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By: **Delegate Smigiel**

Introduced and read first time: February 10, 2006

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Facilities - Certificates of Need - Repeal**

3 FOR the purpose of repealing a certain requirement for a certain State health plan  
4 relating to the certificate of need program; repealing certain requirements for  
5 local health planning agencies relating to certificate of need planning; repealing  
6 requirements that certain health facilities obtain a certificate of need in order to  
7 build a new facility or expand a facility; repealing certain powers and duties of  
8 the Maryland Health Care Commission relating to issuance of certificates of  
9 need; repealing certain provisions relating to certificates of need; altering  
10 certain definitions; repealing certain definitions; and generally relating to  
11 certificates of need for health facilities.

12 BY repealing and reenacting, with amendments,  
13 Article - Health - General  
14 Section 2-105(c), 2-401(a), 19-114, 19-116(b)(1), 19-118, 19-119, 19-319(c),  
15 19-3B-04, 19-4A-05, and 19-906(c)  
16 Annotated Code of Maryland  
17 (2005 Replacement Volume and 2005 Supplement)

18 BY repealing  
19 Article - Health - General  
20 Section 19-120 through 19-129, inclusive, and 19-404(e)  
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 2-105.

27 (c) The Secretary shall adopt and revise as necessary a State health  
28 improvement plan that includes the following:

1 (1) A description of the components that should comprise the health care  
2 system;

3 (2) The goals and policies for Maryland's health care system; AND

4 [(3) Identification of unmet needs and excess services for facilities and  
5 services not regulated by the certificate of need program; and

6 (4)] (3) An assessment of the financial resources required and available  
7 for the health care system.

8 2-401.

9 (a) A local health planning agency SHALL DEVELOP [shall:

10 (1) Develop] a local health plan by assessing local health needs and  
11 [resources; and

12 (2) Provide input into the development of statewide criteria and  
13 standards for certificate of need and health planning] RESOURCES.

14 19-114.

15 (a) In this Part II of this subtitle the following words have the meanings  
16 indicated.

17 (b) [(1)] "Ambulatory surgical facility" means any center, service, office,  
18 facility, or office of one or more health care practitioners or a group practice, as  
19 defined in § 1-301 of the Health Occupations Article, that:

20 [(i)] (1) Has two or more operating rooms;

21 [(ii)] (2) Operates primarily for the purpose of providing surgical  
22 services to patients who do not require overnight hospitalization; and

23 [(iii)] (3) Seeks reimbursement from payors as an ambulatory  
24 surgical facility.

25 [(2) For purposes of this subtitle, the office of one or more health care  
26 practitioners or a group practice with two operating rooms may be exempt from the  
27 certificate of need requirements under this subtitle if the Commission finds, in its  
28 sole discretion, that:

29 (i) A second operating room is necessary to promote the efficiency,  
30 safety, and quality of the surgical services offered; and

31 (ii) The office meets the criteria for exemption from the certificate  
32 of need requirements as an ambulatory surgical facility in accordance with  
33 regulations adopted by the Commission.

1 (c) "Certificate of need" means a certification of public need issued by the  
2 Commission under this Part II of this subtitle for a health care project.

3 (d)] (C) (1) "Health care facility" means:

4 (i) A hospital, as defined in § 19-301(g) of this title;

5 (ii) A limited service hospital, as defined in § 19-301(e) of this title;

6 (iii) A related institution, as defined in § 19-301 of this title;

7 (iv) An ambulatory surgical facility;

8 (v) An inpatient facility that is organized primarily to help in the  
9 rehabilitation of disabled individuals, through an integrated program of medical and  
10 other services provided under competent professional supervision;

11 (vi) A home health agency, as defined in § 19-401 of this title; AND

12 (vii) A hospice, as defined in § 19-901 of this title[; and

13 (viii) Any other health institution, service, or program for which this  
14 Part II of this subtitle requires a certificate of need].

15 (2) "Health care facility" does not include:

16 (i) A hospital or related institution that is operated, or is listed and  
17 certified, by the First Church of Christ Scientist, Boston, Massachusetts;

18 (ii) [For the purpose of providing an exemption from a certificate of  
19 need under § 19-120 of this subtitle, a facility to provide comprehensive care  
20 constructed by a provider of continuing care, as defined by Article 70B of the Code, if:

21 1. Except as provided under § 19-123 of this subtitle, the  
22 facility is for the exclusive use of the provider's subscribers who have executed  
23 continuing care agreements and paid entrance fees that are at least equal to the  
24 lowest entrance fee charged for an independent living unit or an assisted living unit  
25 before entering the continuing care community, regardless of the level of care needed  
26 by the subscribers at the time of admission;

27 2. The facility is located on the campus of the continuing care  
28 community; and

