

---

By: **Delegates Hammen and Taylor**

Introduced and read first time: February 12, 1999

Assigned to: Environmental Matters

---

A BILL ENTITLED

1 AN ACT concerning

2 **Health Planning - Certificate of Need - Home Health**

3 FOR the purpose of repealing the requirement that a certificate of need be obtained  
4 for certain home health agencies and for certain services provided by a home  
5 health agency; altering certain definitions; making certain technical and  
6 stylistic changes; and generally relating to home health.

7 BY repealing and reenacting, with amendments,  
8 Article - Health - General  
9 Section 19-115, 19-404, and 19-406  
10 Annotated Code of Maryland  
11 (1996 Replacement Volume and 1998 Supplement)

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

14 **Article - Health - General**

15 19-115.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) (I) "Health care service" means any clinically-related patient  
18 service [including].

19 (II) "HEALTH CARE SERVICE" INCLUDES a medical service [under  
20 paragraph (3) of this subsection].

21 (3) "Medical service" means:

22 (i) Any of the following categories of health care services:

23 1. Medicine, surgery, gynecology, addictions;

24 2. Obstetrics;



1 (g) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (O) OF THIS SECTION, A  
2 certificate of need is required before an existing or previously approved, but unbuilt,  
3 health care facility is moved to another site.

4 (2) This subsection does not apply if:

5 (i) The Commission adopts limits for relocations and the proposed  
6 relocation does not exceed those limits;

7 (ii) The relocation is the result of a partial or complete replacement  
8 of an existing hospital or related institution, as defined in § 19-301 of this title, and  
9 the relocation is to another part of the site or immediately adjacent to the site of the  
10 existing hospital or related institution; or

11 (iii) The relocation involves moving a portion of a complement of  
12 comprehensive care beds previously approved by the Commission after January 1,  
13 1995 for use in a proposed new related institution, as defined in § 19-301 of this title,  
14 but unbuilt on October 1, 1998 if:

15 1. The comprehensive care beds that were originally  
16 approved by the Commission in a prior certificate of need review were approved for  
17 use in a proposed new related institution to be located in a municipal corporation  
18 within Carroll County in which a related institution is not located;

19 2. The comprehensive care beds being relocated will be used  
20 to establish an additional new related institution that is located in another municipal  
21 corporation within Carroll County in which a related institution is not located;

22 3. The comprehensive care beds not being relocated are  
23 intended to be used to establish a related institution on the original site; and

24 4. Both the previously approved comprehensive care beds for  
25 use on the original site and the relocated comprehensive care beds for use on the new  
26 site will be used as components of single buildings on each site that also offer  
27 independent or assisted living residential units.

28 (3) Notwithstanding any other provision of this subtitle, a certificate of  
29 need is not required for a relocation described under paragraph (2)(iii) of this  
30 subsection.

31 (h) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (O) OF THIS SECTION, A  
32 certificate of need is required before the bed capacity of a health care facility is  
33 changed.

34 (2) This subsection does not apply to any increase or decrease in bed  
35 capacity if:

36 (i) During a 2-year period the increase or decrease would not  
37 exceed the lesser of 10 percent of the total bed capacity or 10 beds;

- 1 (ii) 1. The increase or decrease would change the bed capacity  
2 for an existing medical service; and
- 3 2. A. The change would not increase total bed capacity;  
4 B. The change is maintained for at least a 1-year period; and  
5 C. At least 45 days prior to the change the hospital provides  
6 written notice to the Commission describing the change and providing an updated  
7 inventory of the hospital's licensed bed complement; or
- 8 (iii) 1. At least 45 days before increasing or decreasing bed  
9 capacity, written notice of intent to change bed capacity is filed with the Commission;  
10 and
- 11 2. The Commission in its sole discretion finds that the  
12 proposed change:
- 13 A. Is pursuant to the consolidation or merger of 2 or more  
14 health care facilities, or conversion of a health care facility or part of a facility to a  
15 nonhealth-related use;
- 16 B. Is not inconsistent with the State health plan or the  
17 institution-specific plan developed by the Commission;
- 18 C. Will result in the delivery of more efficient and effective  
19 health care services; and
- 20 D. Is in the public interest.
- 21 (3) Within 45 days of receiving notice, the Commission shall notify the  
22 health care facility of its finding.
- 23 (i) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (O) OF THIS SECTION, A  
24 certificate of need is required before the type or scope of any health care service is  
25 changed if the health care service is offered:
- 26 (i) By a health care facility;  
27 (ii) In space that is leased from a health care facility; or  
28 (iii) In space that is on land leased from a health care facility.
- 29 (2) This subsection does not apply if:
- 30 (i) The Commission adopts limits for changes in health care  
31 services and the proposed change would not exceed those limits;
- 32 (ii) The proposed change and the annual operating revenue that  
33 would result from the addition is entirely associated with the use of medical  
34 equipment;

