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By: **Senator Dorman**  
Introduced and read first time: February 22, 1999  
Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Resources Planning Commission - Certificate of Need - Obstetric**  
3 **Medical Services - Prince George's County**

4 FOR the purpose of excluding new obstetric medical services established in Prince  
5 George's County on or after a certain date from certain requirements concerning  
6 certificates of need issued by the Health Resources Planning Commission; and  
7 generally relating to certain obstetric services in Prince George's County and  
8 certain certificate of need requirements.

9 BY repealing and reenacting, with amendments,  
10 Article - Health - General  
11 Section 19-115  
12 Annotated Code of Maryland  
13 (1996 Replacement Volume and 1998 Supplement)

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

16 **Article - Health - General**

17 19-115.

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

19 (2) "Health care service" means any clinically-related patient service  
20 including a medical service under 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, EXCEPT FOR A NEW OBSTETRIC MEDICAL  
25 SERVICE ESTABLISHED IN PRINCE GEORGE'S COUNTY ON OR AFTER OCTOBER 1, 1999;

- 1                                   3.     Pediatrics;
- 2                                   4.     Psychiatry;
- 3                                   5.     Rehabilitation;
- 4                                   6.     Chronic care;
- 5                                   7.     Comprehensive care;
- 6                                   8.     Extended care;
- 7                                   9.     Intermediate care; or
- 8                                   10.    Residential treatment; or

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

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

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

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

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

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  
26 care 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  
29 imposed, if an appeal concerning the certificate of need, challenging the power of the  
30 Commission to impose certain conditions on a certificate of need, has not been noted  
31 by an aggrieved party before January 13, 1987.

32     (f)     Except as provided in subsection (g)(2)(iii) of this section, a certificate of  
33 need is required before a new health care facility is built, developed, or established.

34     (g)     (1)     A certificate of need is required before an existing or previously  
35 approved, but unbuilt, health care facility is moved to another site.

1 (2) This subsection does not apply if:

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

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

8 (iii) The relocation involves moving a portion of a complement of  
9 comprehensive care beds previously approved by the Commission after January 1,  
10 1995 for use in a proposed new related institution, as defined in § 19-301 of this title,  
11 but unbuilt on October 1, 1998 if:

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

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

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

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

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

28 (h) (1) A certificate of need is required before the bed capacity of a health  
29 care facility is changed.

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

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

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

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

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

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

3                                    3.            Establishment of a home health program, hospice  
4 program, or freestanding ambulatory surgical center or facility; or

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

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

12                                    2.            The Commission in its sole discretion finds that the  
13 proposed change:

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

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

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

21                                    D.           Is in the public interest; and

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

24                                    (3)        Notwithstanding the provisions of paragraph (2) of this subsection, a  
25 certificate of need is required:

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

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

31                                    (iii)      Before a transfer of ownership of any branch office of a home  
32 health agency or home health care service of an existing health care facility that  
33 separates the ownership of the branch office from the home health agency or home  
34 health care service of an existing health care facility which established the branch  
35 office; or

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

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

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

8 (j) (1) A certificate of need is required before any of the following capital  
9 expenditures are made by or on behalf of a health care facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

15                            (5)       This subsection does not apply to:

16                            (i)       Site acquisition;

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

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

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

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

29                                       1.       At least 45 days before an expenditure is made, written  
30 notice of intent is filed with the Commission;

31                                       2.       Within 45 days of receiving notice, the Commission in its  
32 sole discretion finds that the proposed consolidation, merger, or conversion:

33   A.       Is not inconsistent with the State health plan or the  
34 institution-specific plan developed by the Commission as appropriate;

35   B.       Will result in the delivery of more efficient and effective  
36 health care services; and

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



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

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

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

12                     (i)        Has obtained a certificate of need;

13                     (ii)        Has obtained an exemption from certificate of need  
14 requirements; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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