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By: **Senator Middleton** Introduced and read first time: February 8, 2006 Assigned to: Rules

Re-referred to: Finance, February 16, 2006

Committee Report: Favorable with amendments Senate action: Adopted Read second time: March 24, 2006

CHAPTER_____

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 <u>health care facility other than a hospital</u> that
- 6 require <u>requires</u> a certificate of need; providing that a certificate of need is not
- 7 required for a certain capital expenditure by a hospital or a certain plant
- 8 donated to a hospital, if the Maryland Health Care Commission has not made a

9 certain financial determination within a certain time period; repealing a

10 requirement that, to be exempted from altering a certain exemption from the

11 <u>requirement to obtain a certificate of need to close a hospital or part of a</u>

12 hospital, a hospital hold a certain public hearing; and generally relating to

13 certificate of need requirements for health care facilities.

14 BY repealing and reenacting, without amendments,

- 15 Article Health General
- 16 Section 19-120(a) and (c)
- 17 Annotated Code of Maryland
- 18 (2005 Replacement Volume and 2005 Supplement)

19 BY repealing and reenacting, with amendments,

- 20 Article Health General
- 21 Section 19-120(k) and (l)
- 22 Annotated Code of Maryland
- 23 (2005 Replacement Volume and 2005 Supplement)

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

3			Article - Health - General				
4 1	9-120.						
5	(a)	(1)	In this s	section th	e following words have the meanings indicated.		
6		(2)	"Limite	d service	hospital" means a health care facility that:		
7			(i)	Is licen	sed as a hospital on or after January 1, 1999;		
	 8 (ii) Changes the type or scope of health care services offered by 9 eliminating the facility's capability to admit or retain patients for overnight 10 hospitalization; 						
11			(iii)	Retains	an emergency or urgent care center; and		
12 13	19-307.1 o	f this title	(iv)	Compli	es with the regulations adopted by the Secretary under §		
14 15 s	service.	(3)	(i)	"Health	care service" means any clinically related patient		
16			(ii)	"Health	care service" includes a medical service.		
17		(4)	"Medic	al service	" means:		
18			(i)	Any of	the following categories of health care services:		
19				1.	Medicine, surgery, gynecology, addictions;		
20				2.	Obstetrics;		
21				3.	Pediatrics;		
22				4.	Psychiatry;		
23				5.	Rehabilitation;		
24				6.	Chronic care;		
25				7.	Comprehensive care;		
26				8.	Extended care;		
27				9.	Intermediate care; or		
28				10.	Residential treatment; or		

1 Any subcategory of the rehabilitation, psychiatry, (ii) 2 comprehensive care, or intermediate care categories of health care services for which 3 need is projected in the State health plan. The Commission shall adopt rules and regulations for applying for and 4 (c) 5 issuing certificates of need. A certificate of need is required before any of the following capital 6 (k) (1)7 expenditures are made by or on behalf of a [health care facility] HOSPITAL: 8 Any expenditure that, under generally accepted accounting (i) principles, is not properly chargeable as an operating or maintenance expense, if: 9 10 1. The expenditure is made as part of an acquisition, 11 improvement, or expansion, and, after adjustment for inflation as provided in the 12 regulations of the Commission, the total expenditure, including the cost of each study, 13 survey, design, plan, working drawing, specification, and other essential activity, is 14 more than [\$1,250,000] \$10,000,000; 15 The expenditure is made as part of a replacement of any 2. 16 plant and equipment of the [health care facility] HOSPITAL and is more than 17 [\$1,250,000]\$10,000,000 after adjustment for inflation as provided in the regulations 18 of the Commission; 19 3. The expenditure results in a substantial change in the bed 20 capacity of the [health care facility] HOSPITAL; or 21 4. The expenditure results in the establishment of a new 22 medical service in a [health care facility] HOSPITAL that would require a certificate 23 of need under subsection (i) of this section; or 24 Any expenditure that is made to lease or, by comparable (ii) 25 arrangement, obtain any plant or equipment for the [health care facility] HOSPITAL, 26 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] \$10,000,000; The expenditure is made as part of a replacement of any 32 2. 33 plant and equipment and is more than [\$1,250,000] \$10,000,000 after adjustment for 34 inflation as provided in the regulations of the Commission; 35 The expenditure results in a substantial change in the bed 3.

