

# SENATE BILL 628

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71r0733

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By: **Senators Pipkin and Jacobs**

Introduced and read first time: February 2, 2007

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Repeal of Certificate of Need Requirements – Health Care Facilities Other**  
3 **Than Home Health Agencies and Hospices**

4 FOR the purpose of altering requirements that certain health facilities obtain a  
5 certificate of need in order to build a new facility or expand a facility; repealing  
6 certain provisions relating to certificates of need for certain facilities; altering  
7 certain definitions; repealing certain definitions; requiring the Maryland Health  
8 Care Commission to develop a certain comprehensive plan for emergency  
9 medical services; requiring the Commission to issue a certain report to the  
10 General Assembly on or before a certain date; and generally relating to  
11 certificates of need for health facilities and health care planning.

12 BY repealing and reenacting, with amendments,  
13 Article – Health – General  
14 Section 19–114, 19–118, 19–119, 19–120, 19–126, 19–319(c), 19–3B–04, and  
15 19–4A–05  
16 Annotated Code of Maryland  
17 (2005 Replacement Volume and 2006 Supplement)

18 BY repealing  
19 Article – Health – General  
20 Section 19–121 through 19–125, and 19–129  
21 Annotated Code of Maryland  
22 (2005 Replacement Volume and 2006 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Health – General**

4 19–114.

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

7 (b) [(1)] “Ambulatory surgical facility” means any center, service, office,  
8 facility, or office of one or more health care practitioners or a group practice, as defined  
9 in § 1–301 of the Health Occupations Article, that:

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

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

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

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

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

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

24 (c) “Certificate of need” means a certification of public need issued by the  
25 Commission under this Part II of this subtitle for a health care project.

26 (d) (1) “Health care facility” means:

27 [(i) A hospital, as defined in § 19–301(g) of this title;

1 (ii) A limited service hospital, as defined in § 19–301(e) of this  
2 title;

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

4 (iv) An ambulatory surgical facility;

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

8 [(vi)] (I) A home health agency, as defined in § 19–401 of this  
9 title; **AND**

10 [(vii)] (II) A hospice, as defined in § 19–901 of this title[; and

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

13 (2) “Health care facility” does not include:

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

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

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

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

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

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

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

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

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

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

14           (e)     “Health care practitioner” means any individual who is licensed, certified,  
15 or otherwise authorized under the Health Occupations Article to provide health care  
16 services.

17           (f)     “Health service area” means an area of this State that the Governor  
18 designates as appropriate for planning and developing of health services.

19           (g)     “Local health planning agency” means the health department of a  
20 jurisdiction or a body designated by the local health department to perform health  
21 planning functions.

22           (h)     “State health plan” means the State health plan for facilities and  
23 services.

24 19–118.

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

27                   (2)    The plan shall include[:

28                           (i)    The] **THE** methodologies, standards, and criteria for  
29 certificate of need review **FOR HOME HEALTH AGENCIES AND HOSPICES**[: and

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

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

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

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

12 (2) The standards:

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

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

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

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

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

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

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

5 19–119.

6            (a) The Commission shall develop and adopt an institution–specific plan to  
7 guide possible capacity reduction.

8            (b) The institution–specific plan shall address:

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

11                    (2) Cost data associated with all hospital beds and associated services  
12 on a hospital–specific basis;

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

15                    (4) Accessibility and availability of beds;

16                    (5) Quality of care;

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

19                    (7) Hospitals in high growth areas; and

20                    (8) Utilization.

21            (c) In the development of the institution–specific plan the Commission shall  
22 give priority to the conversion of acute capacity to alternative uses where appropriate.

23            (d) [(1) The Commission shall use the institution–specific plan in  
24 reviewing certificate of need applications for conversion, expansion, consolidation, or  
25 introduction of hospital services in conjunction with the State health plan.]

26                    [(2)] (1) If there is a conflict between the State health plan and any  
27 rule or regulation adopted by the Commission in accordance with Title 10, Subtitle 1 of  
28 the State Government Article to implement an institution–specific plan that is

1 developed for identifying any excess capacity in beds and services, the provisions of  
2 whichever plan that is most recently adopted shall control.

