

SENATE BILL 940

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9lr3134
CF HB 931

By: **Senator Klausmeier**

Introduced and read first time: February 15, 2019

Assigned to: Rules

Re-referred to: Finance, February 22, 2019

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 2019

CHAPTER _____

1 AN ACT concerning

2 **Health Care Facilities – Certificate of Need – Modifications**

3 FOR the purpose of ~~altering~~ repealing a provision of law exempting certain offices from
4 certificate of need requirements under certain circumstances; providing that a
5 certificate of need is required before the type or scope of any health care service is
6 changed if the health care service results in a change in operating room capacity in
7 ~~a certain hospital~~ health care facilities; altering the circumstances under which a
8 certificate of need is required before certain capital expenses are made by or on
9 behalf of a certain health care facility; ~~authorizing the Maryland Health Care~~
10 ~~Commission to establish an abbreviated review process for certain applications for a~~
11 ~~certificate of need~~; repealing a provision of law authorizing a hospital to acquire a
12 freestanding ambulatory surgical facility or a certain office or group practice under
13 certain circumstances; providing that a certain certificate of need application is
14 deemed approved under certain circumstances; repealing a provision of law
15 providing for the construction of certain provisions of law governing certificates of
16 need; providing for the application of certain provisions of this Act; altering a certain
17 definition; and generally relating to certificates of need.

18 BY repealing and reenacting, without amendments,

19 Article – Health – General

20 Section 19–114(a)

21 Annotated Code of Maryland

22 (2015 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Health – General
 3 Section 19–114(b), 19–120(j)(1) and (k)(2), and 19–126
 4 Annotated Code of Maryland
 5 (2015 Replacement Volume and 2018 Supplement)

6 BY repealing
 7 Article – Health – General
 8 Section 19–120(k)(8) and (9)
 9 Annotated Code of Maryland
 10 (2015 Replacement Volume and 2018 Supplement)

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

13 **Article – Health – General**

14 19–114.

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

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

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

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

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

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

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

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

1 19–120.

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

4 (I) IS offered:

5 [(i)] 1. By a health care facility;

6 [(ii)] 2. In space that is leased from a health care facility; or

7 [(iii)] 3. In space that is on land leased from a health care facility;

8 OR

9 (II) **RESULTS IN A CHANGE IN OPERATING ROOM CAPACITY IN A**
10 **GENERAL HOSPITAL, A FREESTANDING MEDICAL FACILITY, OR AN AMBULATORY**
11 **SURGICAL FACILITY.**

12 (k) (2) A certificate of need is required before any of the following capital
13 expenditures are made by or on behalf of a health care facility other than a hospital:

14 (i) Any expenditure that, under generally accepted accounting
15 principles, is not properly chargeable as an operating or maintenance expense, 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
18 regulations of the Commission, the total expenditure, including the cost of each study,
19 survey, design, plan, working drawing, specification, and other essential activity, is more
20 than \$5,000,000;

21 2. The expenditure is made as part of a replacement of any
22 plant and equipment of the health care facility other than a hospital and is more than
23 \$5,000,000 after adjustment for inflation as provided in the regulations of the Commission;

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

26 [4.] 2. The expenditure results in the establishment of a new
27 medical service in a health care facility other than a hospital that would require a
28 certificate of need under subsection (i) of this section; or

29 (ii) Any expenditure that is made to lease or, by comparable
30 arrangement, obtain any plant or equipment for the health care facility other than a
31 hospital, 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 more
5 than \$5,000,000;

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

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

11 [4.] 2. The expenditure results in the establishment of a new
12 medical service in a health care facility other than a hospital that would require a
13 certificate of need under subsection (i) of this section.

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

19 (i) Has obtained a certificate of need;

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

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

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

28 19–126.