36 capacity of the [health care facility] HOSPITAL; or

The expenditure results in the establishment of a new 1 4. 2 medical service in a [health care facility] HOSPITAL that would require a certificate 3 of need under subsection (i) of this section. A CERTIFICATE OF NEED IS REQUIRED BEFORE ANY OF THE 4 (2)5 FOLLOWING CAPITAL EXPENDITURES ARE MADE BY OR ON BEHALF OF A RELATED 6 INSTITUTION HEALTH CARE FACILITY OTHER THAN A HOSPITAL: ANY EXPENDITURE THAT, UNDER GENERALLY ACCEPTED 7 (I) 8 ACCOUNTING PRINCIPLES, IS NOT PROPERLY CHARGEABLE AS AN OPERATING OR 9 MAINTENANCE EXPENSE, IF: 10 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION, 11 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS 12 PROVIDED IN THE REGULATIONS OF THE COMMISSION, THE TOTAL EXPENDITURE, 13 INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, WORKING DRAWING, 14 SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE THAN \$5,000,000; THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT 15 2. 16 OF ANY PLANT AND EQUIPMENT OF THE RELATED INSTITUTION HEALTH CARE 17 FACILITY OTHER THAN A HOSPITAL AND IS MORE THAN \$5,000,000 AFTER 18 ADJUSTMENT FOR INFLATION AS PROVIDED IN THE REGULATIONS OF THE 19 COMMISSION; 20 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE 21 IN THE BED CAPACITY OF THE RELATED INSTITUTION HEALTH CARE FACILITY 22 OTHER THAN A HOSPITAL; OR THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF 23 4. 24 A NEW MEDICAL SERVICE IN A RELATED INSTITUTION HEALTH CARE FACILITY 25 OTHER THAN A HOSPITAL THAT WOULD REQUIRE A CERTIFICATE OF NEED UNDER 26 SUBSECTION (I) OF THIS SECTION; OR 27 ANY EXPENDITURE THAT IS MADE TO LEASE OR, BY (II)28 COMPARABLE ARRANGEMENT, OBTAIN ANY PLANT OR EQUIPMENT FOR THE 29 RELATED INSTITUTION HEALTH CARE FACILITY OTHER THAN A HOSPITAL, IF: THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION, 30 1. 31 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS 32 PROVIDED IN THE RULES AND REGULATIONS OF THE COMMISSION, THE TOTAL 33 EXPENDITURE, INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, 34 WORKING DRAWING, SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE 35 THAN \$5.000.000: 36 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT

37 OF ANY PLANT AND EQUIPMENT AND IS MORE THAN \$5,000,000 AFTER ADJUSTMENT
38 FOR INFLATION AS PROVIDED IN THE REGULATIONS OF THE COMMISSION;

13.THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE2IN THE BED CAPACITY OF THE RELATED INSTITUTION HEALTH CARE FACILITY3OTHER THAN A HOSPITAL; OR
 4 4. THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF 5 A NEW MEDICAL SERVICE IN A RELATED INSTITUTION HEALTH CARE FACILITY 6 OTHER THAN A HOSPITAL THAT WOULD REQUIRE A CERTIFICATE OF NEED UNDER 7 SUBSECTION (I) OF THIS SECTION.
8 (3) A CERTIFICATE OF NEED IS REQUIRED BEFORE ANY OF THE 9 FOLLOWING CAPITAL EXPENDITURES ARE MADE BY OR ON BEHALF OF A HEALTH 10 CARE FACILITY OTHER THAN A HOSPITAL OR RELATED INSTITUTION:
11 (I) ANY EXPENDITURE THAT, UNDER GENERALLY ACCEPTED 12 ACCOUNTING PRINCIPLES, IS NOT PROPERLY CHARGEABLE AS AN OPERATING OR 13 MAINTENANCE EXPENSE, IF:
 14 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION, 15 IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS 16 PROVIDED IN THE REGULATIONS OF THE COMMISSION, THE TOTAL EXPENDITURE, 17 INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, WORKING DRAWING, 18 SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE THAN \$1,250,000;
192.THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT20OF ANY PLANT AND EQUIPMENT OF THE HEALTH CARE FACILITY AND IS MORE THAN21\$1,250,000 AFTER ADJUSTMENT FOR INFLATION AS PROVIDED IN THE REGULATIONS22OF THE COMMISSION;
233.THE EXPENDITURE RESULTS IN A SUBSTANTIAL CHANGE24IN THE BED CAPACITY OF THE HEALTH CARE FACILITY; OR
254.THE EXPENDITURE RESULTS IN THE ESTABLISHMENT OF26A NEW MEDICAL SERVICE IN A HEALTH CARE FACILITY THAT WOULD REQUIRE A27CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION; OR
28 (II) ANY EXPENDITURE THAT IS MADE TO LEASE OR, BY 29 COMPARABLE ARRANGEMENT, OBTAIN ANY PLANT OR EQUIPMENT FOR THE HEALTH 30 CARE FACILITY, IF:
 1. THE EXPENDITURE IS MADE AS PART OF AN ACQUISITION, IMPROVEMENT, OR EXPANSION, AND, AFTER ADJUSTMENT FOR INFLATION AS PROVIDED IN THE RULES AND REGULATIONS OF THE COMMISSION, THE TOTAL EXPENDITURE, INCLUDING THE COST OF EACH STUDY, SURVEY, DESIGN, PLAN, WORKING DRAWING, SPECIFICATION, AND OTHER ESSENTIAL ACTIVITY, IS MORE THAN \$1,250,000;
37 2. THE EXPENDITURE IS MADE AS PART OF A REPLACEMENT 38 OF ANY PLANT AND EQUIPMENT AND IS MORE THAN \$1,250,000 AFTER ADJUSTMENT 30 FOR INFLATION AS PROVIDED IN THE RECHTATIONS OF THE COMMISSION