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

6 [(4)] (3) A State health plan developed or adopted after the  
7 incorporation of the institution-specific plan into the State health plan shall include  
8 the criteria in subsection (b) of this section in addition to the criteria in § 19-118 of  
9 this subtitle.

10 19-120.

11 (a) [(1)] In this section the following words have the meanings indicated.

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

13 (i) Is licensed as a hospital on or after January 1, 1999;

14 (ii) Changes the type or scope of health care services offered by  
15 eliminating the facility's capability to admit or retain patients for overnight  
16 hospitalization;

17 (iii) Retains an emergency or urgent care center; and

18 (iv) Complies with the regulations adopted by the Secretary  
19 under § 19-307.1 of this title.

20 (3) (i) **IN THIS SECTION, "[Health] HEALTH care service" means**  
21 **any clinically related patient service.**

22 [(ii)] "Health care service" includes a medical service.

23 (4) "Medical service" means:

24 (i) Any of the following categories of health care services:

25 1. Medicine, surgery, gynecology, addictions;

26 2. Obstetrics;

- 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 health care facilities not assessed a user fee under this subtitle.

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

16           (d) 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.

19           (e) (1) A person shall have a certificate of need issued by the Commission  
20 before the person develops, operates, or participates in any of the following health care  
21 projects for which a certificate of need is required under this section.

22                           (2) A certificate of need issued prior to January 13, 1987 may not be  
23 rendered wholly or partially invalid solely because certain conditions have been  
24 imposed, if an appeal concerning the certificate of need, challenging the power of the  
25 Commission to impose certain conditions on a certificate of need, has not been noted  
26 by an aggrieved party before January 13, 1987.

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



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

3 (2) This subsection does not apply if:

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

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

10 (iii) Subject to the provisions of [subsections] **SUBSECTION** (i)  
11 [and (j)] of this section, the relocation is of an existing health care facility owned or  
12 controlled by a merged asset system and is to:

13 1. A site within the primary service area of the health  
14 care facility to be relocated if:

15 A. The proposed relocation is not across county  
16 boundaries; and

17 B. At least 45 days prior to the proposed relocation  
18 notice is filed with the Commission; **OR**

19 2. A site outside the primary service area of the health  
20 care facility to be relocated but within the primary service area of the merged asset  
21 system if:

22 A. At least 45 days prior to the proposed relocation  
23 notice is filed with the Commission; and

24 B. The Commission in its sole discretion, and in  
25 accordance with the criteria adopted by regulation, finds that the relocation is in the  
26 public interest, is not inconsistent with the State health plan, and will result in the  
27 more efficient and effective delivery of health care services[; or

28 3. For a limited service hospital, a site within the  
29 immediate area as defined in regulation by the Commission; or

1 (iv) The relocation involves moving a portion of a complement of  
2 comprehensive care beds previously approved by the Commission after January 1,  
3 1995 for use in a proposed new related institution, as defined in § 19–301 of this title,  
4 but unbuilt on October 1, 1998 if:

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

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

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

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

19 (3) Notwithstanding any other provision of this subtitle, a certificate  
20 of need is not required for a relocation described under paragraph (2)(iv) of this  
21 subsection].

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

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

26 (i) [For a health care facility that is not a hospital, during]  
27 **DURING** a 2–year period the increase or decrease would not exceed the lesser of 10  
28 percent of the total bed capacity or 10 beds; **OR**

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

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

1                   B.     The change is maintained for at least a 1-year period;  
2 and

3                   C.     At least 45 days prior to the change the hospital  
4 provides written notice to the Commission describing the change and providing an  
5 updated inventory of the hospital's licensed bed complement;]

6                   [(iii)] (II)   1.     At least 45 days before increasing or decreasing  
7 bed capacity, written notice of intent to change bed capacity is filed with the  
8 Commission;

9                                 2.     The Commission in its sole discretion finds that the  
10 proposed change:

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

14                                 B.     Is not inconsistent with the State health plan or the  
15 institution-specific plan developed by the Commission;

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

18                                 D.     Is in the public interest; and

19                                 3.     Within 45 days of receiving notice, the Commission  
20 shall notify the health care facility of its finding[; or

21   (iv)   The increase or decrease in bed capacity is the result of the  
22 annual licensed bed recalculation provided under § 19-307 of this title].

