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**By: Delegate Hammen**

Introduced and read first time: January 31, 1996

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 1996

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CHAPTER \_\_\_\_

1 AN ACT concerning

2 **Health Care Facilities - Certificate of Need**

3 FOR the purpose of specifying that a hospital may acquire certain health care facilities or  
4 group practices without obtaining a certificate of need under certain circumstances;  
5 providing that a hospital may not build or expand its ambulatory surgical capacity in  
6 certain settings without obtaining a certificate of need under certain circumstances;  
7 providing for the effective date of this Act; and generally relating to the  
8 circumstances under which hospitals must obtain a certificate of need.

9 BY repealing and reenacting, without amendments,

10 Article - Health - General  
11 Section 19-101(b)  
12 Annotated Code of Maryland  
13 (1990 Replacement Volume and 1995 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - Health - General  
16 Section 19-115(j)  
17 Annotated Code of Maryland  
18 (1990 Replacement Volume and 1995 Supplement)

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

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1           **Article - Health - General**

2 19-101.

3           (b) (1) "Ambulatory surgical facility" means any center, service, office, facility,  
4 or office of one or more health care practitioners or a group practice, as defined in §  
5 1-301 of the Health Occupations Article, that:

6                           (i) Has two or more operating rooms;

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

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

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

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

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

20 19-115.

21           (j) (1) A certificate of need is required before any of the following capital  
22 expenditures are made by or on behalf of a health care facility:

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

25   1. The expenditure is made as part of an acquisition,  
26 improvement, or expansion, and, after adjustment for inflation as provided in the  
27 regulations of the Commission, the total expenditure, including the cost of each study,  
28 survey, design, plan, working drawing, specification, and other essential activity, is more  
29 than \$1,250,000;

30   2. The expenditure is made as part of a replacement of any  
31 plant and equipment of the health care facility and is more than \$1,250,000 after  
32 adjustment for inflation as provided in the regulations of the Commission;

33   3. The expenditure results in a substantial change in the bed  
34 capacity of the health care facility; or

35   4. The expenditure results in the establishment of a new  
36 medical service in a health care facility that would require a certificate of need under  
37 subsection (i) of this section; or

1 (ii) Any expenditure that is made to lease or, by comparable  
2 arrangement, obtain any plant or equipment for the health care facility, if:

3 1. The expenditure is made as part of an acquisition,  
4 improvement, or expansion, and, after adjustment for inflation as provided in the rules  
5 and regulations of the Commission, the total expenditure, including the cost of each  
6 study, survey, design, plan, working drawing, specification, and other essential activity, is  
7 more than \$1,250,000;

8 2. The expenditure is made as part of a replacement of any  
9 plant and equipment and is more than \$1,250,000 after adjustment for inflation as  
10 provided in the regulations of the Commission;

11 3. The expenditure results in a substantial change in the bed  
12 capacity of the health care facility; or

13 4. The expenditure results in the establishment of a new  
14 medical service in a health care facility that would require a certificate of need under  
15 subsection (i) of this section.

16 (2) A certificate of need is required before any equipment or plant is  
17 donated to a health care facility, if a certificate of need would be required under  
18 paragraph (1) of this subsection for an expenditure by the health care facility to acquire  
19 the equipment or plant directly.

20 (3) A certificate of need is required before any equipment or plant is  
21 transferred to a health care facility at less than fair market value if a certificate of need  
22 would be required under paragraph (1) of this subsection for the transfer at fair market  
23 value.

24 (4) A certificate of need is required before a person acquires a health care  
25 facility if a certificate of need would be required under paragraph (1) of this subsection  
26 for the acquisition by or on behalf of the health care facility.

27 (5) This subsection does not apply to:

28 (i) Site acquisition;

29 (ii) Acquisition of a health care facility if, at least 30 days before  
30 making the contractual arrangement to acquire the facility, written notice of the intent to  
31 make the arrangement is filed with the Commission and the Commission does not find,  
32 within 30 days after the Commission receives notice, that the health services or bed  
33 capacity of the facility will be changed;

34 (iii) Acquisition of business or office equipment that is not directly  
35 related to patient care;

36 (iv) Capital expenditures to the extent that they are directly related to  
37 the acquisition and installation of major medical equipment;

38 (v) A capital expenditure made as part of a consolidation or merger of  
39 2 or more health care facilities, or conversion of a health care facility or part of a facility  
40 to a nonhealth-related use if:

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1                                   1. At least 45 days before an expenditure is made, written  
2 notice of intent is filed with the Commission;

