
By: **Delegate Pendergrass**

Introduced and read first time: February 9, 2006

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Care Commission - Certificate of Need - Health Care**
3 **Facilities**

4 FOR the purpose of altering the level of capital expenditures made by or on behalf of
5 a hospital or a related institution that require a certificate of need; providing
6 that a certificate of need is not required for a certain capital expenditure by a
7 hospital or a certain plant donated to a hospital, if the Maryland Health Care
8 Commission has not made a certain financial determination within a certain
9 time period; repealing a requirement that, to be exempted from certificate of
10 need to close a hospital or part of a hospital, a hospital hold a certain public
11 hearing; and generally relating to certificate of need requirements for health
12 care facilities.

13 BY repealing and reenacting, without amendments,
14 Article - Health - General
15 Section 19-120(a) and (c)
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2005 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Health - General
20 Section 19-120(k) and (l)
21 Annotated Code of Maryland
22 (2005 Replacement Volume and 2005 Supplement)

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

25 **Article - Health - General**

26 19-120.

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

28 (2) "Limited service hospital" means a health care facility that:

- 1 (i) Is licensed as a hospital on or after January 1, 1999;
- 2 (ii) Changes the type or scope of health care services offered by
3 eliminating the facility's capability to admit or retain patients for overnight
4 hospitalization;
- 5 (iii) Retains an emergency or urgent care center; and
- 6 (iv) Complies with the regulations adopted by the Secretary under §
7 19-307.1 of this title.
- 8 (3) (i) "Health care service" means any clinically related patient
9 service.
- 10 (ii) "Health care service" includes a medical service.
- 11 (4) "Medical service" means:
- 12 (i) Any of the following categories of health care services:
- 13 1. Medicine, surgery, gynecology, addictions;
- 14 2. Obstetrics;
- 15 3. Pediatrics;
- 16 4. Psychiatry;
- 17 5. Rehabilitation;
- 18 6. Chronic care;
- 19 7. Comprehensive care;
- 20 8. Extended care;
- 21 9. Intermediate care; or
- 22 10. Residential treatment; or
- 23 (ii) Any subcategory of the rehabilitation, psychiatry,
24 comprehensive care, or intermediate care categories of health care services for which
25 need is projected in the State health plan.
- 26 (c) The Commission shall adopt rules and regulations for applying for and
27 issuing certificates of need.
- 28 (k) (1) A certificate of need is required before any of the following capital
29 expenditures are made by or on behalf of a [health care facility] HOSPITAL:

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

3 1. The expenditure is made as part of an acquisition,
4 improvement, or expansion, and, after adjustment for inflation as provided in the
5 regulations of the Commission, the total expenditure, including the cost of each study,
6 survey, design, plan, working drawing, specification, and other essential activity, is
7 more than [\$1,250,000] \$10,000,000;

8 2. The expenditure is made as part of a replacement of any
9 plant and equipment of the [health care facility] HOSPITAL and is more than
10 [\$1,250,000]\$10,000,000 after adjustment for inflation as provided in the regulations
11 of the Commission;

12 3. The expenditure results in a substantial change in the bed
13 capacity of the [health care facility] HOSPITAL; or

14 4. The expenditure results in the establishment of a new
15 medical service in a [health care facility] HOSPITAL that would require a certificate
16 of need under subsection (i) of this section; or

17 (ii) Any expenditure that is made to lease or, by comparable
18 arrangement, obtain any plant or equipment for the [health care facility] HOSPITAL,
19 if:

20 1. The expenditure is made as part of an acquisition,
21 improvement, or expansion, and, after adjustment for inflation as provided in the
22 rules and regulations of the Commission, the total expenditure, including the cost of
23 each study, survey, design, plan, working drawing, specification, and other essential
24 activity, is more than [\$1,250,000] \$10,000,000;

25 2. The expenditure is made as part of a replacement of any
26 plant and equipment and is more than [\$1,250,000] \$10,000,000 after adjustment for
27 inflation as provided in the regulations of the Commission;

28 3. The expenditure results in a substantial change in the bed
29 capacity of the [health care facility] HOSPITAL; or

30 4. The expenditure results in the establishment of a new
31 medical service in a [health care facility] HOSPITAL that would require a certificate
32 of need under subsection (i) of this section.