1 (iii) The proposed change would establish, increase, or decrease a  
2 health care service and the change would not result in the:

3 1. Establishment of a new medical service or elimination of  
4 an existing medical service;

5 2. Establishment of an open heart surgery, organ transplant  
6 surgery, or burn or neonatal intensive health care service;

7 3. Establishment of a [home health program, ]hospice  
8 [program,] PROGRAM or freestanding ambulatory surgical center or facility; or

9 4. Expansion of a comprehensive care, extended care,  
10 intermediate care, residential treatment, psychiatry, or rehabilitation medical  
11 service, except for an expansion related to an increase in total bed capacity in  
12 accordance with subsection (h)(2)(i) of this section; or

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

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

18 A. Is pursuant to the consolidation or merger of 2 or more  
19 health care facilities, or conversion of a health care facility or part of a facility to a  
20 nonhealth-related use;

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

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

25 D. Is in the public interest; and

26 3. Within 45 days of receiving notice under item 1 of this  
27 subparagraph, the Commission shall notify the health care facility of its finding.

28 [(3) Notwithstanding the provisions of paragraph (2) of this subsection, a  
29 certificate of need is required:

30 (i) Before an additional home health agency, branch office, or home  
31 health care service is established by an existing health care agency or facility;

32 (ii) Before an existing home health agency or health care facility  
33 establishes a home health agency or home health care service at a location in the  
34 service area not included under a previous certificate of need or license;

35 (iii) Before a transfer of ownership of any branch office of a home  
36 health agency or home health care service of an existing health care facility that

1 separates the ownership of the branch office from the home health agency or home  
2 health care service of an existing health care facility which established the branch  
3 office; or

4 (iv) Before the expansion of a home health service or program by a  
5 health care facility that:

6 1. Established the home health service or program without a  
7 certificate of need between January 1, 1984 and July 1, 1984; and

8 2. During a 1-year period, the annual operating revenue of  
9 the home health service or program would be greater than \$333,000 after an annual  
10 adjustment for inflation, based on an appropriate index specified by the  
11 Commission.]

12 (j) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (O) OF THIS SECTION, A  
13 certificate of need is required before any of the following capital expenditures are  
14 made by or on behalf of a health care facility:

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

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

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

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

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

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

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



- 1                                   A.       Is not inconsistent with the State health plan or the  
2 institution-specific plan developed by the Commission as appropriate;
- 3                                   B.       Will result in the delivery of more efficient and effective  
4 health care services; and
- 5                                   C.       Is in the public interest; and
- 6                                   3.       Within 45 days of receiving notice, the Commission shall  
7 notify the health care facility of its finding;
- 8                                   (vi)     A capital expenditure by a nursing home for equipment,  
9 construction, or renovation that:
- 10                                  1.       Is not directly related to patient care; and
- 11                                  2.       Is not directly related to any change in patient charges or  
12 other rates;
- 13                                  (vii)    A capital expenditure by a hospital, as defined in § 19-301 of  
14 this title, for equipment, construction, or renovation that:
- 15                                  1.       Is not directly related to patient care; and
- 16                                  2.       Does not increase patient charges or hospital rates;
- 17                                  (viii)   A capital expenditure by a hospital as defined in § 19-301 of  
18 this title, for a project in excess of \$1,250,000 for construction or renovation that:
- 19                                  1.       May be related to patient care;
- 20                                  2.       Does not require, over the entire period or schedule of debt  
21 service associated with the project, a total cumulative increase in patient charges or  
22 hospital rates of more than \$1,500,000 for the capital costs associated with the project  
23 as determined by the Commission, after consultation with the Health Services Cost  
24 Review Commission;
- 25                                  3.       At least 45 days before the proposed expenditure is made,  
26 the hospital notifies the Commission and within 45 days of receipt of the relevant  
27 financial information, the Commission makes the financial determination required  
28 under item 2 of this subparagraph; and
- 29                                  4.       The relevant financial information to be submitted by the  
30 hospital is defined in regulations promulgated by the Commission, after consultation  
31 with the Health Services Cost Review Commission; or
- 32                                  (ix)     A plant donated to a hospital as defined in § 19-301 of this title,  
33 which does not require a cumulative increase in patient charges or hospital rates of  
34 more than \$1,500,000 for capital costs associated with the donated plant as  
35 determined by the Commission, after consultation with the Health Services Cost  
36 Review Commission that:





1 (1) Operates more than one health care facility; or

2 (2) Operates one or more health care facilities and holds an outstanding  
3 certificate of need to construct a health care facility.