23                   [(i)   (1)   Except as provided in paragraph (2) of this subsection, for a  
24 hospital located in a county with three or more hospitals, a certificate of need is not  
25 required before the bed capacity is increased or decreased if the change:

26   (i)   Occurs on or after July 1, 2000;

27   (ii)   Is between hospitals in a merged asset system located  
28 within the same health service area;

- 1 (iii) Does not involve comprehensive or extended care beds; and
- 2 (iv) Does not occur earlier than 45 days after a notice of intent to  
3 reallocate bed capacity is filed with the Commission.
- 4 (2) A hospital may not create a new health care service through the  
5 relocation of beds from one county to another county pursuant to this subsection.]
- 6 [(j)] (I) (1) A certificate of need is required before the type or scope of  
7 any health care service is changed if the health care service is offered:
- 8 (i) By a health care facility;
- 9 (ii) In space that is leased from a health care facility; or
- 10 (iii) In space that is on land leased from a health care facility.
- 11 (2) This subsection does not apply if:
- 12 (i) The Commission adopts limits for changes in health care  
13 services and the proposed change would not exceed those limits;
- 14 (ii) The proposed change and the annual operating revenue that  
15 would result from the addition is entirely associated with the use of medical  
16 equipment;
- 17 (iii) The proposed change would establish, increase, or decrease  
18 a health care service and the change would not result in the:
- 19 1. Establishment of a new medical service or elimination  
20 of an existing medical service; **OR**
- 21 2. [Establishment of an open heart surgery, organ  
22 transplant surgery, or burn or neonatal intensive health care service;
- 23 3. ]Establishment of a home health [program,] **OR**  
24 hospice program[, or freestanding ambulatory surgical center or facility]; or
- 25 [4. Expansion of a comprehensive care, extended care,  
26 intermediate care, residential treatment, psychiatry, or rehabilitation medical service,  
27 except for an expansion related to an increase in total bed capacity in accordance with  
28 subsection (h)(2)(i) of this section; or]

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

4 2. The Commission in its sole discretion finds that the  
5 proposed change:

6 A. Is pursuant to the consolidation or merger of 2 or  
7 more health care facilities, the conversion of a health care facility or part of a facility  
8 to a nonhealth-related use[, or the conversion of a hospital to a limited service  
9 hospital];

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

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

14 D. Is in the public interest; and

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

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

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

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

24 (iii) Before a transfer of ownership of any branch office of a home  
25 health agency or home health care service of an existing health care facility that  
26 separates the ownership of the branch office from the home health agency or home  
27 health care service of an existing health care facility which established the branch  
28 office; or

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

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

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

6           [(k)] (J)   [(1) A certificate of need is required before any of the following  
7 capital expenditures are made by or on behalf of a hospital:

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

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 \$10,000,000;

15                   2.    The expenditure is made as part of a replacement of  
16 any plant and equipment of the hospital and is more than \$10,000,000 after  
17 adjustment for inflation as provided in the regulations of the Commission;

18                   3.    The expenditure results in a substantial change in the  
19 bed capacity of the hospital; or

20                   4.    The expenditure results in the establishment of a new  
21 medical service in a hospital that would require a certificate of need under subsection  
22 (i) of this section; or

23                   (ii) Any expenditure that is made to lease or, by comparable  
24 arrangement, obtain any plant or equipment for the hospital, if:

25                   1.    The expenditure is made as part of an acquisition,  
26 improvement, or expansion, and, after adjustment for inflation as provided in the rules  
27 and regulations of the Commission, the total expenditure, including the cost of each  
28 study, survey, design, plan, working drawing, specification, and other essential  
29 activity, is more than \$10,000,000;

30                   2.    The expenditure is made as part of a replacement of  
31 any plant and equipment and is more than \$10,000,000 after adjustment for inflation  
32 as provided in the regulations of the Commission;

1                                   3.     The expenditure results in a substantial change in the  
2 bed capacity of the hospital; or

3                                   4.     The expenditure results in the establishment of a new  
4 medical service in a hospital that would require a certificate of need under subsection  
5 (i) of this section.]

