
By: **Delegates Hammen and Taylor**
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CHAPTER _____

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].

- 1 (3) "Medical service" means:
- 2 (i) Any of the following categories of health care services:
- 3 1. Medicine, surgery, gynecology, addictions;
- 4 2. Obstetrics;
- 5 3. Pediatrics;
- 6 4. Psychiatry;
- 7 5. Rehabilitation;
- 8 6. Chronic care;
- 9 7. Comprehensive care;
- 10 8. Extended care;
- 11 9. Intermediate care; or
- 12 10. Residential treatment; or

13 (ii) Any subcategory of the rehabilitation, psychiatry,
14 comprehensive care, or intermediate care categories of health care services for which
15 need is projected in the State health plan.

16 (b) The Commission may set an application fee for a certificate of need for
17 HEALTH CARE facilities not assessed a user fee under § 19-122 of this subtitle.

18 (c) The Commission shall adopt rules and regulations for applying for and
19 issuing certificates of need.

20 (d) [(1)] The Commission may adopt, after October 1, 1983, new thresholds or
21 methods for determining the circumstances or minimum cost requirements under
22 which a certificate of need application must be filed. [The Commission shall study
23 alternative approaches and recommend alternatives that will streamline the current
24 process, and provide incentives for management flexibility through the reduction of
25 instances in which applicants must file for a certificate of need.

26 (2) The Commission shall conduct this study and report to the General
27 Assembly by October 1, 1985.]

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

31 (2) A certificate of need issued prior to January 13, 1987 may not be
32 rendered wholly or partially invalid solely because certain conditions have been
33 imposed, if an appeal concerning the certificate of need, challenging the power of the

1 Commission to impose certain conditions on a certificate of need, has not been noted
2 by an aggrieved party before January 13, 1987.

3 (f) Except as provided in [subsection] SUBSECTIONS (g)(2)(iii) AND (O) of this
4 section, a certificate of need is required before a new health care facility is built,
5 developed, or established.

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

9 (2) This subsection does not apply if:

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

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

16 (iii) The relocation involves moving a portion of a complement of
17 comprehensive care beds previously approved by the Commission after January 1,
18 1995 for use in a proposed new related institution, as defined in § 19-301 of this title,
19 but unbuilt on October 1, 1998 if:

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

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

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

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

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

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

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

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

5 (ii) 1. The increase or decrease would change the bed capacity
6 for an existing medical service; and

7 2. A. The change would not increase total bed capacity;

8 B. The change is maintained for at least a 1-year period; and

9 C. At least 45 days prior to the change the hospital provides
10 written notice to the Commission describing the change and providing an updated
11 inventory of the hospital's licensed bed complement; or

12 (iii) 1. At least 45 days before increasing or decreasing bed
13 capacity, written notice of intent to change bed capacity is filed with the Commission;
14 and

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

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

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

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

24 D. Is in the public interest.

25 (3) Within 45 days of receiving notice, the Commission shall notify the
26 health care facility of its finding.

27 (i) (1) [A] EXCEPT AS PROVIDED IN SUBSECTION (O) OF THIS SECTION, A
28 certificate of need is required before the type or scope of any health care service is
29 changed if the health care service is offered:

30 (i) By a health care facility;

31 (ii) In space that is leased from a health care facility; or

32 (iii) In space that is on land leased from a health care facility.

33 (2) This subsection does not apply if:

1 (i) The Commission adopts limits for changes in health care
2 services and the proposed change would not exceed those limits;

3 (ii) The proposed change and the annual operating revenue that
4 would result from the addition is entirely associated with the use of medical
5 equipment;

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

8 1. Establishment of a new medical service or elimination of
9 an existing medical service;

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

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

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

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

21 2. The Commission in its sole discretion finds that the
22 proposed change:

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

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

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

30 D. Is in the public interest; and

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

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

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

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

4 (iii) Before a transfer of ownership of any branch office of a home
5 health agency or home health care service of an existing health care facility that
6 separates the ownership of the branch office from the home health agency or home
7 health care service of an existing health care facility which established the branch
8 office; or

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

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

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

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

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

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

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

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

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

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

37 1. The expenditure is made as part of an acquisition,
38 improvement, or expansion, and, after adjustment for inflation as provided in the

1 rules and regulations of the Commission, the total expenditure, including the cost of
2 each study, survey, design, plan, working drawing, specification, and other essential
3 activity, is more than \$1,250,000;

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

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

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

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

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

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

23 (5) This subsection does not apply to:

24 (i) Site acquisition;

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

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

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

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

- 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
4 sole 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
18 this 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
22 this 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
27 as determined by the Commission, after consultation with the Health Services Cost
28 Review 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
32 under 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
35 with the Health Services Cost Review Commission; or

