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By: **Senator Middleton**

Introduced and read first time: February 8, 2006

Assigned to: Rules

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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                                   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.