

No. 1979-48

AN ACT

HB 308

Relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1 PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Health Care Facilities Act."

Section 102. Purposes.

The General Assembly finds that the health and welfare of Pennsylvania citizens will be enhanced by the orderly and economical distribution of health care resources to prevent needless duplication of services. Such distribution of resources will be further by governmental involvement to coordinate the health care system. Such a system will enhance the public

health and welfare by making the delivery system responsive and adequate to the needs of its citizens, and assuring that new health care services and facilities are efficiently and effectively used; that health care services and facilities continue to meet high quality standards; and, that all citizens receive humane, courteous, and dignified treatment. In developing such a coordinated health care system, it is the policy of the Commonwealth to foster responsible private operation and ownership of health care facilities, to encourage innovation and continuous development of improved methods of health care and to aid efficient and effective planning using local health systems agencies. It is the intent of the General Assembly that the Department of Health foster a sound health care system which provides for quality care at appropriate health care facilities throughout the Commonwealth.

Section 103. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Act.” The comprehensive Health Care Facilities Act.

“Affected person.” A person whose proposal is being reviewed for purposes of certificate of need, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, and those members of the public who are to be served by the proposed new institutional health services.

“Annual implementation plan.” The latest health systems agency’s annual statement of objectives to achieve the goals of the health systems plan, including the priorities established among the objectives.

“Certificate of need.” A certificate issued by the department under the provisions of this act, including those issued as an amendment to an existing certificate of need.

“Conflict of interest.” The interest of any person, whether financial, by association with, or as a contributor of money or time to, any nonprofit corporation or other corporation, partnership, association, or other organization, and whenever a person is a director, officer or employee of such organization, but shall not exist whenever the organization in which such person is interested is being considered as part of a class or group for whom regulations are being considered, if the material facts as to the relationship or interest are disclosed or are known to the board.

“Consumer.” A natural person who uses or potentially will use the services of a provider of health care, excluding however the following: a health care provider, or third party payor, or a practitioner of the healing arts. It shall also exclude persons one-tenth or more of whose gross income is from provision of health services, research or instruction in health care or from entities producing or supplying drugs or other articles for use in

health care or health care research or instruction, any person who holds a fiduciary position in any of the foregoing or in a health care institution, or the parent, spouse, child, brother, or sister residing in the same household with any of the above excluded person.

“Department.” The Department of Health.

“Develop.” When used in connection with health services or facilities, means to undertake those activities which on their completion will result in the offer of a new health service or the incurring of a financial obligation in relation to the offering of such a service, excluding costs for preliminary plans, studies, and surveys.

“Health care facility.” A general or special hospital including tuberculosis and psychiatric hospitals, skilled nursing facilities, kidney disease treatment centers including free-standing hemodialysis units, intermediate care facilities and ambulatory surgical facilities, both profit and nonprofit and including those operated by an agency of State or local government, but shall not include an office used exclusively for their private or group practice by physicians or dentists, nor a program which renders treatment or care for drug or alcohol abuse or dependence, unless located within, by or through a health care facility, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of any church or religious denomination, nor a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of the religious denominations conducting the facility.

This definition shall exclude all health care facilities as hereinabove defined that do not accept, directly or indirectly, any Federal or State Governmental funds for capitalization, depreciation, interest, research or reimbursement, unless the Secretary of Health, Education and Welfare, pursuant to Federal Public Law 93-641, section 1523(a)(4)(B), concludes that this exclusionary provision is unsatisfactory to the Departments of Health, Education and Welfare.

“Health care provider.” A person who operates a health care facility or health care institution or health maintenance organization.

“Health maintenance organization.” An organization providing health care services for a voluntarily enrolled population operating in a defined geographical area and charging a fixed pre-paid membership fee.

“Health service area.” The area served by a health systems agency as designated in accordance with Title XV of the Federal Public Health Service Act.

“Health services.” Clinically related (i.e., diagnostic, treatment or rehabilitative) services, including alcohol, drug abuse and mental health services.

“Health systems agency” or “HSA.” An entity which has been conditionally or fully designated pursuant to Title XV of the Federal Public Health Service Act.

“Hearing board.” The State Health Facility Hearing Board created in the Department of Justice under the provisions of this act.

“Institutional health services.” Health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

“Offer.” Make provision for providing in a regular manner and on an organized basis specified health services.

“Patient.” A natural person receiving health care in or from a health care provider.

