

Chapter 420

(Senate Bill 707)

AN ACT concerning

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

FOR the purpose of exempting from certain certificate of need requirements the conversion of a certain hospital to a freestanding medical facility in accordance with certain requirements; altering the number of days before the proposed closing or partial closing of a health care facility for the filing of a certain notice by a certain person; altering the requirements for a public informational hearing for a hospital that files a notice of its proposed closing; requiring a certain hospital to hold a public informational hearing if the hospital requests an exemption from certificate of need requirements to convert to a freestanding medical facility; requiring the Maryland Health Care Commission to establish by regulation requirements for certain public informational hearings; requiring, for a hospital seeking to close, partially close, or convert to a freestanding medical facility, that the regulations require the hospital to address certain items at a public informational hearing; requiring a hospital to provide a written summary of a public informational hearing within a certain period of time to certain individuals, entities, and legislative committees; clarifying the circumstances in which a certificate of need is required to establish or operate a freestanding medical facility; authorizing the Commission to approve a site for a freestanding medical facility that is not on a certain site, under certain circumstances; prohibiting a certain hospital from converting to a freestanding medical facility before a certain date; altering the services provided at a freestanding medical facility that may be considered hospital services for purposes of rate-setting; requiring a freestanding medical facility to have a certain license, instead of a certificate of need, to obtain certain rates; altering the definition of “freestanding medical facility” to require a facility to meet the requirements for provider-based status under a certain certification and to exempt, from the requirement that the facility be physically separate from a hospital or hospital grounds, a freestanding medical facility established as a result of a certain hospital conversion; requiring the Department of Health and Mental Hygiene to issue a license to a freestanding medical facility that receives an exemption from obtaining a certificate of need; establishing a workgroup on rural health care delivery; providing for the membership, chair, and staff of the workgroup; requiring the workgroup to oversee a certain study of health care needs in certain counties and to hold certain public hearings; providing for the contents of a certain study; requiring the workgroup to review certain policy options and to report on a certain study and certain recommendations on or before a certain date; stating the intent of the General Assembly; providing for the construction of a certain provision of this Act; authorizing the use of certain funds for a certain purpose; and generally relating to freestanding medical facilities.

BY repealing and reenacting, without amendments,

Article – Health – General
 Section 19–120(j)(1) and (k)(1)
 Annotated Code of Maryland
 (2015 Replacement Volume)

BY repealing and reenacting, with amendments,

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

BY adding to

Article – Health – General
 Section 19–120(k)(6)(x) and (o)
 Annotated Code of Maryland
 (2015 Replacement Volume)

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

Article – Health – General

19–120.

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

- (i) By a health care facility;
- (ii) In space that is leased from a health care facility; or
- (iii) In space that is on land leased from a health care facility.

(2) This subsection does not apply if:

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

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

A. Is pursuant to [the]:

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

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

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

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

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

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

D. Is in the public interest; and

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

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

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

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

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

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

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

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

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

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

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

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

(6) This subsection does not apply to:

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

1. May be related to patient care;

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

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

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

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

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

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

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

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

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

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

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

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

(1) (1) A certificate of need is not required to close any health care facility or part of a health care facility if at least ~~45~~ **90** days before the closing or **IF AT LEAST 45 DAYS BEFORE THE** partial closing of the health care facility, including a State hospital, a person proposing to close all or part of the health care facility files notice of the proposed closing or partial closing with the Commission.

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

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

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

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

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

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

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

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

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

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

1. THE REASONS FOR THE CLOSURE, PARTIAL CLOSURE, OR CONVERSION;

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

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

4. THE PLAN FOR RETRAINING AND PLACING DISPLACED EMPLOYEES;

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

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

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

(I) THE GOVERNOR;

(II) THE SECRETARY;

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

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

(V) THE COMMISSION; AND

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

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

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

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

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

2. THROUGH THE CONVERSION, THE LICENSED GENERAL HOSPITAL WILL ELIMINATE THE CAPABILITY OF THE HOSPITAL TO ADMIT OR RETAIN PATIENTS FOR OVERNIGHT HOSPITALIZATION, EXCEPT FOR OBSERVATION STAYS;

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

4. AT LEAST ~~45~~ 60 DAYS BEFORE THE CONVERSION, WRITTEN NOTICE OF INTENT TO CONVERT THE LICENSED GENERAL HOSPITAL TO A FREESTANDING MEDICAL FACILITY IS FILED WITH THE COMMISSION;

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

A. IS ~~NOT INCONSISTENT~~ CONSISTENT WITH THE STATE HEALTH PLAN;

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

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

D. IS IN THE PUBLIC INTEREST; AND

6. WITHIN ~~45~~ 60 DAYS AFTER RECEIVING NOTICE UNDER ITEM 4 OF THIS SUBPARAGRAPH, THE COMMISSION NOTIFIES THE LICENSED GENERAL HOSPITAL OF THE COMMISSION'S FINDINGS.