4 (n) (1) Notwithstanding any other provision of this section, the Commission  
5 shall consider the special needs and circumstances of a county where a medical  
6 service, as defined in this section, does not exist; and

7 (2) The Commission shall consider and may approve under this  
8 subsection a certificate of need application to establish, build, operate, or participate  
9 in a health care project to provide a new medical service in a county if the  
10 Commission, in its sole discretion, finds that:

11 (i) The proposed medical service does not exist in the county that  
12 the project would be located;

13 (ii) The proposed medical service is necessary to meet the health  
14 care needs of the residents of that county;

15 (iii) The proposed medical service would have a positive impact on  
16 the existing health care system;

17 (iv) The proposed medical service would result in the delivery of  
18 more efficient and effective health care services to the residents of that county; and

19 (v) The application meets any other standards or regulations  
20 established by the Commission to approve applications under this subsection.

21 (O) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A  
22 CERTIFICATE OF NEED IS NOT REQUIRED FOR DEVELOPING, BUILDING,  
23 ESTABLISHING, OR OPERATING A HOME HEALTH AGENCY AND FOR ANY HEALTH  
24 CARE SERVICE THAT A HOME HEALTH AGENCY PROVIDES.

25 19-404.

26 (a) The Department shall adopt rules and regulations that set standards for  
27 the care, treatment, health, safety, welfare, and comfort of patients of home health  
28 agencies.

29 (b) The rules and regulations shall provide for the licensing of home health  
30 agencies and annual license renewal, and shall establish standards that require as a  
31 minimum, that all home health agencies:

32 (1) Within 10 days of acceptance of a patient for skilled care, make and  
33 record all reasonable efforts to contact a physician to obtain the signed order required  
34 under paragraph (2) OF THIS SUBSECTION;

35 (2) That accept patients for skilled care do so only on the signed order of  
36 a physician obtained within 28 days after acceptance;

- 1 (3) Adopt procedures for the administration of drugs and biologicals;
- 2 (4) Maintain clinical records on all patients accepted for skilled care;
- 3 (5) Establish patient care policies and personnel policies;
- 4 (6) Have services available at least 8 hours a day, 5 days a week, and  
5 available on an emergency basis 24 hours a day, 7 days a week;
- 6 (7) Make service available to an individual in need within 24 hours of a  
7 referral when stipulated by a physician's order;
- 8 (8) Have a designated supervisor of patient care who is a full-time  
9 employee of the agency and is available at all times during operating hours and  
10 additionally as needed; and
- 11 (9) Have as the administrator of the agency a person who has at least 1  
12 year of supervisory experience in hospital management, home health management, or  
13 public health program management and who is:
  - 14 (i) A licensed physician;
  - 15 (ii) A registered nurse; or
  - 16 (iii) A college graduate with a bachelor's degree in a health-related  
17 field.
- 18 (c) The rules and regulations may include provisions that:
  - 19 (1) Deal with the establishment of home health agencies;
  - 20 (2) Require each home health agency to have its policies established by a  
21 professional group that includes at least:
    - 22 (i) 1 physician;
    - 23 (ii) 1 registered nurse;
    - 24 (iii) 1 representative of another offered service; and
    - 25 (iv) 1 public member;
  - 26 (3) Govern the services provided by the home health agencies;
  - 27 (4) Require keeping clinical records of each patient, including the plan of  
28 treatment to be provided;
  - 29 (5) Govern supervision of the services, as appropriate, by:
    - 30 (i) A physician;

- 1 (ii) A registered nurse; or
- 2 (iii) Another health professional who is qualified sufficiently by  
3 advanced training to supervise the same kind of services in a hospital; and
- 4 (6) Require submission of an annual report which includes service  
5 utilization statistics.
- 6 (d) (1) A home health agency accredited by an organization approved by the  
7 Secretary shall be deemed to meet State licensing regulations.
- 8 (2) (i) The home health agency shall submit the report of the  
9 accreditation organization to the Secretary within 30 days of its receipt.
- 10 (ii) All reports submitted under this paragraph shall be available  
11 for public inspection.
- 12 (3) The Secretary may:
- 13 (i) Inspect the home health agency for the purpose of a complaint  
14 investigation;
- 15 (ii) Inspect the home health agency to follow up on a serious  
16 problem identified in an accreditation organization's report; and
- 17 (iii) Annually, conduct a survey of up to 5 percent of all home health  
18 agencies in the State to validate the findings of an accreditation organization's report.
- 19 [(e) The provisions of this section do not waive the requirement for a home  
20 health agency to obtain a certificate of need.]
- 21 19-406.
- 22 To qualify for a license, an applicant shall[:
- 23 (1) Show] SHOW that the home health agency will provide:
- 24 [(i)] (1) Appropriate home health care to patients who may be  
25 cared for at a prescribed level of care, in their residence instead of in a hospital; and
- 26 [(ii)] (2) Skilled nursing, home health aid, and at least one other  
27 home health care service that is approved by the Secretary[: and
- 28 (2) Meet the requirements of Subtitle 1 of this title for certification of  
29 need].

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 1999.