33 (2) A CERTIFICATE OF NEED IS REQUIRED BEFORE ANY OF THE
34 FOLLOWING CAPITAL EXPENDITURES ARE MADE BY OR ON BEHALF OF A RELATED
35 INSTITUTION:

36 (I) ANY EXPENDITURE THAT, UNDER GENERALLY ACCEPTED
37 ACCOUNTING PRINCIPLES, IS NOT PROPERLY CHARGEABLE AS AN OPERATING OR
38 MAINTENANCE EXPENSE, IF:

1 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION,
2 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS
3 PROVIDED IN THE REGULATIONS OF THE COMMISSION, THE TOTAL EXPENDITURE,
4 INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, WORKING DRAWING,
5 SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE THAN \$5,000,000;

6 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT
7 OF ANY PLANT AND EQUIPMENT OF THE RELATED INSTITUTION AND IS MORE THAN
8 \$5,000,000 AFTER ADJUSTMENT FOR INFLATION AS PROVIDED IN THE REGULATIONS
9 OF THE COMMISSION;

10 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE
11 IN THE BED CAPACITY OF THE RELATED INSTITUTION; OR

12 4. THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF
13 A NEW MEDICAL SERVICE IN A RELATED INSTITUTION THAT WOULD REQUIRE A
14 CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION; OR

15 (II) ANY EXPENDITURE THAT IS MADE TO LEASE OR, BY
16 COMPARABLE ARRANGEMENT, OBTAIN ANY PLANT OR EQUIPMENT FOR THE
17 RELATED INSTITUTION, IF:

18 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION,
19 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS
20 PROVIDED IN THE RULES AND REGULATIONS OF THE COMMISSION, THE TOTAL
21 EXPENDITURE, INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN,
22 WORKING DRAWING, SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE
23 THAN \$5,000,000;

24 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT
25 OF ANY PLANT AND EQUIPMENT AND IS MORE THAN \$5,000,000 AFTER ADJUSTMENT
26 FOR INFLATION AS PROVIDED IN THE REGULATIONS OF THE COMMISSION;

27 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE
28 IN THE BED CAPACITY OF THE RELATED INSTITUTION; OR

29 4. THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF
30 A NEW MEDICAL SERVICE IN A RELATED INSTITUTION THAT WOULD REQUIRE A
31 CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION.

32 (3) A CERTIFICATE OF NEED IS REQUIRED BEFORE ANY OF THE
33 FOLLOWING CAPITAL EXPENDITURES ARE MADE BY OR ON BEHALF OF A HEALTH
34 CARE FACILITY OTHER THAN A HOSPITAL OR RELATED INSTITUTION:

35 (I) ANY EXPENDITURE THAT, UNDER GENERALLY ACCEPTED
36 ACCOUNTING PRINCIPLES, IS NOT PROPERLY CHARGEABLE AS AN OPERATING OR
37 MAINTENANCE EXPENSE, IF:

38 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION,
39 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS

1 PROVIDED IN THE REGULATIONS OF THE COMMISSION, THE TOTAL EXPENDITURE,
2 INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, WORKING DRAWING,
3 SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE THAN \$1,250,000;

4 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT
5 OF ANY PLANT AND EQUIPMENT OF THE HEALTH CARE FACILITY AND IS MORE THAN
6 \$1,250,000 AFTER ADJUSTMENT FOR INFLATION AS PROVIDED IN THE REGULATIONS
7 OF THE COMMISSION;

8 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE
9 IN THE BED CAPACITY OF THE HEALTH CARE FACILITY; OR

10 4. THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF
11 A NEW MEDICAL SERVICE IN A HEALTH CARE FACILITY THAT WOULD REQUIRE A
12 CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION; OR

13 (II) ANY EXPENDITURE THAT IS MADE TO LEASE OR, BY
14 COMPARABLE ARRANGEMENT, OBTAIN ANY PLANT OR EQUIPMENT FOR THE HEALTH
15 CARE FACILITY, IF:

16 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION,
17 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS
18 PROVIDED IN THE RULES AND REGULATIONS OF THE COMMISSION, THE TOTAL
19 EXPENDITURE, INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN,
20 WORKING DRAWING, SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE
21 THAN \$1,250,000;

22 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT
23 OF ANY PLANT AND EQUIPMENT AND IS MORE THAN \$1,250,000 AFTER ADJUSTMENT
24 FOR INFLATION AS PROVIDED IN THE REGULATIONS OF THE COMMISSION;

25 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE
26 IN THE BED CAPACITY OF THE HEALTH CARE FACILITY; OR

27 4. THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF
28 A NEW MEDICAL SERVICE IN A HEALTH CARE FACILITY THAT WOULD REQUIRE A
29 CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION.

30 [(2)] (4) A certificate of need is required before any equipment or plant is
31 donated to a health care facility, if a certificate of need would be required under
32 [paragraph (1)] PARAGRAPH (1), (2), OR (3) of this subsection for an expenditure by the
33 health care facility to acquire the equipment or plant directly.

34 [(3)] (5) A certificate of need is required before any equipment or plant is
35 transferred to a health care facility at less than fair market value if a certificate of
36 need would be required under [paragraph (1)] PARAGRAPH (1), (2), OR (3) of this
37 subsection for the transfer at fair market value.