39 FOR INFLATION AS PROVIDED IN THE REGULATIONS OF THE COMMISSION;

6 UNOFFICIAL COPY OF SENATE BILL 832					
1 3. THE EXPENDITURE RESULTS IN A SUBSTANTIAL 2 IN THE BED CAPACITY OF THE HEALTH CARE FACILITY; OR	CHANGE				
34.THE EXPENDITURE RESULTS IN THE ESTABLISHN4A NEW MEDICAL SERVICE IN A HEALTH CARE FACILITY THAT WOULD REQUIRE A5CERTIFICATE OF NEED UNDER SUBSECTION (I) OF THIS SECTION.	4 ENT OF				
6 [(2)] (4) (3) A certificate of need is required before any equipment or 7 plant is donated to a health care facility, if a certificate of need would be required 8 under [paragraph (1)] PARAGRAPH (1), (2), OR (3) (1) OR (2) of this subsection for an 9 expenditure by the health care facility to acquire the equipment or plant directly.					
10 [(3)] (5) (4) A certificate of need is required before any equipment or 11 plant is transferred to a health care facility at less than fair market value if a 12 certificate of need would be required under [paragraph (1)] PARAGRAPH (1), (2), OR (3) 13 (1) OR (2) of this subsection for the transfer at fair market value.					
14[(4)](6)(5)A certificate of need is required before a person acquires a15health care facility if a certificate of need would be required under [paragraph (1)]16PARAGRAPH (1), (2), OR (3) (1) OR (2)17behalf of the health care facility.	L				
18 $[(5)]$ (7) (6) This subsection does not apply to:					
19 (i) Site acquisition;					
 (ii) Acquisition of a health care facility if, at least 30 days before making the contractual arrangement to acquire the facility, written notice of the intent to make the arrangement is filed with the Commission and the Commission does not find, within 30 days after the Commission receives notice, that the health services or bed capacity of the facility will be changed, provided that, for a merger with or acquisition of an existing general hospice, the purchaser of the general hospice may only acquire the authority to provide home-based hospice services in jurisdictions in which the seller of the general hospice is licensed to provide home-based hospice services; 					
29(iii)Acquisition of business or office equipment that is not directly30 related to patient care;					
31 (iv) Capital expenditures to the extent that they are directly related 32 to the acquisition and installation of major medical equipment;					
 (v) A capital expenditure made as part of a consolidation or merger of 2 or more health care facilities, or conversion of a health care facility or part of a facility to a nonhealth-related use if: 					
36 1. At least 45 days before an expenditure is made, written					

361.At lea37 notice of intent is filed with the Commission;

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1 2	sole discretion finds that the pr	2. oposed c	Within 45 days of receiving notice, the Commission in its onsolidation, merger, or conversion:		
3 4	institution-specific plan develo	A. ped by th	Is not inconsistent with the State health plan or the ne Commission as appropriate;		
5 6	health care services; and	B.	Will result in the delivery of more efficient and effective		
7		C.	Is in the public interest; and		
8 9	notify the health care facility o	3. f its findi	Within 45 days of receiving notice, the Commission shall ng;		
10 11	(vi) construction, or renovation that		al expenditure by a nursing home for equipment,		
12		1.	Is not directly related to patient care; and		
13 14	other rates;	2.	Is not directly related to any change in patient charges or		
15 16	(vii) this title, for equipment, const		I expenditure by a hospital, as defined in § 19-301 of or renovation that:		
17		1.	Is not directly related to patient care; and		
18		2.	Does not increase patient charges or hospital rates;		
	19 (viii) A capital expenditure by a hospital as defined in § 19-301 of 20 this title, for a project in excess of [\$1,250,000] \$10,000,000 for construction or 21 renovation that:				
22		1.	May be related to patient care;		
25 26	23 2. Does not require, over the entire period or schedule of debt 24 service associated with the project, a total cumulative increase in patient charges or 25 hospital rates of more than \$1,500,000 for the capital costs associated with the project 26 as determined by the Commission, after consultation with the Health Services Cost 27 Review Commission;				
28 29	the hospital notifies the Comm	3. hission [a	At least 45 days before the proposed expenditure is made, nd within]; AND		
	information, the Commission 2 of this subparagraph; OR	A. makes the	WITHIN 45 days of receipt of the relevant financial e financial determination required under item		
33 34	DETERMINATION REQUIR	B. ED UNI	THE COMMISSION HAS NOT MADE THE FINANCIAL DER ITEM 2 OF THIS SUBPARAGRAPH WITHIN 60		

