSPITAL'S PHYSICAL PLANT AND**
31 **SITE; AND**

1 **6. THE PROPOSED TIMELINE FOR THE CLOSURE,**
2 **PARTIAL CLOSURE, OR CONVERSION TO A FREESTANDING MEDICAL FACILITY.**

3 **(6) WITHIN 10 WORKING DAYS AFTER A PUBLIC INFORMATIONAL**
4 **HEARING HELD BY A HOSPITAL UNDER THIS SUBSECTION, THE HOSPITAL SHALL**
5 **PROVIDE A WRITTEN SUMMARY OF THE HEARING TO:**

6 **(I) THE GOVERNOR;**

7 **(II) THE SECRETARY;**

8 **(III) THE GOVERNING BODY OF THE COUNTY IN WHICH THE**
9 **HOSPITAL IS LOCATED;**

10 **(IV) THE LOCAL HEALTH DEPARTMENT AND THE LOCAL BOARD**
11 **OF HEALTH OR SIMILAR BODY FOR THE COUNTY IN WHICH THE HOSPITAL IS**
12 **LOCATED;**

13 **(V) THE COMMISSION; AND**

14 **(VI) SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT**
15 **ARTICLE, THE SENATE FINANCE COMMITTEE, THE HOUSE HEALTH AND**
16 **GOVERNMENT OPERATIONS COMMITTEE, AND THE MEMBERS OF THE GENERAL**
17 **ASSEMBLY WHO REPRESENT THE DISTRICT IN WHICH THE HOSPITAL IS LOCATED.**

18 **(O) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS**
19 **SUBSECTION, A PERSON SHALL HAVE A CERTIFICATE OF NEED ISSUED BY THE**
20 **COMMISSION BEFORE A PERSON ESTABLISHES OR OPERATES A FREESTANDING**
21 **MEDICAL FACILITY.**

22 **(2) A CERTIFICATE OF NEED IS NOT REQUIRED FOR THE**
23 **ESTABLISHMENT OR OPERATION OF A FREESTANDING MEDICAL FACILITY PILOT**
24 **PROJECT ESTABLISHED UNDER § 19-3A-07 OF THIS TITLE.**

25 **(3) (I) A CERTIFICATE OF NEED IS NOT REQUIRED TO ESTABLISH**
26 **OR OPERATE A FREESTANDING MEDICAL FACILITY IF:**

27 **1. THE FREESTANDING MEDICAL FACILITY IS**
28 **ESTABLISHED AS THE RESULT OF THE CONVERSION OF A LICENSED GENERAL**
29 **HOSPITAL;**

30 **2. THROUGH THE CONVERSION, THE LICENSED**
31 **GENERAL HOSPITAL WILL ELIMINATE THE CAPABILITY OF THE HOSPITAL TO ADMIT**

1 OR RETAIN PATIENTS FOR OVERNIGHT HOSPITALIZATION, EXCEPT FOR
2 OBSERVATION STAYS;

3 3. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
4 PARAGRAPH, THE FREESTANDING MEDICAL FACILITY WILL REMAIN ON THE SITE OF,
5 OR ON A SITE ADJACENT TO, THE LICENSED GENERAL HOSPITAL;

6 4. AT LEAST 45 DAYS BEFORE THE CONVERSION,
7 WRITTEN NOTICE OF INTENT TO CONVERT THE LICENSED GENERAL HOSPITAL TO A
8 FREESTANDING MEDICAL FACILITY IS FILED WITH THE COMMISSION;

9 5. THE COMMISSION IN ITS SOLE DISCRETION FINDS
10 THAT THE CONVERSION:

11 A. IS NOT INCONSISTENT WITH THE STATE HEALTH
12 PLAN;

13 B. WILL RESULT IN THE DELIVERY OF MORE EFFICIENT
14 AND EFFECTIVE HEALTH CARE SERVICES;

15 C. WILL MAINTAIN ADEQUATE AND APPROPRIATE
16 DELIVERY OF EMERGENCY CARE WITHIN THE STATEWIDE EMERGENCY MEDICAL
17 SERVICES SYSTEM AS DETERMINED BY THE STATE EMERGENCY MEDICAL SERVICES
18 BOARD; AND

19 D. IS IN THE PUBLIC INTEREST; AND

20 6. WITHIN 45 DAYS AFTER RECEIVING NOTICE UNDER
21 ITEM 4 OF THIS SUBPARAGRAPH, THE COMMISSION NOTIFIES THE LICENSED
22 GENERAL HOSPITAL OF THE COMMISSION'S FINDINGS.