6                           [(2)] (1)     A certificate of need is required before any of the following  
7 capital expenditures are made by or on behalf of a health care facility [other than a  
8 hospital]:

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

11                                   1.     The expenditure is made as part of an acquisition,  
12 improvement, or expansion, and, after adjustment for inflation as provided in the  
13 regulations of the Commission, the total expenditure, including the cost of each study,  
14 survey, design, plan, working drawing, specification, and other essential activity, is  
15 more than \$5,000,000;

16                                   2.     The expenditure is made as part of a replacement of  
17 any plant and equipment of the health care facility [other than a hospital] and is more  
18 than \$5,000,000 after adjustment for inflation as provided in the regulations of the  
19 Commission;

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

22                                   4.     The expenditure results in the establishment of a new  
23 medical service in a health care facility [other than a hospital that would require a  
24 certificate of need under 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 [other than a  
27 hospital], if:

28                                   1.     The expenditure is made as part of an acquisition,  
29 improvement, or expansion, and, after adjustment for inflation as provided in the rules  
30 and regulations of the Commission, the total expenditure, including the cost of each  
31 study, survey, design, plan, working drawing, specification, and other essential  
32 activity, is more than \$5,000,000;

1                   2.     The expenditure is made as part of a replacement of  
2 any plant and equipment and is more than \$5,000,000 after adjustment for inflation  
3 as provided in the regulations of the Commission;

4                   3.     The expenditure results in a substantial change in the  
5 bed capacity of the health care facility [other than a hospital]; or

6                   4.     The expenditure results in the establishment of a new  
7 medical service in a health care facility [other than a hospital that would require a  
8 certificate of need under subsection (i) of this section].

9                   [(3)] (2)    A certificate of need is required before any equipment or  
10 plant is donated to a health care facility, if a certificate of need would be required  
11 under paragraph (1) [or (2)] of this subsection for an expenditure by the health care  
12 facility to acquire the equipment or plant directly.

13                   [(4)] (3)    A certificate of need is required before any equipment or  
14 plant is transferred to a health care facility at less than fair market value if a  
15 certificate of need would be required under paragraph (1) [or (2)] of this subsection for  
16 the transfer at fair market value.

17                   [(5)] (4)    A certificate of need is required before a person acquires a  
18 health care facility if a certificate of need would be required under paragraph [(1) or  
19 (2)] of this subsection for the acquisition by or on behalf of the health care facility.

20                   [(6)] (5)    This subsection does not apply to:

21                   (i)    Site acquisition;

22                   (ii)   Acquisition of a health care facility if, at least 30 days before  
23 making the contractual arrangement to acquire the facility, written notice of the  
24 intent to make the arrangement is filed with the Commission and the Commission  
25 does not find, within 30 days after the Commission receives notice, that the health  
26 services or bed capacity of the facility will be changed, provided that, for a merger with  
27 or acquisition of an existing general hospice, the purchaser of the general hospice may  
28 only acquire the authority to provide home-based hospice services in jurisdictions in  
29 which the seller of the general hospice is licensed to provide home-based hospice  
30 services;

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



1 (iv) Capital expenditures to the extent that they are directly  
2 related to the acquisition and installation of major medical equipment; **OR**

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

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

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

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

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

14 C. Is in the public interest; and

15 3. Within 45 days of receiving notice, the Commission  
16 shall notify the health care facility of its finding[;]

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

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

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

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

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

25 2. Does not increase patient charges or hospital rates;

26 (viii) A capital expenditure by a hospital as defined in § 19-301 of  
27 this title, for a project in excess of \$10,000,000 for construction or renovation that:

