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By: ~~Delegate Nathan Pulliam~~ Delegates Nathan Pulliam and Rawlings

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Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 1996

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CHAPTER \_\_\_\_

1 AN ACT concerning

2 **State Health Resources Planning Commission - ~~Certificate of Need—Ambulatory~~**

3 **Freestanding Primary Care Facilities - Study**

4 FOR the purpose of ~~requiring certain ambulatory primary care facilities to obtain a~~  
5 ~~certificate of need from the Health Resources Planning Commission under certain~~  
6 ~~circumstances; defining a certain term; altering a certain definition; providing for~~  
7 ~~the construction of this Act; providing for the application of this Act; and generally~~  
8 ~~relating to requiring certain ambulatory primary care facilities to obtain a certificate~~  
9 ~~of need; requiring the Health Resources Planning Commission, in consultation with~~  
10 ~~the Department of Health and Mental Hygiene and the Health Services Cost~~  
11 ~~Review Commission, to conduct a certain study concerning the impact on certain~~  
12 ~~freestanding primary care facilities and other primary care providers of certain laws,~~  
13 ~~regulations, and waivers that would authorize or require the enrollment of~~  
14 ~~Maryland Medical Assistance Program recipients into managed care plans or~~  
15 ~~organizations; requiring the Health Resources Planning Commission to submit a~~  
16 ~~certain report by a certain date; providing for the termination of this Act; and~~  
17 ~~generally relating to requiring the Health Resources Planning Commission to~~  
18 ~~conduct a certain study.~~

19 ~~BY~~ repealing and reenacting, with amendments,

20 ~~Article—Health—General~~

21 ~~Section 19-101, 19-115(j)(7), and 19-118(f)~~

22 ~~Annotated Code of Maryland~~

23 ~~(1990 Replacement Volume and 1995 Supplement)~~

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1 Preamble

2 WHEREAS, Preventive and primary health care services are essential to the  
3 optimum health of Maryland's citizens; and

4 WHEREAS, The availability of preventive and primary health care services is  
5 necessary to reduce the cost of health care for all Marylanders; and

6 WHEREAS, The health care delivery system is most efficient when health care  
7 facilities are in the proper proportion to health care need; and

8 WHEREAS, The costs of building and maintaining health care facilities should be  
9 targeted to locations where health care is not adequately available; and

10 WHEREAS, Duplicative health care facilities in any location create inefficiency in  
11 health care expenditures; and

12 ~~WHEREAS, Maryland's certificate of need program is nationally recognized as a~~  
13 ~~model for planning and distribution of health care facilities; and~~

14 WHEREAS, The Maryland Health Resources Planning Commission and the  
15 Maryland Health Services Cost Review Commission have successfully controlled  
16 hospital-based health care costs; and

17 WHEREAS, Changes in public policy and private industry are increasing the  
18 significance of primary and preventive health care in controlling health care costs; now,  
19 therefore,

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

22 ~~Article—Health—General~~

23 ~~49-101.~~

24 ~~(a) In Part I of this subtitle the following words have the meanings indicated.~~

25 ~~(B) "AMBULATORY PRIMARY CARE FACILITY" MEANS ANY CENTER, SERVICE,~~  
26 ~~OFFICE, FACILITY, OR OFFICE OF ONE OR MORE HEALTH CARE PRACTITIONERS OR~~  
27 ~~A GROUP PRACTICE, AS DEFINED IN § 1-301 OF THE HEALTH OCCUPATIONS ARTICLE,~~  
28 ~~THAT:~~

29 ~~(1) IS NOT LICENSED AS A HOSPITAL OR A PART OF A HOSPITAL OR~~  
30 ~~NURSING HOME;~~

31 ~~(2) HAS A SEPARATE STAFF FUNCTIONING UNDER THE DIRECTION OF A~~  
32 ~~CLINIC ADMINISTRATOR OR HEALTH OFFICER AND IS ORGANIZED TO PROVIDE~~  
33 ~~AMBULATORY PRIMARY HEALTH CARE SERVICES;~~

34 ~~(3) OPERATES FOR THE PURPOSE OF PROVIDING PRIMARY HEALTH~~  
35 ~~CARE SERVICES TO PATIENTS NEEDING HEALTH CARE SERVICES THAT ADDRESS A~~  
36 ~~PATIENT'S GENERAL HEALTH NEEDS, INCLUDING THE COORDINATION OF CARE~~  
37 ~~FOR THE PREVENTION OF DISEASE, THE PROMOTION AND MAINTENANCE OF~~