38 [(4)] (6) A certificate of need is required before a person acquires a
39 health care facility if a certificate of need would be required under [paragraph (1)]

1 PARAGRAPH (1), (2), OR (3) of this subsection for the acquisition by or on behalf of the
2 health care facility.

3 [(5)] (7) This subsection does not apply to:

4 (i) Site acquisition;

5 (ii) Acquisition of a health care facility if, at least 30 days before
6 making the contractual arrangement to acquire the facility, written notice of the
7 intent to make the arrangement is filed with the Commission and the Commission
8 does not find, within 30 days after the Commission receives notice, that the health
9 services or bed capacity of the facility will be changed, provided that, for a merger
10 with or acquisition of an existing general hospice, the purchaser of the general
11 hospice may only acquire the authority to provide home-based hospice services in
12 jurisdictions in which the seller of the general hospice is licensed to provide
13 home-based hospice services;

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

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

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

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

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

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

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

29 C. Is in the public interest; and

30 3. Within 45 days of receiving notice, the Commission shall
31 notify the health care facility of its finding;

32 (vi) A capital expenditure by a nursing home for equipment,
33 construction, or renovation that:

34 1. Is not directly related to patient care; and

35 2. Is not directly related to any change in patient charges or
36 other rates;

1 (vii) A capital expenditure by a hospital, as defined in § 19-301 of
2 this title, for equipment, construction, or renovation that:

- 3 1. Is not directly related to patient care; and
4 2. Does not increase patient charges or hospital rates;

5 (viii) A capital expenditure by a hospital as defined in § 19-301 of
6 this title, for a project in excess of [\$1,250,000] \$10,000,000 for construction or
7 renovation that:

- 8 1. May be related to patient care;
9 2. Does not require, over the entire period or schedule of debt
10 service associated with the project, a total cumulative increase in patient charges or
11 hospital rates of more than \$1,500,000 for the capital costs associated with the project
12 as determined by the Commission, after consultation with the Health Services Cost
13 Review Commission;
14 3. At least 45 days before the proposed expenditure is made,
15 the hospital notifies the Commission [and within]; AND

16 A. WITHIN 45 days of receipt of the relevant financial
17 information, the Commission makes the financial determination required under item
18 2 of this subparagraph; OR

19 B. THE COMMISSION HAS NOT MADE THE FINANCIAL
20 DETERMINATION REQUIRED UNDER ITEM 2 OF THIS SUBPARAGRAPH WITHIN 60
21 DAYS OF THE RECEIPT OF THE RELEVANT FINANCIAL INFORMATION; and

22 4. The relevant financial information to be submitted by the
23 hospital is defined in regulations adopted by the Commission, after consultation with
24 the Health Services Cost Review Commission; or

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

30 1. At least 45 days before the proposed donation is made, the
31 hospital notifies the Commission [and within]; AND

32 A. WITHIN 45 days of receipt of the relevant financial
33 information, the Commission makes the financial determination required under this
34 subparagraph; OR

35 B. THE COMMISSION HAS NOT MADE THE FINANCIAL
36 DETERMINATION REQUIRED UNDER ITEM 2 OF THIS SUBPARAGRAPH WITHIN 60
37 DAYS OF THE RECEIPT OF THE RELEVANT FINANCIAL INFORMATION; and

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

4 [(6)] (8) Paragraph [(5)(vi), (vii), (viii), and (ix)] (7)(VI), (VII), (VIII), AND
5 (IX) of this subsection may not be construed to permit a facility to offer a new health
6 care service for which a certificate of need is otherwise required.

7 [(7)] (9) Subject to the notice requirements of paragraph [(5)(ii)] (7)(II)
8 of this subsection, a hospital may acquire a freestanding ambulatory surgical facility
9 or 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)] (10) Nothing in this subsection may be construed to permit a
18 hospital to build or expand its ambulatory surgical capacity in any setting owned or
19 controlled by the hospital without obtaining a certificate of need from the
20 Commission if the building or expansion would increase the surgical capacity of the
21 State's health care 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) [(i)] Except as provided in paragraph (2) of this subsection, at least
25 45 days before the closing or partial closing of a hospital, including a State hospital, a
26 person proposing to close all or part of the hospital files notice of the proposed closing
27 or partial closing with the Commission; [and

28 (ii) Within 30 days after receipt of the notice of intent to close, the
29 hospital, in consultation with the Commission, holds a public informational hearing
30 in the county where the hospital is located;] or

31 (2) (i) For a hospital located in a county with fewer than three
32 hospitals, at least 45 days before the closing or partial closing of the hospital, a person
33 proposing to close all or part of the hospital files notice of the proposed closing or
34 partial closing with the Commission; and

35 (ii) The Commission finds that the closing:

36 1. Is in the public interest; and

37 2. Is not inconsistent with:

- 1 A. The State health plan; or
- 2 B. An institution-specific plan developed by the Commission
- 3 under § 19-119 of this subtitle.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 June 1, 2006.