29 3. The number of comprehensive care nursing beds in the  
30 community does not exceed:

31 A. 24 percent of the number of independent living units in a  
32 community having less than 300 independent living units; or

33 B. 20 percent of the number of independent living units in a  
34 community having 300 or more independent living units;

1 (iii) Except for a facility to provide kidney transplant services or  
2 programs, a kidney disease treatment facility, as defined by rule or regulation of the  
3 United States Department of Health and Human Services;

4 [(iv)] (III) Except for kidney transplant services or programs, the  
5 kidney disease treatment stations and services provided by or on behalf of a hospital  
6 or related institution; or

7 [(v)] (IV) The office of one or more individuals licensed to practice  
8 dentistry under Title 4 of the Health Occupations Article, for the purposes of  
9 practicing dentistry.

10 [(e)] (D) "Health care practitioner" means any individual who is licensed,  
11 certified, or otherwise authorized under the Health Occupations Article to provide  
12 health care services.

13 [(f)] (E) "Health service area" means an area of this State that the Governor  
14 designates as appropriate for planning and developing of health services.

15 [(g)] (F) "Local health planning agency" means the health department of a  
16 jurisdiction or a body designated by the local health department to perform health  
17 planning functions.

18 [(h)] (G) "State health plan" means the State health plan for facilities and  
19 services.

20 19-116.

21 (b) (1) [In addition to information that an applicant for a certificate of need  
22 must provide, the] THE Commission may request, collect, and report any statistical or  
23 other information that:

24 (i) Is needed by the Commission to perform its duties described in  
25 this Part II of this subtitle; and

26 (ii) Is described in regulations of the Commission.

27 19-118.

28 (a) [(1)] At least every 5 years, beginning no later than October 1, 1983, the  
29 Commission shall adopt a State health plan.

30 [(2)] The plan shall include:

31 (i) The methodologies, standards, and criteria for certificate of  
32 need review; and

33 (ii) Priority for conversion of acute capacity to alternative uses  
34 where appropriate.]

1 (b) Annually or upon petition by any person, the Commission shall review the  
2 State health plan and publish any changes in the plan that the Commission considers  
3 necessary, subject to the review and approval granted to the Governor under this  
4 subtitle.

5 (c) The Commission shall adopt rules and regulations that ensure broad  
6 public input, public hearings, and consideration of local health plans in development  
7 of the State health plan.

8 [(d) (1) The Commission shall develop standards and policies consistent with  
9 the State health plan that relate to the certificate of need program.

10 (2) The standards:

11 (i) Shall address the availability, accessibility, cost, and quality of  
12 health care; and

13 (ii) Are to be reviewed and revised periodically to reflect new  
14 developments in health planning, delivery, and technology.

15 (3) In adopting standards regarding cost, efficiency, cost-effectiveness,  
16 or financial feasibility, the Commission shall take into account the relevant  
17 methodologies of the Health Services Cost Review Commission.]

18 [(e) (D) Annually, the Secretary shall make recommendations to the  
19 Commission on the plan. The Secretary may review and comment on State  
20 specifications to be used in the development of the State health plan.

21 [(f) (E) All State agencies and departments, directly or indirectly involved  
22 with or responsible for any aspect of regulating, funding, or planning for the health  
23 care industry or persons involved in it, shall carry out their responsibilities in a  
24 manner consistent with the State health plan and available fiscal resources.

25 [(g) (F) In carrying out their responsibilities under this Part II of this subtitle  
26 for hospitals, the Commission and the Secretary shall recognize, but may not apply,  
27 develop, or duplicate standards or requirements related to quality which have been  
28 adopted and enforced by national or State licensing or accrediting authorities.

29 [(h) The Commission shall transfer to the Department of Health and Mental  
30 Hygiene health planning functions and necessary staff resources for licensed entities  
31 in the State health plan that are not required to obtain a certificate of need or an  
32 exemption from the certificate of need program.]

33 19-119.

34 (a) The Commission shall develop and adopt an institution-specific plan to  
35 guide possible capacity reduction.

36 (b) The institution-specific plan shall address:

1 (1) Accurate bed count data for licensed beds and staffed and operated  
2 beds;

3 (2) Cost data associated with all hospital beds and associated services on  
4 a hospital-specific basis;

5 (3) Migration patterns and current and future projected population data;

6 (4) Accessibility and availability of beds;

7 (5) Quality of care;

8 (6) Current health care needs, as well as growth trends for such needs,  
9 for the area served by each hospital;

10 (7) Hospitals in high growth areas; and

11 (8) Utilization.

12 (c) In the development of the institution-specific plan the Commission shall  
13 give priority to the conversion of acute capacity to alternative uses where appropriate.