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

1. THE LICENSED GENERAL HOSPITAL IS:

A. THE ONLY HOSPITAL IN THE COUNTY; OR

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

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

(III) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, A LICENSED GENERAL HOSPITAL LOCATED IN KENT COUNTY MAY NOT CONVERT TO A FREESTANDING MEDICAL FACILITY IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH BEFORE JULY 1, 2020.

19-201.

(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[:

1. Freestanding medical facility pilot projects 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] **A FREESTANDING MEDICAL FACILITY LICENSED UNDER SUBTITLE 3A OF THIS TITLE;**

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

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

1. A CERTIFICATE OF NEED UNDER § 19-120(O)(1) OF THIS TITLE; OR

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

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

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

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

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

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

(3) “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.

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

(1) A freestanding medical facility pilot project 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] **LICENSED UNDER SUBTITLE 3A OF THIS TITLE.**

19–3A–01.

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

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

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

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

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

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) [After July 1, 2015, receives] **RECEIVES** a certificate of need **OR AN EXEMPTION FROM OBTAINING A CERTIFICATE OF NEED** from the Maryland Health Care Commission [issued] under § 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-08.

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

(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 rates set by the Health Services Cost Review Commission under Subtitle 2 of this title for 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] **LICENSED UNDER § 19-3A-03 OF THIS SUBTITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a workgroup on rural health care delivery.

(b) The workgroup consists of:

(1) the Chair of the Senate Finance Committee and the Chair of the House Health and Government Operations Committee;

(2) two members of the Senate of Maryland and two members of the House of Delegates from rural areas of the State, appointed by the President of the Senate and the Speaker of the House of Delegates, respectively;

(3) the Secretary of Health and Mental Hygiene, or the Secretary's designee; ~~and~~

(4) the Chief Executive Officer of McCready Memorial Hospital, or the Chief Executive Officer's designee;

(5) the Chief Executive Officer of Garrett Regional Medical Center, or the Chief Executive Officer's designee; and

~~(4)~~ (6) individuals representing the interests of health care providers, business, labor, State and local government, consumers, and other stakeholder groups, appointed by the Maryland Health Care Commission.

(c) The Maryland Health Care Commission shall designate the chair of the workgroup.

(d) The Maryland Health Care Commission and the Department of Health and Mental Hygiene shall provide staff for the workgroup.

(e) The workgroup shall:

(1) oversee a study of rural health care needs in Caroline, Dorchester, Kent, Queen Anne's, and Talbot counties; and

(2) hold public hearings to gain community input regarding the health care needs in the five study counties.

(f) The study required under subsection (e)(1) of this section shall:

(1) be carried out by an entity with expertise in rural health care delivery and planning;

(2) examine challenges to the delivery of health care in the five study counties, including:

- (i) the limited availability of health care providers and services;
 - (ii) the special needs of vulnerable populations;
 - (iii) transportation barriers; and
 - (iv) the economic impact of the closure, partial closure, or conversion of a health care facility;
- (3) take into account the input gained through the public hearings held by the workgroup;
- (4) identify opportunities created by telehealth and the Maryland all-payer model contract for restructuring the delivery of health care services; and
- (5) develop policy options for addressing the health care needs of residents of and improving the health care delivery system in the five study counties.
- (g) The workgroup shall:
- (1) review the policy options developed under the study and recommend policies that address:
 - (i) the health care needs of residents of the five study counties; and
 - (ii) improvements to the health care delivery system in the five study counties; and
 - (2) on or before October 1, 2017, report on the findings of the study and the recommendations of the workgroup to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) It is the intent of the General Assembly that, due to unique circumstances and a desire for prompt consideration by the Maryland Health Care Commission of the certificate of need for the Prince George's Regional Medical Center, the memorandum of understanding, which sets forth the process for community engagement regarding the modernization and transformation plan for Laurel Regional Hospital entered into by the University of Maryland Medical System and representatives of local government, shall supplement the process for community engagement regarding the modernization and transformation plan for the Laurel Regional Hospital.

(b) Subsection (a) of this section may not be construed to affect the processes established under Section 1 of this Act.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That, notwithstanding any other provision of law:

(a) Funds in the Maryland Health Benefit Exchange Fund deposited or transferred from the Maryland Health Insurance Plan Fund may be used by the Maryland Health Care Commission in fiscal years 2017 and 2018 to pay for the study of rural health care needs required under Section 2 of this Act.

(b) The amount of funds that may be used under subsection (a) of this section may not exceed \$500,000.

SECTION ~~2~~ ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016.

Approved by the Governor, May 10, 2016.