“Person.” A natural person, corporation (including associations, joint stock companies and insurance companies), partnership, trust, estate, association, the Commonwealth, and any local governmental unit, authority and agency thereof.

“Persons directly affected.” A person whose proposal for certificate of need is being reviewed, members of the public who are to be served by the proposed new institutional health services, health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review, and health care facilities and health maintenance organizations which prior to receipt by the agency of the proposal being reviewed have formally indicated an intention to provide such similar service in the future.

“Policy board.” The Health Care Policy Board created in the Department of Health under the provisions of this act.

“Predevelopment costs.” Expenditures for preparation of architectural designs, working drawings, plans and specifications; however expenditures for preliminary plans, studies and surveys are excluded from the operation of this act.

“Public hearing.” A meeting open to the public where any person has an opportunity to present testimony held without imposition of a fee.

“Secretary.” The Secretary of the Department of Health of the Commonwealth of Pennsylvania.

“State health plan.” The statement of goals for the State health care system based on the various HSA plans as annually approved by the SHCC.

“State medical facilities plan.” The statement of needs and priorities consistent with the State health plan prepared annually to serve as a guide for allocation of Federal and State funds in support of capital expenditures of health care facilities and for consideration in issuing certificates of need.

“Statewide Health Coordinating Council” or “SHCC”, or “council.” The council established in compliance with Title XV of the Federal Public Health Service Act.

“Third party payor.” A person who makes payments on behalf of patients under compulsion of law or contract who does not supply care or services as a health care provider or who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical

service benefits, but shall not include the Federal, State, or any local government unit, authority, or agency thereof or a health maintenance organization.

CHAPTER 2 POWERS AND DUTIES OF THE DEPARTMENT

Section 201. Powers and duties of the department.

The Department of Health shall have the power and its duties shall be:

(1) To act as a single State agency through its staff and the policy board in serving as the designated sole State health planning and development agency in accordance with Titles XV and XVI of the Federal Public Health Service Act.

(2) To exercise exclusive jurisdiction over health care providers, and jurisdiction over health maintenance organizations in accordance with the provisions of this act.

(3) To issue certificates of need and amended certificates of need in accordance with the provisions of this act.

(4) With respect to health care facilities, to investigate, and report to the Auditor General, upon every application to the Auditor General made by any institution, corporation or unincorporated association, desiring to give a mortgage under the provisions of the act of April 29, 1915 (P.L.201, No.112), entitled "An act making mortgages, given by benevolent, charitable, philanthropic, educational and eleemosynary institutions, corporations, or unincorporated associations, for permanent improvements and refunding purposes, prior liens to the liens of the Commonwealth for the appropriation of moneys; providing a method for the giving of such mortgages and fixing the duties of the Auditor General and Board of Public Charities in connection therewith."

(5) To evaluate at least annually its functions and performance and their economic effectiveness.

(6) To compile, maintain and publish a Statewide inventory of health care facilities and their types of services.

(7) To require, pursuant to regulation, submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(8) To research, prepare and after adoption by the SHCC publish annually a State health plan for the Commonwealth.

(9) To provide coordination with the National Center for Health Statistics of the activities of the department for the collection, retrieval, analysis, reporting and publication of statistical and other information relating to health and health care and to require health care providers doing business in the Commonwealth to make statistical and other reports of information required by Federal law to be submitted to the National Center for Health Care Statistics; and to collect such other information as may be appropriate to determine the appropriate level of

facilities and services for the effective implementation of certification of need under this act.

(10) To furnish such staff support and expertise to the department's policy board as may be needed by them to perform their responsibilities provided that any refusal of a substantial request from such board be subject to final determination by the Governor.

(11) To receive, docket and review all applications for certificates of need or amendments thereof and approve or disapprove the same.

(12) To prepare a State medical facilities plan for approval by the SHCC.

(13) To minimize the administrative burden on health care providers by eliminating unnecessary duplication of financial and operational reports and to the extent possible coordinating reviews and inspections performed by Federal, State, local and private agencies.

(14) To adopt and promulgate, after consultation with the policy board, regulations necessary to carry out the purposes and provisions of this act relating to certificate of need.

(15) To enforce the rules and regulations promulgated by the department as provided in this act.

(16) To consult with the SHCC in the administration of this act.

CHAPTER 3 ORGANIZATION AND POWERS AND DUTIES OF THE HEALTH CARE POLICY BOARD

Section 301. Health Care Policy Board.