29 (a) If the Commission receives an application for a certificate of need for a change
30 in the bed capacity of a health care facility, as required under § 19–120 of this subtitle, or
31 for a health care project that would create a new health care service or abolish an existing
32 health care service, the Commission shall give notice of the filing by publication in the
33 Maryland Register and give the following notice to:

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

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

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

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

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

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

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

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

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

21 (ii) Comply with State licensing standards; or

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

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

27 ~~(H) THE COMMISSION MAY ESTABLISH AN ABBREVIATED~~
28 ~~REVIEW PROCESS FOR UNCONTESTED APPLICATIONS FOR A CERTIFICATE OF NEED~~
29 ~~THAT DO NOT INVOLVE:~~

30 ~~1. THE ESTABLISHMENT OF A HEALTH CARE FACILITY;~~

31 ~~2. THE RELOCATION OF A HEALTH CARE FACILITY; OR~~

~~3. THE INTRODUCTION BY A HOSPITAL OF CARDIAC
SURGERY OR ORGAN TRANSPLANTATION.~~

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

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

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

(ii) May request further information from the applicant.

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

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

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

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

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

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

(8) The Commission shall define the term "interested party" to include, at a minimum:

(i) The staff of the Commission;

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

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

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

1 (v) In the review of a replacement acute general hospital project
2 proposed by or on behalf of a regional health system that serves multiple contiguous
3 jurisdictions, a jurisdiction within the region served by the regional health system that does
4 not contain the proposed replacement acute general hospital project.

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

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

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

14 (11) Any interested party who has submitted written comments under
15 paragraph (7) of this subsection may submit written exceptions to the proposed decision
16 and make oral argument to the Commission, in accordance with regulations adopted by the
17 Commission, before the Commission takes final action on the 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 on
20 the basis of the recommended decision, the record before the staff or the reviewer, and
21 exceptions and arguments, if any, before the Commission.

22 (13) The decision of the Commission shall be by a majority of the quorum
23 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 applicants
27 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 the
30 greater of 10 beds or 10 percent of total licensed bed capacity to the extent of the beds that
31 are voluntarily delicensed; or

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

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

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

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

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

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

(h) (1) The applicant or any aggrieved party, as defined in § 19–128(a) of this subtitle, may petition the Commission within 15 days for a reconsideration.

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

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

(i) (1) [If] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF** the Commission does not act on an application within the required period, the applicant may file with a court of competent jurisdiction within 60 days after expiration of the period a petition to require the Commission to act on the application.

~~(2) FOR UNCONTESTED APPLICATIONS FOR A CERTIFICATE OF NEED ELIGIBLE FOR AN ABBREVIATED PROJECT REVIEW PROCESS UNDER SUBSECTION (D)(1)(H) OF THIS SECTION, IF FINAL ACTION BY THE COMMISSION DOES NOT OCCUR WITHIN 90 DAYS AFTER THE APPLICATION WAS DOCKETED, THE APPLICATION FOR THE CERTIFICATE OF NEED SHALL BE DEEMED APPROVED.~~

(2) (I) THIS PARAGRAPH DOES NOT APPLY TO AN APPLICATION FOR A CERTIFICATE OF NEED INVOLVING:

- 1. THE ESTABLISHMENT OF A HEALTH CARE FACILITY;**
- 2. THE RELOCATION OF A HEALTH CARE FACILITY; OR**

1 **3. THE INTRODUCTION BY A HOSPITAL OF CARDIAC**
2 **SURGERY OR ORGAN TRANSPLANTATION.**

3 **(II) A CERTIFICATE OF NEED FILED AFTER OCTOBER 1, 2019,**
4 **SHALL BE DEEMED APPROVED IF:**

5 **1. THE CERTIFICATE OF NEED IS UNCONTESTED; AND**

6 **2. FINAL ACTION BY THE COMMISSION DOES NOT**
7 **OCCUR WITHIN 120 DAYS AFTER THE APPLICATION FOR THE CERTIFICATE OF NEED**
8 **WAS DOCKETED.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.