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**By: Senators Astle and Neall**

Introduced and read first time: January 17, 1997

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Resources Planning Commission - Certificate of Need - Application and Review**  
3 **Requirements**

4 FOR the purpose of requiring a person that has been issued a certificate of need to  
5 reapply for a new certificate of need if the person does not develop, operate, or  
6 participate in the health care project for which the certificate of need was issued  
7 within a certain time period; requiring a person that intends to transfer a certificate  
8 of need to another person to apply to the Health Resources Planning Commission  
9 for approval of the transfer; specifying the criteria the Commission must consider  
10 when making a determination on whether to approve a transfer of a certificate of  
11 need; altering certain provisions of law related to the process used by the  
12 Commission to review applications for certificates of need to require that certain  
13 persons be given an opportunity to present certain oral arguments in regard to an  
14 application for a certificate of need at a public hearing under certain circumstances;  
15 and generally relating to certificate of need application and review requirements.

16 BY renumbering

17 Article - Health - General  
18 Section 19-115(m) and (n), respectively  
19 to be Section 19-115(n) and (o), respectively  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article - Health - General  
24 Section 19-115(e) and 19-118(d)  
25 Annotated Code of Maryland  
26 (1996 Replacement Volume and 1996 Supplement)

27 BY adding to

28 Article - Health - General  
29 Section 19-115(m)  
30 Annotated Code of Maryland  
31 (1996 Replacement Volume and 1996 Supplement)

1 BY repealing and reenacting, without amendments,  
2 Article - Health - General  
3 Section 19-118(a), (g), and (h)  
4 Annotated Code of Maryland  
5 (1996 Replacement Volume and 1996 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That Section(s) 19-115(m) and (n), respectively, of Article - Health -  
8 General of the Annotated Code of Maryland be renumbered to be Section(s) 19-115(n)  
9 and (o), respectively.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
11 read as follows:

12 **Article - Health - General**

13 19-115.

14 (e) (1) A person shall have a certificate of need issued by the Commission  
15 before the person develops, operates, or participates in any of the following health care  
16 projects for which a certificate of need is required under this section.

17 (2) A certificate of need issued prior to January 13, 1987 may not be  
18 rendered wholly or partially invalid solely because certain conditions have been imposed,  
19 if an appeal concerning the certificate of need, challenging the power of the Commission  
20 to impose certain conditions on a certificate of need, has not been noted by an aggrieved  
21 party before January 13, 1987.

22 (3) (I) ANY PERSON THAT IS ISSUED A CERTIFICATE OF NEED BY THE  
23 COMMISSION TO DEVELOP, OPERATE, OR PARTICIPATE IN ANY HEALTH CARE  
24 PROJECT FOR WHICH A CERTIFICATE OF NEED IS REQUIRED UNDER THIS SECTION  
25 SHALL HAVE 3 YEARS FROM THE DATE OF ITS ISSUANCE TO DEVELOP, OPERATE, OR  
26 PARTICIPATE IN THE CERTIFIED HEALTH CARE PROJECT.

27 (II) WHENEVER A PERSON DOES NOT DEVELOP, OPERATE, OR  
28 PARTICIPATE IN A HEALTH CARE PROJECT WITHIN 3 YEARS FROM THE DATE A  
29 CERTIFICATE OF NEED WAS ISSUED FOR THE PROJECT AS REQUIRED UNDER  
30 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE CERTIFICATE OF NEED ISSUED TO  
31 THE PERSON SHALL BE RENDERED INVALID AND THE PERSON MUST FILE AN  
32 APPLICATION WITH THE COMMISSION FOR ISSUANCE OF A NEW CERTIFICATE OF  
33 NEED.

34 (M) (1) ANY PERSON THAT HAS BEEN ISSUED A CERTIFICATE OF NEED TO  
35 DEVELOP, OPERATE, OR PARTICIPATE IN A HEALTH CARE PROJECT THAT INTENDS  
36 TO TRANSFER THE CERTIFICATE OF NEED TO ANOTHER PERSON SHALL:

37 (I) PROVIDE NOTICE TO THE COMMISSION OF THE PERSON'S  
38 INTENT TO TRANSFER OWNERSHIP AT LEAST 45 DAYS PRIOR TO THE TRANSFER;  
39 AND

40 (II) APPLY TO THE COMMISSION FOR APPROVAL OF THE  
41 TRANSFER.

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1 (2) THE COMMISSION SHALL CONSIDER AND MAY APPROVE A  
2 TRANSFER OF A CERTIFICATE OF NEED UNDER THIS SUBSECTION IF THE  
3 COMMISSION, IN ITS SOLE DISCRETION, FINDS THAT THE PROPOSED TRANSFER:

4 (I) IS NOT INCONSISTENT WITH THE STATE HEALTH PLAN OR THE  
5 INSTITUTION-SPECIFIC PLAN DEVELOPED BY THE COMMISSION; AND

6 (II) IS IN THE PUBLIC INTEREST.

7 (3) WITHIN 45 DAYS AFTER RECEIVING THE NOTICE UNDER  
8 PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSION SHALL NOTIFY THE PERSON  
9 OF ITS FINDINGS.