In the interest of providing for broad consumer and professional representation in the regulatory development under this act, there is hereby created a Health Care Policy Board within the Department of Health and as an integral part thereof. The Department of Health shall act as the single State agency to administer the certificate of need provisions of this act. The policy board shall consist of 13 members, 12 of whom shall be appointed by the Governor and confirmed by a majority vote of the Senate. Of the members first appointed, three shall be appointed for a term of one year, three for a term of two years, three for a term of three years, and three for a term of four years. Thereafter, appointments shall be made by the Governor for four year terms. A vacancy occurring during a term shall be filled for the unexpired term in the same manner his predecessor was appointed. The Secretary of Health or his designee shall serve *ex officio*, and act as chairman. Members of the policy board chosen by the Governor shall be seven consumers (including at least one representative of organized labor and one representative of industry), one hospital representative, one skilled nursing or intermediate care representative, one physician and two representatives of third party payors. Members shall be chosen for their familiarity and experience with health care facilities or for relevant training and experience which will assist the board to perform its functions. Six members shall constitute a quorum. No member shall participate in any

action or decision or discussions thereof concerning any matter in which the member has a conflict of interest.

Section 302. Health Care Policy Board; powers and duties.

The Health Care Policy Board shall have the powers and duties to:

(1) Study and review all the requirements of this act and all State and Federal laws pertinent thereto.

(2) Review rules and regulations prepared by the department pursuant to this act as an advisory board and consult with the department as to such rules and regulations.

(3) Consider recommendations of the council relating to certification of need and to report periodically on its activities to the secretary and the SHCC.

Section 303. Policy board compensation; expenses.

Each member of the policy board shall be paid travel and other necessary expenses and compensation at the per diem rate to be fixed by the executive board.

CHAPTER 4 STATEWIDE HEALTH COORDINATING COUNCIL AND HEALTH SYSTEMS AGENCIES

Section 401. Statewide Health Coordinating Council.

The Statewide Health Coordinating Council as established or designated under Federal law shall perform such functions as are mandated by Federal law.

Section 402. Statewide Health Coordinating Council; powers.

The Statewide Health Coordinating Council shall consult with the department and make recommendations as to carrying out the department's functions in acting as the single State agency under this act.

Section 403. Health systems agencies.

The health systems agencies as established and designated by the Secretary of Health, Education and Welfare, shall perform such functions as are mandated by Federal law.

Section 404. Health systems agencies; powers.

The health systems agencies shall have in addition to their functions as provided under Title XV of the Federal Public Health Service Act the following powers and duties: to receive and review for their respective geographic areas all applications for certificates of need, and, after due deliberation, prepare recommendations or objections for submission to the department.

Section 405. Health systems agencies; election of directors.

(a) Some or all of the members of the governing body of health systems agencies in this Commonwealth shall be elected at general election; provided that before this section shall become effective:

(1) the commission herein established shall study the advantages and disadvantages of having members so elected, hold public hearings on the matter and report to the Governor their recommendations by June 30,

1980, which if favorable, shall include rules and regulations providing for such elections in compliance with the act of June 3, 1937 (P.L.1333, No.320), known as the "Pennsylvania Election Code"; and

(2) the Governor shall approve the election of some or all such members and approve or modify the rules and regulations for such elections.

(b) The commission herein established shall consist of the Secretary of Health, as chairman, a Senator from each party to be appointed by the President pro tempore of the Senate, a representative from each party to be appointed by the Speaker of the House of Representatives, and four members to be appointed by the Governor.

CHAPTER 5

THE STATE HEALTH FACILITY HEARING BOARD

Section 501. State Health Facility Hearing Board.

There is hereby created the State Health Facility Hearing Board in the Department of Justice which shall consist of three members who shall initially be appointed for terms of one, two and three years respectively by the Governor and confirmed by a majority vote of the Senate. Thereafter, appointments shall be by the Governor for four year terms. Members shall be chosen for their familiarity and experience with health care facilities or for relevant training and experience which will assist the board to perform its functions. No person shall be chosen who is at the time of appointment an employee of the Commonwealth or of any health care provider. No member shall participate in any action or decision concerning any matter in which the member has an economic interest or other conflict of interest.

Section 502. Powers and duties of the hearing board.

(a) The hearing board shall have the powers and its duties shall be:

(1) To hear appeals from departmental decisions on applications for certificates of need or amendments thereto.

(2) To hear upon petition objections to published regulations, criteria, or standards of the health systems agency or department as to the policies therein set forth and where appropriate to request the promulgating agency to reconsider such policies.

