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**By: Senators Astle and Neall**

Introduced and read first time: January 17, 1997

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 1997

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 **Nursing Facilities Implementation 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~~ build, develop, establish, or operate a nursing  
7 facility for which the certificate of need was issued within a certain time period;  
8 providing for certain exceptions; requiring a person that intends to transfer a  
9 certificate of need to another person or location to apply to the Health Resources  
10 Planning Commission for approval of the transfer; specifying the criteria the  
11 Commission must consider when making a determination on whether to approve a  
12 transfer of a certificate of need; ~~altering certain provisions of law related to the~~  
13 ~~process used by the Commission to review applications for certificates of need to~~  
14 ~~require that certain persons be given an opportunity to present certain oral~~  
15 ~~arguments in regard to an application for a certificate of need at a public hearing~~  
16 requiring the Commission to notify certain health agencies in certain counties of  
17 certain decisions to grant or modify certificates of need for nursing facilities;  
18 requiring the Commission to allow representatives of certain communities to  
19 address the Commission under certain circumstances; providing for the application  
20 of this Act; and generally relating to certificate of need ~~application and review~~  
21 implementation requirements.

22 BY renumbering

23 Article - Health - General

24 Section 19-115(m) and (n), respectively

25 to be Section 19-115(n) and (o), respectively

26 Annotated Code of Maryland

27 (1996 Replacement Volume and 1996 Supplement)

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1 BY repealing and reenacting, with amendments,  
2 Article - Health - General  
3 Section 19-115(e) and 19-118(d)  
4 Annotated Code of Maryland  
5 (1996 Replacement Volume and 1996 Supplement)

6 BY adding to  
7 Article - Health - General  
8 Section 19-115(m)  
9 Annotated Code of Maryland  
10 (1996 Replacement Volume and 1996 Supplement)

11 BY repealing and reenacting, without amendments,  
12 Article - Health - General  
13 Section 19-118(a), (g), and (h)  
14 Annotated Code of Maryland  
15 (1996 Replacement Volume and 1996 Supplement)

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

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

22 **Article - Health - General**

23 19-115.

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

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

32 (3) (I) 1. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH 2 OF THIS  
33 SUBPARAGRAPH, ANY PERSON THAT IS ISSUED A CERTIFICATE OF NEED BY THE  
34 COMMISSION TO DEVELOP, OPERATE, OR PARTICIPATE IN ANY HEALTH CARE  
35 PROJECT BUILD, DEVELOP, ESTABLISH, OR OPERATE A NURSING FACILITY FOR  
36 WHICH A CERTIFICATE OF NEED IS REQUIRED UNDER THIS SECTION SHALL HAVE 3  
37 YEARS FROM THE DATE OF ITS ISSUANCE TO DEVELOP, OPERATE, OR PARTICIPATE  
38 IN THE CERTIFIED HEALTH CARE PROJECT BUILD, DEVELOP, ESTABLISH, OR  
39 OPERATE A NURSING FACILITY.

40 2. PURSUANT TO ITS REGULATIONS, THE COMMISSION MAY:

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1 A. GRANT AN EXTENSION OF THE TIME PERIOD IN  
2 SUB-SUBPARAGRAPH 1 OF THIS SUBPARAGRAPH IF A DELAY RESULTS FROM THE  
3 ACTION OR INACTION OF A GOVERNMENTAL AUTHORITY; OR

4 B. IF AN APPEAL OF A COMMISSION DECISION IS MADE TO  
5 THE COURTS, STAY THE TIME PERIOD IN SUB-SUBPARAGRAPH 1 OF THIS  
6 SUBPARAGRAPH UNTIL THE APPEAL IS CONCLUDED.

7 (II) WHENEVER A PERSON DOES NOT ~~DEVELOP, OPERATE, OR~~  
8 ~~PARTICIPATE IN A HEALTH CARE PROJECT WITHIN 3 YEARS FROM THE DATE A~~  
9 ~~CERTIFICATE OF NEED WAS ISSUED FOR THE PROJECT AS~~ BUILD, DEVELOP,  
10 ESTABLISH, OR OPERATE A NURSING FACILITY WITHIN THE TIME PERIOD  
11 REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE CERTIFICATE OF  
12 NEED ISSUED TO THE PERSON SHALL BE RENDERED INVALID AND THE PERSON  
13 MUST FILE AN APPLICATION WITH THE COMMISSION FOR ISSUANCE OF A NEW  
14 CERTIFICATE OF NEED.