1 (ix) A plant donated to a hospital as defined in § 19-301 of this title,
2 which does not require a cumulative increase in patient charges or hospital rates of
3 more than \$1,500,000 for capital costs associated with the donated plant as
4 determined by the Commission, after consultation with the Health Services Cost
5 Review Commission that:

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

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

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

16 (7) Subject to the notice requirements of paragraph (5)(ii) of this
17 subsection, a hospital may acquire a freestanding ambulatory surgical facility or
18 office of one or more health care practitioners or a group practice with one or more
19 operating rooms used primarily for the purpose of providing ambulatory surgical
20 services if the facility, office, or group practice:

21 (i) Has obtained a certificate of need;

22 (ii) Has obtained an exemption from certificate of need
23 requirements; or

24 (iii) Did not require a certificate of need in order to provide
25 ambulatory surgical services after June 1, 1995.

26 (8) Nothing in this subsection may be construed to permit a hospital to
27 build or expand its ambulatory surgical capacity in any setting owned or controlled by
28 the hospital without obtaining a certificate of need from the Commission if the
29 building or expansion would increase the surgical capacity of the State's health care
30 system.

31 (l) A certificate of need is not required to close any hospital or part of a
32 hospital as defined in § 19-301 of this title if:

33 (1) At least 45 days before closing, written notice of intent to close is filed
34 with the Commission;

35 (2) The Commission in its sole discretion finds that the proposed closing
36 is not inconsistent with the State health plan or the institution-specific plan
37 developed by the Commission and is in the public interest; and

1 (3) Within 45 days of receiving notice the Commission notifies the health
2 care facility of its findings.

3 (m) In this section the terms "consolidation" and "merger" include increases
4 and decreases in bed capacity or services among the components of an organization
5 which:

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

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

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

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

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

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

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

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

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

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

30 19-404.

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

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

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

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

6 (3) Adopt procedures for the administration of drugs and biologicals;

7 (4) Maintain clinical records on all patients accepted for skilled care;

8 (5) Establish patient care policies and personnel policies;

9 (6) Have services available at least 8 hours a day, 5 days a week, and
10 available on an emergency basis 24 hours a day, 7 days a week;

11 (7) Make service available to an individual in need within 24 hours of a
12 referral when stipulated by a physician's order;

13 (8) Have a designated supervisor of patient care who is a full-time
14 employee of the agency and is available at all times during operating hours and
15 additionally as needed; and

16 (9) Have as the administrator of the agency a person who has at least 1
17 year of supervisory experience in hospital management, home health management, or
18 public health program management and who is:

19 (i) A licensed physician;

20 (ii) A registered nurse; or

21 (iii) A college graduate with a bachelor's degree in a health-related
22 field.

23 (c) The rules and regulations may include provisions that:

24 (1) Deal with the establishment of home health agencies;

25 (2) Require each home health agency to have its policies established by a
26 professional group that includes at least:

27 (i) 1 physician;

28 (ii) 1 registered nurse;

29 (iii) 1 representative of another offered service; and

30 (iv) 1 public member;

31 (3) Govern the services provided by the home health agencies;

1 (4) Require keeping clinical records of each patient, including the plan of
2 treatment to be provided;

3 (5) Govern supervision of the services, as appropriate, by:

4 (i) A physician;

5 (ii) A registered nurse; or

6 (iii) Another health professional who is qualified sufficiently by
7 advanced training to supervise the same kind of services in a hospital; and

8 (6) Require submission of an annual report which includes service
9 utilization statistics.

10 (d) (1) A home health agency accredited by an organization approved by the
11 Secretary shall be deemed to meet State licensing regulations.

12 (2) (i) The home health agency shall submit the report of the
13 accreditation organization to the Secretary within 30 days of its receipt.

14 (ii) All reports submitted under this paragraph shall be available
15 for public inspection.

16 (3) The Secretary may:

17 (i) Inspect the home health agency for the purpose of a complaint
18 investigation;

19 (ii) Inspect the home health agency to follow up on a serious
20 problem identified in an accreditation organization's report; and

21 (iii) Annually, conduct a survey of up to 5 percent of all home health
22 agencies in the State to validate the findings of an accreditation organization's report.

23 [(e) The provisions of this section do not waive the requirement for a home
24 health agency to obtain a certificate of need.]

25 19-406.

26 To qualify for a license, an applicant shall[:

27 (1) Show] SHOW that the home health agency will provide:

28 [(i) (1) Appropriate home health care to patients who may be
29 cared for at a prescribed level of care, in their residence instead of in a hospital; and

30 [(ii) (2) Skilled nursing, home health aid, and at least one other
31 home health care service that is approved by the Secretary]; and

1 (2) Meet the requirements of Subtitle 1 of this title for certification of
2 need].

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