(3) To hear appeals from decisions of the department which are inconsistent with the recommendation of a health systems agency under Title XVI of the Federal Public Health Service Act, or on decisions made with respect to the review of the State Medical Facilities Plan, or in the performance of other functions of the State Health Coordinating Council, or with respect to reviews for appropriateness.

(4) To fix the place of hearings in the area from which the application arises in matters relating to certificate of need.

(b) Hearings may be held before one or more members of the board, but action of the board shall be made by majority vote of the board.

Section 503. Counsel.

The Attorney General shall appoint counsel to serve and advise the hearing board and shall replace such counsel upon request of the board.

Section 504. Hearing board; compensation; expenses.

Each member of the hearing board shall be paid travel and other necessary expenses and compensation at a rate to be fixed by the executive board.

Section 505. Hearings before the hearing board.

(a) All hearings before the hearing board shall be subject to right of notice, hearing and adjudication in accordance with 2 Pa.C.S. Chaps. 5 and 7, known as the Administrative Agency Law and a written record shall be kept of said proceedings and a copy thereof provided to the parties at cost.

(b) Persons conducting hearings under this act shall have the power to subpoena witnesses and documents required for the hearing, to administer oaths and examine witnesses and receive evidence in any locality which the hearing body may designate, having regard to the public convenience and proper discharge of its functions and duties.

(c) Notice of hearings before the hearing board shall be given to the parties at least 21 days in advance of the hearing. In appeals to the board from the decision of the department on an application for certificate of need or amendment thereof, notice of the same shall be published (other than by legal notice or classified advertisement) in a newspaper in general circulation in the health service area and to the areas affected and in the Pennsylvania Bulletin at least 14 days before the hearing.

Section 506. Appeals to the hearing board.

(a) Decisions of the department on an application for a certificate of need or amendment thereto may be appealed within 30 days by any party or health systems agency who is involved in the proceeding. The appeal to the hearing board shall be commenced within 30 days of the appeal and shall be limited to issues raised by the appellant in the specification of objections to the decision of the department which shall raise no further issues not brought to the attention of the health systems agency or the department, and the board shall entertain no evidence that the hearing board is satisfied the appellant was able, by the exercise of reasonable diligence, to have submitted before the health systems agency and the department.

(b) The hearing board shall be bound by the duly promulgated regulations of the department and shall give due deference to the expertise of the health systems agencies and the department in reaching their decisions. It shall receive any evidence as to challenges of the authority of the department or the reasonableness of the criteria or regulations used in the review of the application for the sole purpose of creating a record for any subsequent appeal to court.

(c) When any decision of the hearing board is inconsistent with the recommendations made with respect thereto by a health systems agency, or with the applicable health systems plan or annual implementation plan, the hearing board shall submit to such health systems agency and all parties to the proceeding a written, detailed statement of the reasons for the inconsistency.

Section 507. Appeals and procedures on appeals.

The action of the hearing board may be appealed to the Commonwealth Court on the record made before the hearing board by any party or health systems agency who is involved in that proceeding.

**CHAPTER 6
ADMINISTRATION OF THE ACT****Section 601. Promulgation of rules and regulations.**

(a) All rules and regulations under this act relating to ¹ certificate of need shall be prepared by the department and submitted for review by the policy board and the department shall consult with the policy board before proposed regulations are published.

(b) All rules and regulations adopted under this act shall provide fair access and due process in all proceedings held to carry out the provisions of this act and shall not require an applicant to supply data or information as to other health care facilities or health maintenance organizations.

(c) All proposed rules and regulations shall be submitted to the Secretary of the Senate and Chief Clerk of the House of Representatives who shall cause the regulations to be printed and distributed among all members of both chambers in the same manner as a reorganization plan. If both bodies fail to act within 30 days of receipt of such regulations, or within five legislative days after receipt, whichever shall last occur, regulations adopted by the department shall be promulgated pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

(d) If either chamber disapproves any regulation, such information shall be certified by the Speaker of the House of Representatives or President pro tempore of the Senate to the department, and such regulation shall not be promulgated as a final regulation.

(e) The department shall also publish notice of proposed regulations relating to certificate of need and any revisions thereof in accordance with the designation agreement with the Secretary of Health, Education and Welfare, if any, (other than as a legal notice or classified advertisement) in at least two newspapers in general circulation in the Commonwealth, together with a place they may be examined and copied by interested persons. It shall also send the proposed regulations to each health systems agency.

