



Maryland  
Hospital Association

**House Bill 931: Health Care Facilities – Certificate of Need - Modification**  
**Position: Support with Amendments**

**Bill Summary**

HB 931 would allow Ambulatory Surgical Facilities (ASFs) with three operating rooms to be opened without a certificate of need (CON). HB 931 would eliminate a certificate of need spending threshold for non-hospital services and would create an abbreviated process for non-contested CONs for selected services.

**MHA Position**

On behalf of the Maryland Hospital Association's (MHA) 62-member hospitals and health systems, we will support the legislation with several amendments. The legislation is intended to align with recommendations from the Maryland Health Care Commission's (MHCC or the Commission) Certificate of Need Task Force.

Ambulatory Surgical Facilities

The Commission's task force recommended that ASFs with up to **two** operating rooms be permissible without a Certificate of Need. Currently, a single operating room ASF is allowed without a CON. Adding a second operating room requires the applicant to seek an exemption from CON, a process that requires Commission approval. The proposed legislation would remove the exemption approval requirement for the second operating room. We agree with this provision. However, as drafted, HB 931 would allow up to *three* operating rooms without CON approval, inconsistent with the consensus recommendation.

The Commission's task force recommended that CON approval for changes in operating room capacity by hospitals be limited to operating rooms provided "at the hospital," which means those within the hospital building. The current statute already requires CON approval for hospitals to increase surgical services. The Commission's task force recommended that all types of providers should be allowed to establish ASF services, including hospitals. The current ASF definition allows only one or more health care practitioners or a group practice to own an ASF.

We propose the following amendments:

- 1) Page 1, line 23 - change language to read, "**Ambulatory surgical facility**" means **any center, service, office or facility, that...** This removes the reference to one or more health care practitioners or a group practice.
- 2) Page 2, line 6 – **delete all of subsection 2.** This removes the CON exemption approval requirement, limited to one or two operating rooms, consistent with the task force's recommendations.
- 3) Page 2, line 23 – **delete all of subsection II.** This section is not necessary because hospitals are already required to have CON to expand surgical services at the hospital.

- 4) NEW – in Health General 19-120, **change subsection (8) to read, “Subject to the notice requirements of paragraph (6)(ii) of this subsection, a hospital may acquire an freestanding ambulatory surgical facility if the facility or office...”** This removes the reference to practitioners or a group practice.
- 5) NEW – in Health General 19-120, **change subsection (9) to read, “Nothing in this subsection may be construed to permit a hospital to build or expand its ambulatory surgical capacity the at the hospital without obtaining a certificate of need from the Commission if the building or expansion would increase the surgical capacity of the State's health care system.”** This clarifies the current requirement that hospitals must obtain CON approval to expand surgical services “at the hospital.” Hospitals are allowed to create an ASF, outside of the hospital, by obtaining CON approval for three or more operating rooms, and would be allowed to create an ASF with two or fewer operating rooms, outside of the hospital, without CON approval.

#### Non-Hospital Capital Threshold

The Commission’s task force recommended eliminating the capital threshold for non-hospital health care facility projects. Hospitals understand the intent of this provision, but we are concerned that this may indirectly lead to growth in total cost of care as a result of cost escalation. We are not offering amendments to this language, simply raising awareness of this concern.

#### Abbreviated Review Process

Hospitals agree with task force recommendations to abbreviate the review process for uncontested projects that do not involve certain services. We suggest modifying the approach to ensure an abbreviated review process by enforcing the deadline, rather than establishing a new process.

We propose the following amendments:

- 6) Page 4, line 27 – delete proposed subsection II. The intent of the proposed language will be addressed in the next amendment.
- 7) Page 7, line 25 – **revise proposed subsection (2) to read:**  
**(2) For uncontested certificate of need applications that do not involve the services listed in sections (I), (II) and (III) of this subsection, if final action by the commission does not occur within 120 days after the application was docketed, the application for the certificate of need shall be deemed approved.**
  - (I) The establishment of a health care facility;**
  - (II) The relocation of a health care facility**
  - (III) The introduction by a hospital of cardiac surgery or organ transplantation.**

This accomplishes the goal to abbreviate the review process without creating a new process.

With these amendments, we urge you to give **HB 931 a favorable** report.