1 ~~HEALTH, THE TREATMENT OF ILLNESS, AND, WHEN APPROPRIATE, THE REFERRAL~~  
 2 ~~TO SPECIALISTS FOR MORE INTENSIVE HEALTH CARE SERVICES;~~

3                   (4) ~~OPERATES FOR THE PURPOSE OF PROVIDING PRIMARY HEALTH~~  
 4 ~~CARE SERVICES THAT INCLUDE DIAGNOSTIC, TREATMENT, CONSULTATIVE,~~  
 5 ~~REFERRAL, AND PREVENTIVE HEALTH CARE SERVICES THAT ARE GENERALLY~~  
 6 ~~RENDERED BY GENERAL PRACTITIONERS, FAMILY PRACTITIONERS, INTERNISTS,~~  
 7 ~~OBSTETRICIANS, GYNECOLOGISTS, PEDIATRICIANS, AND MID-LEVEL~~  
 8 ~~PRACTITIONERS, SUCH AS PHYSICIAN ASSISTANTS, NURSE CLINICIANS, AND NURSE~~  
 9 ~~PRACTITIONERS;~~

10                   (5) ~~OPERATES AS AN INDEPENDENT PRACTICE ASSOCIATION SITE,~~  
 11 ~~STAFF MODEL SITE, OR GROUP MODEL SITE OF A HEALTH MAINTENANCE~~  
 12 ~~ORGANIZATION, MEDICAL SERVICES ORGANIZATION, MANAGED CARE~~  
 13 ~~ORGANIZATION, OR PHYSICIAN/HOSPITAL ORGANIZATION; AND~~

14                   (6) ~~SEEKS REIMBURSEMENT FROM PAYORS AS AN INDIVIDUAL~~  
 15 ~~PHYSICIAN OFFICE, GROUP PRACTICE, FEDERALLY QUALIFIED HEALTH CENTER,~~  
 16 ~~MARYLAND QUALIFIED HEALTH CENTER, OR FREESTANDING CLINIC.~~

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

20                   (i) ~~Has two or more operating rooms;~~

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

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

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

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

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

34                   (3) ~~"AMBULATORY SURGICAL FACILITY" DOES NOT INCLUDE AN~~  
 35 ~~AMBULATORY PRIMARY CARE FACILITY.~~

36           [(e)] (D) ~~"Certificate of need" means a certification of public need issued by the~~  
 37 ~~Commission under this subtitle for a health care project.~~

38           [(d)] (E) ~~"Commission" means the State Health Resources Planning Commission.~~

1       ~~{{(e)}} (F) "Federal Act" means the National Health Planning and Resources~~  
2 ~~Development Act of 1974 (Public Law 93-641), as amended.~~

3       ~~{{(f)}} (G) (1) "Health care facility" means:~~

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

5                       ~~(ii) A related institution, as defined in § 19-301 of this title;~~

6                       ~~(iii) An ambulatory surgical facility;~~

7                       ~~(IV) AN AMBULATORY PRIMARY CARE FACILITY;~~

8                       ~~{{(iv)}} (V) An inpatient facility that is organized primarily to help in the~~  
9 ~~rehabilitation of disabled individuals, through an integrated program of medical and~~  
10 ~~other services provided under competent professional supervision;~~

11                      ~~{{(v)}} (VI) A home health agency, as defined in § 19-401 of this title;~~

12                      ~~{{(vi)}} (VII) A hospice, as defined in § 19-901 of this title; and~~

13                      ~~{{(vii)}} (VIII) Any other health institution, service, or program for which~~  
14 ~~Part I of this subtitle requires a certificate of need.~~

15       ~~(2) "Health care facility" does not include:~~

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

18                      ~~(ii) For the purpose of providing an exemption from a certificate of~~  
19 ~~need under § 19-115 of this subtitle, a facility to provide comprehensive care constructed~~  
20 ~~by a provider of continuing care, as defined by Article 70B of the Code, if:~~

21                               ~~1. The facility is for the exclusive use of the provider's~~  
22 ~~subscribers who have executed continuing care agreements for the purpose of utilizing~~  
23 ~~independent living units or domiciliary care within the continuing care facility;~~

24                               ~~2. The number of comprehensive care nursing beds in the~~  
25 ~~facility does not exceed 20 percent of the number of independent living units at the~~  
26 ~~continuing care community; and~~

27                               ~~3. The facility is located on the campus of the continuing care~~  
28 ~~facility;~~