- 1                   1.     May be related to patient care;
- 2                   2.     Does not require, over the entire period or schedule of  
3 debt service associated with the project, a total cumulative increase in patient charges  
4 or hospital rates of more than \$1,500,000 for the capital costs associated with the  
5 project as determined by the Commission, after consultation with the Health Services  
6 Cost Review Commission;
- 7                   3.     At least 45 days before the proposed expenditure is  
8 made, the hospital notifies the Commission; and
- 9                   A.     Within 45 days of receipt of the relevant financial  
10 information, the Commission makes the financial determination required under item 2  
11 of this subparagraph; or
- 12                   B.     The Commission has not made the financial  
13 determination required under item 2 of this subparagraph within 60 days of the  
14 receipt of the relevant financial information; and
- 15                   4.     The relevant financial information to be submitted by  
16 the hospital is defined in regulations adopted by the Commission, after consultation  
17 with the Health Services Cost Review Commission; or
- 18                   (ix)   A plant donated to a hospital as defined in § 19–301 of this  
19 title, which does not require a cumulative increase in patient charges or hospital rates  
20 of more than \$1,500,000 for capital costs associated with the donated plant as  
21 determined by the Commission, after consultation with the Health Services Cost  
22 Review Commission that:
  - 23                   1.     At least 45 days before the proposed donation is made,  
24 the hospital notifies the Commission; and
  - 25                   A.     Within 45 days of receipt of the relevant financial  
26 information, the Commission makes the financial determination required under this  
27 subparagraph; or
  - 28                   B.     The Commission has not made the financial  
29 determination required under item 2 of this subparagraph within 60 days of the  
30 receipt of the relevant financial information; and

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

4                   (7)     Paragraph (6)(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                   (8)     Subject to the notice requirements of paragraph (6)(ii) of this  
8 subsection, a hospital may acquire a freestanding ambulatory surgical facility or office  
9 of one or more health care practitioners or a group practice with one or more operating  
10 rooms used primarily for the purpose of providing ambulatory surgical services if the  
11 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                   (9)     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                   (1)     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 the closing or partial closing of a hospital,  
25 including a State hospital, a person proposing to close all or part of the hospital files  
26 notice of the proposed closing or partial closing with the Commission; and

27                           (2)     For a hospital located in a county with fewer than three hospitals,  
28 within 30 days after receipt of the notice of intent to close, the hospital, in consultation  
29 with the Commission, holds a public informational hearing in the county where the  
30 hospital is located].

1            [(m)] (K) In this section the terms “consolidation” and “merger” include  
2 increases and decreases in bed capacity or services among the components of an  
3 organization which:

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

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

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

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

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

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

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

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

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

24            [(o)] (M) The Commission may not issue a certificate of need or a  
25 determination with respect to an acquisition that authorizes a general hospice to  
26 provide home-based hospice services on a statewide basis.

27 19–126.

28            (a) If the Commission receives an application for a certificate of need for a  
29 change in the bed capacity of a health care facility, as required under § 19–120 of this  
30 subtitle, or for a health care project that would create a new health care service or

1 abolish an existing health care service, the Commission shall give notice of the filing  
2 by publication in the Maryland Register and give the following notice to:

3 (1) Each member of the General Assembly in whose district the action  
4 is planned;

5 (2) Each member of the governing body for the county where the  
6 action is planned;

7 (3) The county executive, mayor, or chief executive officer, if any, in  
8 whose county or city the action is planned; and

9 (4) Any health care provider, third party payor, local planning agency,  
10 or any other person the Commission knows has an interest in the application.

11 (b) Failure to give notice shall not adversely affect the application.

12 (c) (1) All decisions of the Commission on an application for a certificate  
13 of need, except in emergency circumstances posing a threat to public health, shall be  
14 consistent with the State health plan and the standards for review established by the  
15 Commission.

16 (2) The mere failure of the State health plan to address any particular  
17 project or health care service shall not alone be deemed to render the project  
18 inconsistent with the State health plan.