23 (ii) THE COMMISSION MAY APPROVE A SITE FOR A
24 FREESTANDING MEDICAL FACILITY THAT IS NOT ON THE SITE OF, OR ON A SITE
25 ADJACENT TO, THE LICENSED GENERAL HOSPITAL IF:

26 1. THE LICENSED GENERAL HOSPITAL IS:

27 A. THE ONLY HOSPITAL IN THE COUNTY; OR

28 B. ONE OF TWO HOSPITALS IN THE COUNTY THAT ARE
29 PART OF THE SAME MERGED ASSET SYSTEM; AND

1 **2. THE SITE IS WITHIN A 5-MILE RADIUS AND IN THE**
2 **PRIMARY SERVICE AREA OF THE LICENSED GENERAL HOSPITAL.**

3 19–201.

4 (d) (1) “Hospital services” means:

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

7 (ii) Emergency services, including services provided at[:

8 1. Freestanding medical facility pilot projects authorized
9 under Subtitle 3A of this title prior to January 1, 2008; and

10 2. A freestanding medical facility issued a certificate of need
11 by the Maryland Health Care Commission after July 1, 2015] **A FREESTANDING MEDICAL**
12 **FACILITY LICENSED UNDER SUBTITLE 3A OF THIS TITLE;**

13 (iii) Outpatient services provided at [the] A hospital; [and]

14 **(IV) OUTPATIENT SERVICES, AS SPECIFIED BY THE**
15 **COMMISSION IN REGULATION, PROVIDED AT A FREESTANDING MEDICAL FACILITY**
16 **LICENSED UNDER SUBTITLE 3A OF THIS TITLE THAT HAS RECEIVED:**

17 1. **A CERTIFICATE OF NEED UNDER § 19–120(O)(1) OF**
18 **THIS TITLE; OR**

19 2. **AN EXEMPTION FROM OBTAINING A CERTIFICATE OF**
20 **NEED UNDER § 19–120(O)(3) OF THIS TITLE; AND**

21 [(iv)] **(V) Identified physician services for which a facility has**
22 **Commission–approved rates on June 30, 1985.**

23 (2) “Hospital services” includes a hospital outpatient service:

24 (i) Of a hospital that, on or before June 1, 2015, is under a merged
25 asset hospital system;

26 (ii) That is designated as a part of another hospital under the same
27 merged asset hospital system to make it possible for the hospital outpatient service to
28 participate in the 340B Program under the federal Public Health Service Act; and

29 (iii) That complies with all federal requirements for the 340B
30 Program and applicable provisions of 42 C.F.R. § 413.65.

1 (3) “Hospital services” does not include:

2 (i) Outpatient renal dialysis services; or

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

5 19–211.

6 (c) The Commission shall set rates for hospital services provided at:

7 (1) A freestanding medical facility pilot project authorized under Subtitle
8 3A of this title prior to January 1, 2008; and

9 (2) A freestanding medical facility [issued a certificate of need by the
10 Maryland Health Care Commission after July 1, 2015] **LICENSED UNDER SUBTITLE 3A**
11 **OF THIS TITLE.**

12 19–3A–01.

13 In this subtitle, “freestanding medical facility” means a facility:

14 (1) In which medical and health services are provided;

15 (2) That, **EXCEPT FOR A FREESTANDING MEDICAL FACILITY**
16 **ESTABLISHED AS A RESULT OF A CONVERSION OF A LICENSED GENERAL HOSPITAL**
17 **UNDER § 19–120(O)(3) OF THIS TITLE**, is physically separate from a hospital or hospital
18 grounds; [and]

19 (3) That is an administrative part of a hospital [or related institution], as
20 defined in § 19–301 of this title; **AND**

21 (4) **THAT MEETS THE REQUIREMENTS FOR PROVIDER–BASED STATUS**
22 **UNDER THE CERTIFICATION FOR AN AFFILIATED HOSPITAL AS SET FORTH BY THE**
23 **CENTERS FOR MEDICARE AND MEDICAID SERVICES IN 42 C.F.R. § 413.65.**

24 19–3A–03.

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

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

27 (2) [After July 1, 2015, receives] **RECEIVES** a certificate of need **OR AN**
28 **EXEMPTION FROM OBTAINING A CERTIFICATE OF NEED** from the Maryland Health
29 Care Commission [issued] under § 19–120 of this title.

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

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

8 19-3A-08.

9 (a) This section applies to all payors subject to the rate-setting authority of the
10 Health Services Cost Review Commission, including:

11 (1) Insurers, nonprofit health service plans, and health maintenance
12 organizations that deliver or issue for delivery individual, group, or blanket health
13 insurance policies and contracts in the State;

14 (2) Managed care organizations, as defined in § 15-101 of this article; and

15 (3) The Maryland Medical Assistance Program established under Title 15,
16 Subtitle 1 of this article.

17 (b) A payor subject to this section shall pay rates set by the Health Services Cost
18 Review Commission under Subtitle 2 of this title for hospital services provided at:

19 (1) A freestanding medical facility pilot project authorized under this
20 subtitle prior to January 1, 2008; and

21 (2) A freestanding medical facility [issued a certificate of need by the
22 Maryland Health Care Commission after July 1, 2015] **LICENSED UNDER § 19-3A-03 OF**
23 **THIS SUBTITLE.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2016.