34 DETERMINATION REQUIRED UNDER ITEM 2 OF THIS SUBPARAGRAPH WITHIN 6035 DAYS OF THE RECEIPT OF THE RELEVANT FINANCIAL INFORMATION; and

4. The relevant financial information to be submitted by the hospital is defined in regulations adopted by the Commission, after consultation with the Health Services Cost Review Commission; or						
 4 (ix) A plant donated to a hospital as defined in § 19-301 of this title, 5 which does not require a cumulative increase in patient charges or hospital rates of 6 more than \$1,500,000 for capital costs associated with the donated plant as 7 determined by the Commission, after consultation with the Health Services Cost 8 Review Commission that: 						
9 1. At least 45 days before the proposed donation is made, the 10 hospital notifies the Commission [and within]; AND						
A. WITHIN 45 days of receipt of the relevant financial information, the Commission makes the financial determination required under this subparagraph; OR						
14B.THE COMMISSION HAS NOT MADE THE FINANCIAL15DETERMINATION REQUIRED UNDER ITEM 2 OF THIS SUBPARAGRAPH WITHIN 6016DAYS OF THE RECEIPT OF THE RELEVANT FINANCIAL INFORMATION; and						
172.The relevant financial information to be submitted by the18 hospital is defined in regulations adopted by the Commission after consultation with19 the Health Services Cost Review Commission.						
20 [(6)] (8) (7) Paragraph [(5)(vi), (vii), and (ix)] (7)(VI), (6)(VI), (VII), 21 (VIII), AND (IX) of this subsection may not be construed to permit a facility to offer a 22 new health care service for which a certificate of need is otherwise required.						
 [(7)] (9) (8) Subject to the notice requirements of paragraph [(5)(ii)] (7)(II) (6)(II) of this subsection, a hospital may acquire a freestanding ambulatory surgical facility or office of one or more health care practitioners or a group practice with one or more operating rooms used primarily for the purpose of providing ambulatory surgical services if the facility, office, or group practice: 						
28 (i) Has obtained a certificate of need;						
29(ii)Has obtained an exemption from certificate of need30 requirements; or						
31(iii)Did not require a certificate of need in order to provide32ambulatory surgical services after June 1, 1995.						
33 [(8)] (10) (9) Nothing in this subsection may be construed to permit a 34 hospital to build or expand its ambulatory surgical capacity in any setting owned or 35 controlled by the hospital without obtaining a certificate of need from the						

36 Commission if the building or expansion would increase the surgical capacity of the 37 State's health care system.

1 (1) A certificate of need is not required to close any hospital or part of a 2 hospital as defined in § 19-301 of this title if:						
 3 (1) [(i)] Except as provided in paragraph (2) of this subsection, at <u>AT</u> 4 least 45 days before the closing or partial closing of a hospital, including a State 5 hospital, a person proposing to close all or part of the hospital files notice of the 6 proposed closing or partial closing with the Commission; fand 						
 7 (ii) (2) Within FOR A HOSPITAL LOCATED IN A COUNTY WITH 8 FEWER THAN THREE HOSPITALS, WITHIN 30 days after receipt of the notice of intent 9 to close, the hospital, in consultation with the Commission, holds a public 10 informational hearing in the county where the hospital is located; or 11 (2) (i) For a hospital located in a county with fewer than three 12 hospitals, at least 45 days before the closing or partial closing of the hospital, a person 13 proposing to close all or part of the hospital files notice of the proposed closing or 14 partial closing with the Commission; and 						
15	(ii)	The Co	mmission finds that the closing:			
16		1.	Is in the public interest; and			
17		2.	Is not inconsistent with:			
18		A.	The State health plan; or			
19 20 under § 19-119 of th i	is subtitl	B. e.	An institution specific plan developed by the Commission			

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

22 June 1, 2006.