

SENATE BILL 752

J3
SB 628/07 – FIN

9lr2719

By: **Senator Pipkin**
Introduced and read first time: February 6, 2009
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of altering requirements that certain health care 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; making stylistic changes;
11 authorizing the publisher of the Annotated Code of Maryland to correct
12 cross-references rendered inconsistent by this Act; and generally relating to
13 certificates of need for health care facilities and health care planning.

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 19–114, 19–118, 19–119, 19–120, 19–126, 19–319(c), 19–3B–04, and
17 19–4A–05
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2008 Supplement)

20 BY repealing
21 Article – Health – General
22 Section 19–121 through 19–125 and 19–129
23 Annotated Code of Maryland
24 (2005 Replacement Volume and 2008 Supplement)

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

27 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 19–114.

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

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

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

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

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

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

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

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

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

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

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

25 [(ii) A limited service hospital, as defined in § 19–301 of this
26 title;

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

28 [(iv) An ambulatory surgical facility;

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

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

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

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

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

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

9 (ii) [For the purpose of providing an exemption from a
10 certificate of need under § 19–120 of this subtitle, a facility to provide comprehensive
11 care constructed by a provider of continuing care, as defined in § 10–401 of the Human
12 Services Article, if:

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

19 2. The facility is located on the campus of the continuing
20 care community; and

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

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

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

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

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

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

4 (e) "Health care practitioner" means any individual who is licensed, certified,
5 or otherwise authorized under the Health Occupations Article to provide health care
6 services.

7 (f) "Health service area" means an area of this State that the Governor
8 designates as appropriate for planning and developing of health services.

9 (g) "Local health planning agency" means the health department of a
10 jurisdiction or a body designated by the local health department to perform health
11 planning functions.

12 (h) "State health plan" means the State health plan for facilities and
13 services.

14 19–118.

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

17 (2) The plan shall include[:

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

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

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

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

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

31 (2) The standards:

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

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

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

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

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

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

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

21 19-119.

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

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

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

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

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

31 (4) Accessibility and availability of beds;

32 (5) Quality of care;

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

3 (7) Hospitals in high growth areas; and

4 (8) Utilization.

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

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

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

15 [(3)] (2) Immediately upon adoption of the institution-specific plan
16 the Commission shall begin the process of incorporating the institution-specific plan
17 into the State health plan and shall complete the incorporation within 12 months.

18 [(4)] (3) A State health plan developed or adopted after the
19 incorporation of the institution-specific plan into the State health plan shall include
20 the criteria in subsection (b) of this section in addition to the criteria in § 19-118 of
21 this subtitle.

22 19-120.

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

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

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

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

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

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

1 (3) (i) **IN THIS SECTION, [“Health] “HEALTH care service” means**
2 any clinically related patient service.

3 [(ii) “Health care service” includes a medical service.

4 (4) “Medical service” means:

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

6 1. Medicine, surgery, gynecology, addictions;

7 2. Obstetrics;

8 3. Pediatrics;

9 4. Psychiatry;

10 5. Rehabilitation;

11 6. Chronic care;

12 7. Comprehensive care;

13 8. Extended care;

14 9. Intermediate care; or

15 10. Residential treatment; or

16 (ii) Any subcategory of the rehabilitation, psychiatry,
17 comprehensive care, or intermediate care categories of health care services for which
18 need is projected in the State health plan.]

19 (b) The Commission may set an application fee for a certificate of need for
20 health care facilities not assessed a user fee under this subtitle.

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

23 (d) The Commission may adopt, after October 1, 1983, new thresholds or
24 methods for determining the circumstances or minimum cost requirements under
25 which a certificate of need application must be filed.

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

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

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

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

10 (2) This subsection does not apply if:

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

13 (ii) The relocation is the result of a partial or complete
14 replacement of an existing hospital or related institution, as defined in § 19-301 of
15 this title, and the relocation is to another part of the site or immediately adjacent to
16 the site of the existing hospital or related institution; **OR**

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

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

22 A. The proposed relocation is not across county
23 boundaries; and

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

26 2. A site outside the primary service area of the health
27 care facility to be relocated but within the primary service area of the merged asset
28 system if:

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

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

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

3 (iv) The relocation involves moving a portion of a complement of
4 comprehensive care beds previously approved by the Commission after January 1,
5 1995 for use in a proposed new related institution, as defined in § 19-301 of this title,
6 but unbuilt on October 1, 1998 if:

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

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

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

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

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

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

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

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

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

33 2. A. The change would not increase total bed
34 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] **TWO**
12 or more health care facilities, or conversion of a health care facility or part of a facility
13 to 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; **AND**

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;

29 (iii) Does not involve comprehensive or extended care beds; and

30 (iv) Does not occur earlier than 45 days after a notice of intent to
31 reallocate bed capacity is filed with the Commission.

1 (2) A hospital may not create a new health care service through the
2 relocation of beds from one county to another county pursuant to this subsection.]