(f) Proposed regulations establishing certificate of need review procedures and criteria or changes therein shall be distributed by the department to the SHCC, each health systems agency operating in the Commonwealth and Statewide health agencies and*organizations.

(g) The department shall distribute copies of adopted final regulations on certificate of need review procedures and criteria, and any revisions thereof, to the Departments of Health, Education and Welfare and shall provide such copies to other interested persons upon request.

¹"a" in original.

(h) Prior to review by the department of new institutional health services under this act, the department shall disseminate to all health care facilities and health maintenance organizations within the Commonwealth, and shall publish in one or more newspapers in general circulation within the Commonwealth a description of coverage of the certificate of need program for review, as determined under regulations, and any revisions thereof shall be similarly disseminated and published.

Section 602. Regulations.

The department is hereby authorized and empowered pursuant to the provisions of this act to adopt rules and regulations establishing procedures required by this act for administration of certificate of need.

Section 603. Enforcement of orders relating to certificate of need.

(a) (1) No certificate of need shall be granted to a health care facility for a new institutional health service unless such new institutional health service is found by the department to be needed.

(2) Only those new institutional health services which are granted certificates of need shall be offered or developed within the Commonwealth by a health care facility.

(3) No expenditures in excess of \$150,000 in preparation for the offering or development of a new institutional health service for a health care facility shall be made by any person unless a certificate of need for such services or expenditures has been granted.

(4) No binding arrangement or commitment for financing the offering or development of a new institutional health service shall be made for any health care facility unless a certificate of need for such new institutional health service, or the preparation for the offering or development of the same has been granted.

(b) Orders for which the time of appeal has expired shall be enforced by the department in summary proceedings or, when necessary, with the aid of the court of common pleas of the county in which the health care facility is located.

(c) No collateral attack on any order, including questions relating to jurisdiction shall be permitted in the enforcement proceeding, but such relief may be sought in the Commonwealth Court when such relief has not been barred by the failure to take a timely appeal.

(d) Any health care facility operating a facility or a new institutional health service within this Commonwealth for which no certificate of need has been obtained, after service of a cease and desist order of the department, or after expiration of the time for appeal of any final order on appeal, upon conviction thereof, shall be sentenced to pay a fine of not less than \$100 or more than \$1,000 and costs of prosecution. Each day of operating a health care facility after issuance of a cease and desist order shall constitute a separate offense.

(e) Any person violating this act by a willful failure to obtain a certificate of need, or willfully deviating from the provisions of the certificate, or beginning construction, or providing services, or acquiring

equipment after the expiration of a certificate of need shall be subject to a penalty of not less than \$100 per day and not more than \$1,000 per day. Each day after notice to them of the existence of such violation shall be considered a separate offense.

(f) The department shall seek injunctive relief to prevent continuing violations of this act.

(g) No license to operate a health care facility, health maintenance organization, or new institutional health service by a health care facility in this Commonwealth shall be granted and any license issued shall be void and of no effect as to any facility, organization, service or part thereof for which a certificate of need is required by this act and not granted.

Section 604. Immunity from legal liability.

Any person, whether an employee or not, who as a member of any board, governing body, or committee, or other part of any agency established or designated under this act who performs duties or activities in good faith on behalf of that board, body, committee or agency and without malice shall be immune from any liability for payment of any form of damages.

CHAPTER 7 CERTIFICATE OF NEED

Section 701. Certificate of need required; new institutional health services subject to review.

(a) No person shall offer, develop, construct or otherwise establish or undertake to establish within the State a new institutional health service in a health care facility without first obtaining a certificate of need from the department. For purposes of this chapter, "new institutional health services" shall include:

(1) The construction development or other establishment of a new health care¹ facility or health maintenance organization.

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of \$150,000 which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this chapter shall not apply to expenditures for acquisitions of existing health care facilities and health maintenance organizations which currently have a certificate of need. An acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, shall be deemed a capital expenditure subject to review, except that no review shall be required for acquisition of real property by gift, devise or option.

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or redistributes beds among various categories other than levels of care in a

¹"care" omitted in original.

nursing home, or relocates such beds from one physical facility or site to another) by more than ten beds or more than 10% of total bed capacity, as defined by the regulations, whichever is less, over a two-year period.

(4) Health services which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the 12-month period prior to the time such services would be offered.

