

HOUSE BILL 1256

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5lr3079
CF 5lr2943

By: **Delegate Bromwell**

Introduced and read first time: March 6, 2015

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Care Commission – Certificates of Need – Application of Bed**
3 **Need Projections**

4 FOR the purpose of requiring the Maryland Health Care Commission to apply a certain
5 bed need projection in considering a certificate of need application for new
6 comprehensive care facility beds; defining a certain term; providing for the
7 application of this Act; and generally relating to the application of bed need
8 projections to certificates of need by the Maryland Health Care Commission.

9 BY repealing and reenacting, with amendments,
10 Article – Health – General
11 Section 19–126
12 Annotated Code of Maryland
13 (2009 Replacement Volume and 2014 Supplement)

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

16 **Article – Health – General**

17 19–126.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

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

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

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

19 (i) The staff of the Commission;

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

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

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

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

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

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

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

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

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

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

15 (1) Have satisfactorily met all applicable standards;

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

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

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

22 **(F) (1) IN THIS SUBSECTION, "BED NEED PROJECTION" MEANS A**
23 **PROJECTION OF THE NEED FOR NEW COMPREHENSIVE CARE FACILITY BEDS THAT**
24 **IS:**

25 **(I) DEVELOPED IN ACCORDANCE WITH THE NEED PROJECTION**
26 **METHODOLOGY PROVIDED FOR IN THE STATE HEALTH PLAN; AND**

27 **(II) USED IN EVALUATING A CERTIFICATE OF NEED**
28 **APPLICATION.**

29 **(2) IN CONSIDERING A CERTIFICATE OF NEED APPLICATION FOR NEW**
30 **COMPREHENSIVE CARE FACILITY BEDS, THE COMMISSION SHALL APPLY THE BED**
31 **NEED PROJECTION THAT WAS PUBLISHED AND IN EFFECT AT THE TIME THE**
32 **CERTIFICATE OF NEED APPLICATION WAS DETERMINED TO BE COMPLETE AND WAS**
33 **DOCKETED.**

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

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

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

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

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

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

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

22 **[(i)] (J)** If the Commission does not act on an application within the required
23 period, the applicant may file with a court of competent jurisdiction within 60 days after
24 expiration of the period a petition to require the Commission to act on the application.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
26 apply retroactively and shall be applied to and interpreted to affect any certificate of need
27 application pending before the Maryland Health Care Commission on or after January 1,
28 2015.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
30 1, 2015.