19 (3) Unless the Commission finds that the facility or service for which  
20 the proposed expenditure is to be made is not needed or is not consistent with the  
21 State health plan, the Commission shall approve an application for a certificate of  
22 need required under § 19–120(k) of this subtitle to the extent that the expenditure is  
23 to be made to:

24 (i) Eliminate or prevent an imminent safety hazard, as defined  
25 by federal, State, or local fire, building, or life safety codes or regulations;

26 (ii) Comply with State licensing standards; or

27 (iii) Comply with accreditation standards for reimbursement  
28 under Title XVIII of the Social Security Act or under the State Medical Assistance  
29 Program approved under Title XIX of the Social Security Act.

30 (d) (1) The Commission alone shall have final nondelegable authority to  
31 act upon an application for a certificate of need, except as provided in this subsection.

1           (2) Seven voting members of the Commission shall be a quorum to act  
2 on an application for a certificate of need.

3           (3) After an application is filed, the staff of the Commission:

4                 (i) Shall review the application for completeness within 10  
5 working days of the filing of the application; and

6                 (ii) May request further information from the applicant.

7           (4) The Commission may delegate to a reviewer the responsibility for  
8 review of an application for a certificate of need, including:

9                 (i) The holding of an evidentiary hearing if the Commission, in  
10 accordance with criteria it has adopted by regulation, considers an evidentiary hearing  
11 appropriate due to the magnitude of the impact the proposed project may have on the  
12 health care delivery system; and

13                 (ii) Preparation of a recommended decision for consideration by  
14 the full Commission.

15           (5) The Commission shall designate a single Commissioner to act as a  
16 reviewer for the application and any competing applications.

17           (6) The Commission shall delegate to its staff the responsibility for an  
18 initial review of an application, including, in the event that no written comments on  
19 an application are submitted by any interested party other than the staff of the  
20 Commission, the preparation of a recommended decision for consideration by the full  
21 Commission.

22           (7) Any “interested party” may submit written comments on the  
23 application in accordance with procedural regulations adopted by the Commission.

24           (8) The Commission shall define the term “interested party” to  
25 include, at a minimum:

26                 (i) The staff of the Commission;

27                 (ii) Any applicant who has submitted a competing application;

28                 (iii) Any other person who can demonstrate that the person  
29 would be adversely affected by the decision of the Commission on the application; and

1 (iv) A local health planning agency for a jurisdiction or region in  
2 which the proposed facility or service will be located.

3 (9) The reviewer shall review the application, any written comments  
4 on the application, and any other materials permitted by this section or by the  
5 Commission's regulations, and present a recommended decision on the application to  
6 the full Commission.

7 (10) (i) An applicant and any interested party may request the  
8 opportunity to present oral argument to the reviewer, in accordance with regulations  
9 adopted by the Commission, before the reviewer prepares a recommended decision on  
10 the application for consideration by the full Commission.

11 (ii) The reviewer may grant, deny, or impose limitations on an  
12 interested party's request to present oral argument to the reviewer.

13 (11) Any interested party who has submitted written comments under  
14 paragraph (7) of this subsection may submit written exceptions to the proposed  
15 decision and make oral argument to the Commission, in accordance with regulations  
16 adopted by the Commission, before the Commission takes final action on the  
17 application.

18 (12) The Commission shall, after determining that the recommended  
19 decision is complete, vote to approve, approve with conditions, or deny the application  
20 on the basis of the recommended decision, the record before the staff or the reviewer,  
21 and exceptions and arguments, if any, before the Commission.

22 (13) The decision of the Commission shall be by a majority of the  
23 quorum present and voting.

24 [(e) Where the State health plan identifies a need for additional hospital bed  
25 capacity in a region or subregion, in a comparative review of 2 or more applicants for  
26 hospital bed expansion projects, a certificate of need shall be granted to 1 or more  
27 applicants in that region or subregion that:

28 (1) Have satisfactorily met all applicable standards;

29 (2) (i) Have within the preceding 10 years voluntarily delicensed  
30 the greater of 10 beds or 10 percent of total licensed bed capacity to the extent of the  
31 beds that are voluntarily delicensed; or

1                   (ii) Have been previously granted a certificate of need which  
2 was not recertified by the Commission within the preceding 10 years; and

3                   (3) The Commission finds at least comparable to all other applicants.]