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

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

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

1       ~~[(g)] (H) "Health care practitioner" means a person who is licensed, certified, or~~  
 2 ~~otherwise authorized under the Health Occupations Article to provide medical services in~~  
 3 ~~the ordinary course of business or practice of a profession.~~

4       ~~[(h)] (I) "Health service area" means an area of this State that the Governor~~  
 5 ~~designates as appropriate for planning and developing of health services.~~

6       ~~[(i)] (J) "Local health planning agency" means a body that the Commission~~  
 7 ~~designates to perform health planning and development functions for a health service~~  
 8 ~~area.~~

9 ~~19-115.~~

10       ~~(j) (7) Nothing in this subsection may be construed to permit a hospital to build~~  
 11 ~~or expand its ambulatory surgical capacity OR ITS AMBULATORY PRIMARY CARE~~  
 12 ~~CAPACITY in any setting owned or controlled by the hospital without obtaining a~~  
 13 ~~certificate of need from the Commission.~~

14 ~~19-118.~~

15       ~~(f) (1) If any party or interested person requests an evidentiary hearing with~~  
 16 ~~respect to a certificate of need application for any health care facility other than an~~  
 17 ~~ambulatory surgical facility OR AMBULATORY PRIMARY CARE FACILITY and the~~  
 18 ~~Commission, in accordance with criteria it has adopted by regulation, considers an~~  
 19 ~~evidentiary hearing appropriate due to the magnitude of the impact that the proposed~~  
 20 ~~project may have on the health care delivery system, the Commission or a committee of~~  
 21 ~~the Commission shall hold the hearing in accordance with the contested case procedures~~  
 22 ~~of the Administrative Procedure Act.~~

23       ~~(2) Except as provided in this section or in regulations adopted by the~~  
 24 ~~Commission to implement the provisions of this section, the review of an application for~~  
 25 ~~a certificate of need for an ambulatory surgical facility OR AMBULATORY PRIMARY~~  
 26 ~~CARE FACILITY is not subject to the contested case procedures of Title 10, Subtitle 2 of~~  
 27 ~~the State Government Article.~~

28       ~~SECTION 2. AND BE IT FURTHER ENACTED, That the changes made by this~~  
 29 ~~Act to Title 19, Subtitle 1 of the Health—General Article do not apply to any person:~~

30       ~~(1) Requiring a determination from the State Health Resources Planning~~  
 31 ~~Commission of whether a certificate of need is required to build a new ambulatory~~  
 32 ~~primary care facility or to expand existing ambulatory primary care capacity in any setting~~  
 33 ~~that has requested or received the determination on or before June 30, 1996 and has~~  
 34 ~~obligated not less than \$25,000 in reliance on that determination on or before June 30,~~  
 35 ~~1996; or~~

36       ~~(2) Certified by Medicare to receive reimbursement as an ambulatory~~  
 37 ~~primary care facility on or before June 30, 1996.~~

38       ~~SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act may be~~  
 39 ~~construed to require any existing and operating ambulatory primary care facility to obtain~~  
 40 ~~a certificate of need if the facility has previously requested and received a determination~~  
 41 ~~from the State Health Resources Planning Commission that the facility is exempt from~~

1 ~~the certificate of need requirements, unless the facility seeks to expand its primary care~~  
2 ~~capacity after July 1, 1996.~~

3 (a) The Health Resources Planning Commission, in consultation with the  
4 Department of Health and Mental Hygiene and the Health Services Cost Review  
5 Commission, shall study the impact on existing community health centers and other  
6 primary care providers of any law, regulation, grant of a federal waiver, and any other  
7 governmental action that authorizes or requires the enrollment of Maryland Medical  
8 Assistance Program recipients into managed care plans or organizations.

9 (b) The study shall include an assessment of the current availability and  
10 accessibility of primary care services necessary to serve the Medicaid population and the  
11 uninsured and the ability of education programs in primary care specialties, including  
12 medical residencies, to provide clinical training sites.

13 (c) The Health Resources Planning Commission shall submit a report on the  
14 results of its investigation and study, together with any resulting policy recommendations,  
15 to the Secretary of Health and Mental Hygiene, the Governor, and, subject to § 2-1312 of  
16 the State Government Article, the General Assembly on or before November 1, 1996.

17 SECTION 4. 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 July 1, 1996. It shall remain effective for a period of 1 year and, at the end of June 30,  
19 1997, with no further action required by the General Assembly, this Act shall be  
20 abrogated and of no further force and effect.