3 [(j)] (I) (1) A certificate of need is required before the type or scope of
4 any health care service is changed if the health care service is offered:

5 (i) By a health care facility;

6 (ii) In space that is leased from a health care facility; or

7 (iii) In space that is on land leased from a health care facility.

8 (2) This subsection does not apply if:

9 (i) The Commission adopts limits for changes in health care
10 services and the proposed change would not exceed those limits;

11 (ii) The proposed change and the annual operating revenue that
12 would result from the addition is entirely associated with the use of medical
13 equipment;

14 (iii) The proposed change would establish, increase, or decrease
15 a health care service and the change would not result in the:

16 1. Establishment of a new medical service or elimination
17 of an existing medical service; **OR**

18 2. [Establishment of an open heart surgery, organ
19 transplant surgery, or burn or neonatal intensive health care service;

20 3.] Establishment of a home health [program,] **OR**
21 hospice program[, or freestanding ambulatory surgical center or facility]; or

22 [4. Expansion of a comprehensive care, extended care,
23 intermediate care, residential treatment, psychiatry, or rehabilitation medical service,
24 except for an expansion related to an increase in total bed capacity in accordance with
25 subsection (h)(2)(i) of this section; or]

26 (iv) 1. At least 45 days before increasing or decreasing the
27 volume of [1] **ONE** or more health care services, written notice of intent to change the
28 volume of health care services is filed with the Commission;

29 2. The Commission in its sole discretion finds that the
30 proposed change:

31 A. Is pursuant to the consolidation or merger of [2] **TWO**
32 or more health care facilities, the conversion of a health care facility or part of a

1 facility to a nonhealth–related use[, or the conversion of a hospital to a limited service
2 hospital];

3 B. Is not inconsistent with the State health plan or the
4 institution–specific plan developed and adopted by the Commission;

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

7 D. Is in the public interest; and

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

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

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

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

17 (iii) Before a transfer of ownership of any branch office of a home
18 health agency or home health care service of an existing health care facility that
19 separates the ownership of the branch office from the home health agency or home
20 health care service of an existing health care facility which established the branch
21 office; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 [(2)] (1) A certificate of need is required before any of the following
30 capital expenditures are made by or on behalf of a health care facility [other than a
31 hospital]:

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

34 1. The expenditure is made as part of an acquisition,
35 improvement, or expansion, and, after adjustment for inflation as provided in the
36 regulations of the Commission, the total expenditure, including the cost of each study,

1 survey, design, plan, working drawing, specification, and other essential activity, is
2 more than \$5,000,000;

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

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

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

12 (ii) Any expenditure that is made to lease or, by comparable
13 arrangement, obtain any plant or equipment for the health care facility [other than a
14 hospital], if:

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

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

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

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

28 [(3)] (2) A certificate of need is required before any equipment or
29 plant is donated to a health care facility, if a certificate of need would be required
30 under paragraph (1) [or (2)] of this subsection for an expenditure by the health care
31 facility to acquire the equipment or plant directly.

32 [(4)] (3) A certificate of need is required before any equipment or
33 plant is transferred to a health care facility at less than fair market value if a
34 certificate of need would be required under paragraph (1) [or (2)] of this subsection for
35 the transfer at fair market value.

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

4 ~~[(6)]~~ (5) This subsection does not apply to:

5 (i) Site acquisition;

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

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

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

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

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

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

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

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

30 C. Is in the public interest; and

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

33 ~~[(vi)]~~ (vi) A capital expenditure by a nursing home for equipment,
34 construction, or renovation that:

- 1 1. Is not directly related to patient care; and
- 2 2. Is not directly related to any change in patient
- 3 charges or other rates;

4 (vii) A capital expenditure by a hospital, as defined in § 19–301 of

5 this title, for equipment, construction, or renovation that:

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

8 (viii) A capital expenditure by a hospital as defined in § 19–301 of

9 this title, for a project in excess of \$10,000,000 for construction or renovation that:

- 10 1. May be related to patient care;
- 11 2. Does not require, over the entire period or schedule of
- 12 debt service associated with the project, a total cumulative increase in patient charges
- 13 or hospital rates of more than \$1,500,000 for the capital costs associated with the
- 14 project as determined by the Commission, after consultation with the Health Services
- 15 Cost Review Commission;

16 3. At least 45 days before the proposed expenditure is

17 made, the hospital notifies the Commission; and

18 A. Within 45 days of receipt of the relevant financial

19 information, the Commission makes the financial determination required under item 2

20 of this subparagraph; or

21 B. The Commission has not made the financial

22 determination required under item 2 of this subparagraph within 60 days of the

23 receipt of the relevant financial information; and

24 4. The relevant financial information to be submitted by

25 the hospital is defined in regulations adopted by the Commission, after consultation