14 (d) (1) [The Commission shall use the institution-specific plan in reviewing  
15 certificate of need applications for conversion, expansion, consolidation, or  
16 introduction of hospital services in conjunction with the State health plan.

17 (2)] If there is a conflict between the State health plan and any rule or  
18 regulation adopted by the Commission in accordance with Title 10, Subtitle 1 of the  
19 State Government Article to implement an institution-specific plan that is developed  
20 for identifying any excess capacity in beds and services, the provisions of whichever  
21 plan that is most recently adopted shall control.

22 [(3)] (2) Immediately upon adoption of the institution-specific plan the  
23 Commission shall begin the process of incorporating the institution-specific plan into  
24 the State health plan and shall complete the incorporation within 12 months.

25 [(4)] (3) A State health plan developed or adopted after the  
26 incorporation of the institution-specific plan into the State health plan shall include  
27 the criteria in subsection (b) of this section in addition to the criteria in § 19-118 of  
28 this subtitle.

29 19-319.

30 (c) [(1) The applicant shall have a certificate of need, as required under  
31 Subtitle 1 of this title, for the hospital, residential treatment center, or related  
32 institution to be operated.

33 (2)] The hospital, residential treatment center, or related institution to be  
34 operated shall:

1 [(i)] (1) Be an accredited hospital or accredited residential  
2 treatment center; or

3 [(ii)] (2) Meet the requirements that the Secretary adopts under  
4 this subtitle and Subtitle 12 of this title.

5 19-3B-04.

6 (a) An applicant for a license shall:

7 (1) Submit an application to the Secretary; and

8 (2) Pay to the Secretary the application fee set by the Secretary through  
9 regulation.

10 (b) The application shall:

11 (1) Be on a form and accompanied by any supporting information that  
12 the Secretary [requires, including documentation that the Maryland Health Care  
13 Commission has determined that the freestanding ambulatory care facility either  
14 received a certificate of need or is exempt from certificate of need requirements;]  
15 REQUIRES; and

16 (2) Be signed and verified by the applicant.

17 19-404.

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

20 19-4A-05.

21 To qualify for a license, an applicant:

22 (1) Shall show that the residential service agency will provide  
23 appropriate home health care providers to sick or disabled individuals who may be  
24 provided care in the individual's residence, instead of in a hospital; AND

25 (2) Shall meet any additional requirements that the Department  
26 ADOPTS. [adopts; and

27 (3) May not be required to meet the requirements of Subtitle 1 of this  
28 title for certificate of need.]

29 19-906.

30 (c) [(1) Except for a limited licensee, the applicant shall have a certificate of  
31 need, as required under Subtitle 1 of this title, for the hospice care program to be  
32 operated.]

1           (2)     The Secretary, in consultation with the Maryland Health Care  
2 Commission, shall specify those jurisdictions in which a general hospice is authorized  
3 to provide home-based hospice services.

4           (3)     A general hospice may not be licensed to provide home-based hospice  
5 services in a jurisdiction unless the general hospice or an entity acquired by the  
6 general hospice provided home-based hospice services to a patient in the jurisdiction  
7 during the 12-month period ending December 31, 2001.

8           (4)     Notwithstanding paragraph (3) of this subsection:

9           (i)     A general hospice may provide home-based hospice services to a  
10 specific patient outside of the jurisdictions in which the hospice is licensed if the  
11 Maryland Health Care Commission approves the service provision; and

12           (ii)    A general hospice that is a hospital-based hospice or that had  
13 an affiliation agreement before April 5, 2003 with a health care facility or health care  
14 system may serve patients immediately upon discharge from the hospital, health care  
15 facility, or health care system, regardless of the jurisdiction in which the patient  
16 resides.

17           (5)     Upon the notification by the Maryland Health Care Commission of  
18 the issuance of a certificate of need to a general hospice, the Secretary shall append to  
19 the general hospice license any additional jurisdictions in which the general hospice  
20 may provide home-based hospice services.

21           (6)]    The hospice care program to be operated and its medical director  
22 shall meet the requirements that the Secretary adopts under this subtitle.

23     SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 19-120  
24 through 19-129, inclusive, of Article - Health - General of the Annotated Code of  
25 Maryland be repealed.

26     SECTION 3. AND BE IT FURTHER ENACTED, That the publisher of the  
27 Annotated Code of Maryland, in consultation with and subject to the approval of the  
28 Department of Legislative Services, shall correct, with no further action required by  
29 the General Assembly, cross-references and terminology rendered incorrect by this  
30 Act or by any other Act of the General Assembly of 2006 that affects provisions  
31 enacted by this Act. The publisher shall adequately describe any such correction in an  
32 editor's note following the section affected.

33     SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 July 1, 2006.