4           [[f] (1) (E) If any party or interested person requests an evidentiary  
5 hearing with respect to a certificate of need application for any health care facility  
6 [other than an ambulatory surgical facility] and the Commission, in accordance with  
7 criteria it has adopted by regulation, considers an evidentiary hearing appropriate due  
8 to the magnitude of the impact that the proposed project may have on the health care  
9 delivery system, the Commission or a committee of the Commission shall hold the  
10 hearing in accordance with the contested case procedures of the Administrative  
11 Procedure Act.

12                   [(2) Except as provided in this section or in regulations adopted by the  
13 Commission to implement the provisions of this section, the review of an application  
14 for a certificate of need for an ambulatory surgical facility is not subject to the  
15 contested case procedures of Title 10, Subtitle 2 of the State Government Article.]

16           [[g] (F) (1) An application for a certificate of need shall be acted upon by  
17 the Commission no later than 150 days after the application was docketed.

18                   (2) If an evidentiary hearing is not requested, the Commission's  
19 decision on an application shall be made no later than 90 days after the application  
20 was docketed.

21           [[h] (G) (1) The applicant or any aggrieved party, as defined in §  
22 19-128(a) of this subtitle, may petition the Commission within 15 days for a  
23 reconsideration.

24                   (2) The Commission shall decide whether or not it will reconsider its  
25 decision within 30 days of receipt of the petition for reconsideration.

26                   (3) The Commission shall issue its reconsideration decision within 30  
27 days of its decision on the petition.

28           [[i] (H) If the Commission does not act on an application within the  
29 required period, the applicant may file with a court of competent jurisdiction within 60  
30 days after expiration of the period a petition to require the Commission to act on the  
31 application.

32 19-319.



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

4 (2)] The hospital, residential treatment center, or related institution to  
5 be operated shall meet the requirements that the Secretary adopts under this subtitle  
6 and Subtitle 12 of this title.

7 19-3B-04.

8 (a) An applicant for a license shall:

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

10 (2) Pay to the Secretary the application fee set by the Secretary  
11 through regulation.

12 (b) The application shall:

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

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

19 19-4A-05.

20 To qualify for a license, an applicant:

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That Sections 19–121 through  
2 19–125 and 19–129 of Article – Health – General of the Annotated Code of Maryland  
3 be repealed.

4 SECTION 3. AND BE IT FURTHER ENACTED, That the publisher of the  
5 Annotated Code of Maryland, in consultation with and subject to the approval of the  
6 Department of Legislative Services, shall correct, with no further action required by  
7 the General Assembly, cross–references and terminology rendered incorrect by this  
8 Act or by any other Act of the General Assembly of 2007 that affects provisions  
9 enacted by this Act. The publisher shall adequately describe any such correction in an  
10 editor’s note following the section affected.

11 SECTION 4. AND BE IT FURTHER ENACTED, That:

12 (a) (1) The Maryland Health Care Commission shall develop a  
13 comprehensive plan for emergency medical services.

14 (2) (i) The plan shall include the following components:

15 1. The appropriate number, mix, and geographic  
16 distribution of emergency medical facilities in the State and the offered services and  
17 standards for each facility; and

18 2. The appropriate State commitment to fund and  
19 ensure the financial solvency of emergency medical facilities provided for in the  
20 comprehensive plan.

21 (ii) The plan may not include certificate of need review for  
22 hospitals that have emergency medical facilities that are not part of the  
23 comprehensive plan.

24 (b) On or before December 1, 2007, the Commission shall report to the  
25 General Assembly, in accordance with § 2–1246 of the State Government Article, with  
26 the findings of the comprehensive plan, including any recommendations for legislation  
27 needed to implement the plan.

28 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 July 1, 2007.