15 (M) (1) ANY PERSON THAT HAS BEEN ISSUED A CERTIFICATE OF NEED TO  
16 ~~DEVELOP, OPERATE, OR PARTICIPATE IN A HEALTH CARE PROJECT~~ BUILD,  
17 DEVELOP, ESTABLISH, OR OPERATE A NURSING FACILITY THAT INTENDS TO  
18 TRANSFER THE CERTIFICATE OF NEED TO ANOTHER PERSON OR LOCATION SHALL:

19 (I) PROVIDE NOTICE TO THE COMMISSION OF THE PERSON'S  
20 INTENT TO TRANSFER OWNERSHIP OR LOCATION AT LEAST 45 DAYS PRIOR TO THE  
21 TRANSFER; AND

22 (II) APPLY TO THE COMMISSION FOR APPROVAL OF THE  
23 TRANSFER.

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

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

29 (II) IS IN THE PUBLIC INTEREST.

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

33 (4) IF THE CERTIFICATE OF NEED IS MODIFIED TO ALLOW A TRANSFER  
34 OF OWNERSHIP OR LOCATION, THE DEADLINES ESTABLISHED BY THE COMMISSION  
35 IN ITS INITIAL APPROVAL OF THE CERTIFICATE OF NEED REMAIN IN EFFECT.

36 19-118.

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) Preparation of a recommended decision for consideration by the  
23 full Commission.

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

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

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

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

34 (i) The staff of the Commission;

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

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

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

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

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

13 (II) THE REVIEWER MAY GRANT, DENY, OR IMPOSE LIMITATIONS  
 14 ON AN INTERESTED PARTY'S REQUEST TO PRESENT ORAL ARGUMENT TO THE  
 15 REVIEWER.

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

21 ~~(II) WHENEVER ANY INTERESTED PARTY REQUESTS AN~~  
 22 ~~OPPORTUNITY TO PRESENT ORAL ARGUMENT TO THE COMMISSION, THE~~  
 23 ~~COMMISSION SHALL GRANT THE REQUEST AND ALLOW THE INTERESTED PARTY TO~~  
 24 ~~PRESENT ORAL ARGUMENT TO THE COMMISSION AT A PUBLIC HEARING BEFORE~~  
 25 ~~THE COMMISSION TAKES FINAL ACTION ON THE APPLICATION.~~

26 (II) AT LEAST 30 DAYS BEFORE THE COMMISSION REACHES A  
 27 FINAL DECISION TO GRANT A CERTIFICATE OF NEED TO BUILD, DEVELOP,  
 28 ESTABLISH, OR OPERATE A NURSING FACILITY OR TO MODIFY THE ORIGINAL  
 29 CERTIFICATE OF NEED FOR A NURSING FACILITY TO ALLOW A RELOCATION OF THE  
 30 ORIGINALLY APPROVED SITE, THE COMMISSION SHALL:

31 1. NOTIFY THE LOCAL HEALTH PLANNING AGENCY, OR IN  
 32 THE ABSENCE OF A LOCAL HEALTH PLANNING AGENCY, THE LOCAL HEALTH  
 33 DEPARTMENT IN THE COUNTY OF THE PROPOSED SITE OF THE DECISION PENDING  
 34 BEFORE THE COMMISSION;

35 2. REQUEST THAT THE LOCAL HEALTH PLANNING AGENCY  
 36 OR LOCAL HEALTH DEPARTMENT IDENTIFY ALL AFFECTED COMMUNITIES AND  
 37 NOTIFY THE RESIDENTS IN THOSE COMMUNITIES OF THE DECISION PENDING  
 38 BEFORE THE COMMISSION; AND

39 3. ALLOW REPRESENTATIVES OF THE AFFECTED  
 40 COMMUNITIES TO ADDRESS THE COMMISSION AT A PUBLIC HEARING REGARDING  
 41 THE POTENTIAL IMPACT THAT THE PROPOSED NEW FACILITY WOULD HAVE ON THE  
 42 COMMUNITIES.

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

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

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

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

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

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

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

18 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the  
19 General Assembly that the Maryland Health Resources Planning Commission consider  
20 for revocation any certificate of need for a nursing facility originally approved prior to  
21 July 1, 1993 which has not obtained all necessary construction permits and has not broken  
22 ground as of the effective date of this Act.

23 SECTION 3- 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October ~~July~~ 1, 1997.