26 with the Health Services Cost Review Commission; or

27 (ix) A plant donated to a hospital as defined in § 19–301 of this

28 title, which does not require a cumulative increase in patient charges or hospital rates

29 of more than \$1,500,000 for capital costs associated with the donated plant as

30 determined by the Commission, after consultation with the Health Services Cost

31 Review Commission that:

32 1. At least 45 days before the proposed donation is made,

33 the hospital notifies the Commission; and

1 A. Within 45 days of receipt of the relevant financial
2 information, the Commission makes the financial determination required under this
3 subparagraph; or

4 B. The Commission has not made the financial
5 determination required under item 2 of this subparagraph within 60 days of the
6 receipt of the relevant financial information; and

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

10 (7) Paragraph (6)(vi), (vii), (viii), and (ix) of this subsection may not be
11 construed to permit a facility to offer a new health care service for which a certificate
12 of need is otherwise required.

13 (8) Subject to the notice requirements of paragraph (6)(ii) of this
14 subsection, a hospital may acquire a freestanding ambulatory surgical facility or office
15 of one or more health care practitioners or a group practice with one or more operating
16 rooms used primarily for the purpose of providing ambulatory surgical services if the
17 facility, office, or group practice:

18 (i) Has obtained a certificate of need;

19 (ii) Has obtained an exemption from certificate of need
20 requirements; or

21 (iii) Did not require a certificate of need in order to provide
22 ambulatory surgical services after June 1, 1995.

23 (9) Nothing in this subsection may be construed to permit a hospital to
24 build or expand its ambulatory surgical capacity in any setting owned or controlled by
25 the hospital without obtaining a certificate of need from the Commission if the
26 building or expansion would increase the surgical capacity of the State's health care
27 system.]

28 [(1) A certificate of need is not required to close any hospital or part of a
29 hospital as defined in § 19–301 of this title if:

30 (1) At least 45 days before the closing or partial closing of a hospital,
31 including a State hospital, a person proposing to close all or part of the hospital files
32 notice of the proposed closing or partial closing with the Commission; and

33 (2) For a hospital located in a county with fewer than three hospitals,
34 within 30 days after receipt of the notice of intent to close, the hospital, in consultation
35 with the Commission, holds a public informational hearing in the county where the
36 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
31 abolish an existing health care service, the Commission shall give notice of the filing
32 by publication in the Maryland Register and give the following notice to:

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

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

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

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

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

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

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

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

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

24 (ii) Comply with State licensing standards; or

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

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

30 (2) A majority of the full authorized membership of the Commission
31 shall be a quorum to act on an application for a certificate of need.

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

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

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

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

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

8 (ii) Preparation of a recommended decision for consideration by
9 the full Commission.

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

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

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

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

21 (i) The staff of the Commission;

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

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

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

27 (9) The reviewer shall review the application, any written comments
28 on the application, and any other materials permitted by this section or by the
29 Commission’s regulations, and present a recommended decision on the application to
30 the full Commission.

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

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

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

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

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

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

18 (1) Have satisfactorily met all applicable standards;

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

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

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

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

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

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

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

6 [(h)] (G) (1) The applicant or any aggrieved party, as defined in §
7 19-128(a) of this subtitle, may petition the Commission within 15 days for a
8 reconsideration.

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

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

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

17 19-319.

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

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

24 19-3B-04.

25 (a) An applicant for a license shall:

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

27 (2) Pay to the Secretary the application fee set by the Secretary
28 through regulation.

29 (b) The application shall:

30 (1) Be on a form and accompanied by any supporting information that
31 the Secretary requires[, including documentation that the Maryland Health Care

1 Commission has determined that the freestanding ambulatory care facility either
2 received a certificate of need or is exempt from certificate of need requirements]; and

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

4 19-4A-05.

5 To qualify for a license, an applicant:

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

9 (2) Shall meet any additional requirements that the Department
10 adopts[; and

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 19-121
14 through 19-125 and 19-129 of Article – Health – General of the Annotated Code of
15 Maryland be repealed.

16 SECTION 3. AND BE IT FURTHER ENACTED, That:

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

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

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

23 2. The appropriate State commitment to fund and
24 ensure the financial solvency of emergency medical facilities provided for in the
25 comprehensive plan.

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

29 (b) On or before December 1, 2009, the Commission shall report to the
30 General Assembly, in accordance with § 2-1246 of the State Government Article, with
31 the findings of the comprehensive plan, including any recommendations for legislation
32 needed to implement the plan.

1 SECTION 4. AND BE IT FURTHER ENACTED, That the publisher of the
2 Annotated Code of Maryland, in consultation with and subject to the approval of the
3 Department of Legislative Services, shall correct, with no further action required by
4 the General Assembly, cross-references and terminology rendered incorrect by this
5 Act or by any other Act of the General Assembly of 2009 that affects provisions
6 enacted by this Act. The publisher shall adequately describe any such correction in an
7 editor's note following the section affected.

8 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 July 1, 2009.