10 19-118.

11 (a) If the Commission receives an application for a certificate of need for a  
12 change in the bed capacity of a health care facility, as required under § 19-115 of this  
13 subtitle, or for a health care project that would create a new health care service or abolish  
14 an existing health care service, the Commission shall give notice of the filing by  
15 publication in the Maryland Register and give the following notice to:

16 (1) Each member of the General Assembly in whose district the action is  
17 planned;

18 (2) Each member of the governing body for the county where the action is  
19 planned;

20 (3) The county executive, mayor, or chief executive officer, if any, in whose  
21 county or city the action is planned; and

22 (4) Any health care provider, third party payor, local planning agency, or  
23 any other person the Commission knows has an interest in the application.

24 (d) The Commission alone shall have final nondelegable authority to act upon an  
25 application for a certificate of need, except as provided in this subsection.

26 (1) Seven voting members of the Commission shall be a quorum.

27 (2) After an application is filed, the staff of the Commission:

28 (i) Shall review the application for completeness within 10 working  
29 days of the filing of the application; and

30 (ii) May request further information from the applicant.

31 (3) The Commission may delegate to a reviewer the responsibility for review  
32 of an application for a certificate of need, including:

33 (i) The holding of an evidentiary hearing if the Commission, in  
34 accordance with criteria it has adopted by regulation, considers an evidentiary hearing  
35 appropriate due to the magnitude of the impact the proposed project may have on the  
36 health care delivery system; and

37 (ii) Preparation of a recommended decision for consideration by the  
38 full Commission.

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1 (4) The Commission shall designate a single Commissioner to act as a  
2 reviewer for the application and any competing applications.

3 (5) The Commission shall delegate to its staff the responsibility for an initial  
4 review of an application, including, in the event that no written comments on an  
5 application are submitted by any interested party other than the staff of the Commission,  
6 the preparation of a recommended decision for consideration by the full Commission.

7 (6) Any "interested party" may submit written comments on the application  
8 in accordance with procedural regulations adopted by the Commission.

9 (7) The Commission shall define the term "interested party" to include, at a  
10 minimum:

11 (i) The staff of the Commission;

12 (ii) Any applicant who has submitted a competing application; and

13 (iii) Any other person who can demonstrate that the person would be  
14 adversely affected by the decision of the Commission on the application.

15 (8) The reviewer shall review the application, any written comments on the  
16 application, and any other materials permitted by this section or by the Commission's  
17 regulations, and present a recommended decision on the application to the full  
18 Commission.

19 (9) (i) An applicant and any interested party may request the opportunity  
20 to present oral argument to the reviewer, in accordance with regulations adopted by the  
21 Commission, before the reviewer prepares a recommended decision on the application  
22 for consideration by the full Commission.

23 (ii) [The] WHENEVER ANY INTERESTED PARTY REQUESTS AN  
24 OPPORTUNITY TO PRESENT ORAL ARGUMENT TO THE REVIEWER, THE reviewer  
25 [may] SHALL grant[, deny, or impose limitations on an] THE interested party's request  
26 to present oral argument to the reviewer AT A PUBLIC HEARING.

27 (10) (I) Any interested party who has submitted written comments under  
28 paragraph (6) of this subsection may submit written exceptions to the proposed decision  
29 and [make] REQUEST AN OPPORTUNITY TO PRESENT oral argument to the  
30 Commission, in accordance with regulations adopted by the Commission, before the  
31 Commission takes final action on the application.

32 (II) WHENEVER ANY INTERESTED PARTY REQUESTS AN  
33 OPPORTUNITY TO PRESENT ORAL ARGUMENT TO THE COMMISSION, THE  
34 COMMISSION SHALL GRANT THE REQUEST AND ALLOW THE INTERESTED PARTY TO  
35 PRESENT ORAL ARGUMENT TO THE COMMISSION AT A PUBLIC HEARING BEFORE  
36 THE COMMISSION TAKES FINAL ACTION ON THE APPLICATION.

37 (11) The Commission shall, after determining that the recommended  
38 decision is complete, vote to approve, approve with conditions, or deny the application on  
39 the basis of the recommended decision, the record before the staff or the reviewer, and  
40 exceptions and arguments, if any, before the Commission.

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1                   (12) The decision of the Commission shall be by a majority of the quorum  
2 present and voting, except that no project shall be approved without the affirmative vote  
3 of at least two consumer members of the Commission.

4                   (g) (1) An application for a certificate of need shall be acted upon by the  
5 Commission no later than 150 days after the application was docketed.

6                   (2) If an evidentiary hearing is not requested, the Commission's decision on  
7 an application shall be made no later than 90 days after the application was docketed.

8                   (h) (1) The applicant or any aggrieved party, as defined in § 19-120(a) of this  
9 subtitle, may petition the Commission within 15 days for a reconsideration.

10                  (2) The Commission shall decide whether or not it will reconsider its  
11 decision within 30 days of receipt of the petition for reconsideration.

12                  (3) The Commission shall issue its reconsideration decision within 30 days  
13 of its decision on the petition.

14                  SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 1997.