3                                   2. Within 45 days of receiving notice, the Commission in its sole  
4 discretion finds that the proposed consolidation, merger, or conversion:

5                                   A. Is not inconsistent with the State health plan or the  
6 institution-specific plan developed by the Commission as appropriate;

7                                   B. Will result in the delivery of more efficient and effective  
8 health care services; and

9                                   C. Is in the public interest; and

10                                  3. Within 45 days of receiving notice, the Commission shall  
11 notify the health care facility of its finding;

12                                  (vi) A capital expenditure by a nursing home for equipment,  
13 construction, or renovation that:

14                                   1. Is not directly related to patient care; and

15                                   2. Is not directly related to any change in patient charges or  
16 other rates;

17                                  (vii) A capital expenditure by a hospital, as defined in §19-301 of this  
18 title, for equipment, construction, or renovation that:

19                                   1. Is not directly related to patient care; and

20                                   2. Does not increase patient charges or hospital rates;

21                                  (viii) A capital expenditure by a hospital as defined in §19-301 of this  
22 title, for a project in excess of \$1,250,000 for construction or renovation that:

23                                   1. May be related to patient care;

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

29                                   3. At least 45 days before the proposed expenditure is made,  
30 the hospital notifies the Commission and within 45 days of receipt of the relevant  
31 financial information, the Commission makes the financial determination required under  
32 item 2 of this subparagraph; and

33                                   4. The relevant financial information to be submitted by the  
34 hospital is defined in regulations promulgated by the Commission, after consultation with  
35 the Health Services Cost Review Commission; or

36                                  (ix) A plant donated to a hospital as defined in § 19-301 of this title,  
37 which does not require a cumulative increase in patient charges or hospital rates of more

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1 than \$1,500,000 for capital costs associated with the donated plant as determined by the  
2 Commission, after consultation with the Health Services Cost Review Commission that:

3                                   1. At least 45 days before the proposed donation is made, the  
4 hospital notifies the Commission and within 45 days of receipt of the relevant financial  
5 information, the Commission makes the financial determination required under this  
6 subparagraph; and

7                                   2. The relevant financial information to be submitted by the  
8 hospital is defined in regulations promulgated by the Commission after consultation with  
9 the Health Services Cost Review Commission.

10                               (6) Paragraph (5)(vi), (vii), (viii), and (ix) of this subsection may not be  
11 construed to permit a facility to offer a new health care service for which a certificate of  
12 need is otherwise required.

13                               ~~(7) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO PROHIBIT A~~  
14 ~~HOSPITAL FROM ACQUIRING A FREESTANDING AMBULATORY SURGICAL FACILITY~~  
15 ~~OR PHYSICIAN GROUP PRACTICE WITHOUT OBTAINING A CERTIFICATE OF NEED~~  
16 ~~FROM THE COMMISSION IF THE FACILITY OR PRACTICE HAS OBTAINED A~~  
17 ~~CERTIFICATE OF NEED OR AN EXEMPTION FROM CERTIFICATE OF NEED~~  
18 ~~REQUIREMENTS.~~

19                               (7) SUBJECT TO THE NOTICE REQUIREMENTS OF PARAGRAPH (5)(II) OF  
20 THIS SUBSECTION, A HOSPITAL MAY ACQUIRE A FREESTANDING AMBULATORY  
21 SURGICAL FACILITY OR OFFICE OF ONE OR MORE HEALTH CARE PRACTITIONERS  
22 OR A GROUP PRACTICE WITH ONE OR MORE OPERATING ROOMS USED PRIMARILY  
23 FOR THE PURPOSE OF PROVIDING AMBULATORY SURGICAL SERVICES IF THE  
24 FACILITY, OFFICE, OR GROUP PRACTICE:

25                                       (I) HAS OBTAINED A CERTIFICATE OF NEED;

26                                       (II) HAS OBTAINED AN EXEMPTION FROM CERTIFICATE OF NEED  
27 REQUIREMENTS; OR

28                                       (III) DID NOT REQUIRE A CERTIFICATE OF NEED IN ORDER TO  
29 PROVIDE AMBULATORY SURGICAL SERVICES AFTER JUNE 1, 1995.

30                               [(7)] (8) Nothing in this subsection may be construed to permit a hospital to  
31 build or expand its ambulatory surgical capacity in any setting owned or controlled by the  
32 hospital without obtaining a certificate of need from the Commission IF THE BUILDING  
33 OR EXPANSION WOULD INCREASE THE SURGICAL CAPACITY OF THE STATE'S  
34 HEALTH CARE SYSTEM.

35                               SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
36 June 1, 1996.