(b) (1) Any expenditure by or on behalf of health care facilities or a health maintenance organization in excess of \$150,000 made in preparation for the offering or development of a new institutional health service and any binding arrangement or commitment by either of them for financing the offering or development of the new institutional health service shall be subject to review under this chapter. Should a higher dollar limitation for review requirements of new institutional health services be permitted by Federal law such higher amount shall apply throughout this act each time a dollar limit appears.

(2) Nothing in this paragraph shall preclude the department from granting a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed.

Section 702. Certificates of need; notice of intent; application; issuance.

(a) Projects for facilities, services or equipment requiring a certificate of need shall, at the earliest possible time in their planning, be submitted to the health systems agency and the department in a letter of intent in such detail advising of the scope and nature of the project as required by regulations.

(b) A person desiring to obtain or amend a certificate of need shall apply to the local health systems agency, if any, and to the department simultaneously supplying to them such information as is required by rules and regulations. The health systems agency and the department shall have 20 business days after receipt of the application within which to determine whether the application is complete and in which to request specific further information. If further information is requested, the agency requiring the same shall determine whether the application is complete within 15 business days of receipt of the same. No information shall be required that is not specified in the rules and regulations promulgated by the department.

(c) Notice of the beginning of review of the application by the health systems agency shall be sent with the notice of a completed application, upon the expiration of the time to determine that an application is complete, or 60 days or more after the filing of the application upon written demand by the applicant that review begin, whichever shall first occur, and the review shall be completed within 60 days of the "date of notification" unless the applicant agrees in writing to a specified extension of time for the

review by the health systems agency. A health systems agency shall have, at least, 60 days to complete its review unless the health systems agency waives such time in writing. The "date of notification" of the beginning of review shall be the date such notice is sent, or the date such notice is published in a newspaper of general circulation, whichever is later.

(d) The department shall consider the timely filed recommendations or objections of the health systems agency in reviewing the application and shall approve or disapprove the application, unless there is an agreed extension in writing, within 30 days from receipt of the health systems agency report or report on a hearing for reconsideration before the health systems agency, whichever is later, or upon the expiration of the time for filing the same. If no action is taken within the time permitted the department to make its findings, the application will be found not needed; provided, that if permitted by amendment of the Federal law or regulation any application upon which action is not taken within the prescribed time shall be deemed needed and the department shall have no right of appeal with respect thereto. No new institutional health service shall be granted a certificate of need unless found or deemed to be found needed by the department or on appeal therefrom.

(e) Certificates of need shall be granted or refused. They shall not be conditioned upon the applicant changing other aspects of its facilities or services or requiring the applicant to meet other specified requirements, and no such condition shall be imposed by the department or the health systems agency in granting or refusing approval or recommendation.

(f) The department shall make written findings which state the basis for any final decision made by the department. Such findings shall be served upon the applicant, the health systems agency or agencies, and all parties to the proceedings, and shall be made available to others upon request.

(g) When the department makes a decision regarding the proposed new institutional health service which is inconsistent with the recommendation made with respect thereto by a health systems agency, or with the applicable health systems plan or annual implementation plan, the department shall submit to such health systems agency and all parties to the proceeding a written, detailed statement of the reasons for the inconsistency.

(h) Modification of the application at any stage of the proceeding shall not extend the time limits provided by this act unless the health systems agency expressly finds that the modification represents a substantial change in the character of the application.

Section 703. Notice and hearings before health systems agencies.

(a) Notice of filing applications for certificates of need or amendment thereto and of the beginning of review shall be published by the health systems agency in the appropriate news media and by the department in the Pennsylvania Bulletin in accordance with 45 Pa.C.S. Chap. 7 B (relating to publication of documents), and the health systems agency shall notify all affected persons with notice of the schedule for review, the date by which a

public hearing must be demanded, and of the manner notice will be given of a hearing, if one is to be held. Such notice will be sent by mail to the applicant, contiguous health systems agencies, and health care facilities and health maintenance organizations located within the health service area; including another health systems agency if the service will affect its area, or a consumer, provider or third party payor may file objections within 15 days of such publication with the local health systems agency setting forth specifically the reasons such objections were filed. Persons filing the objections shall be parties to the proceeding, unless and until such objections are withdrawn.

(b) Directly affected persons may request a public hearing or the health systems agency may require a public hearing during the course of such review. Fourteen days written notice of the hearing shall be given to directly affected persons. In addition, notice shall be published by the health systems agency (other than by legal notice or classified advertisement) in a newspaper of general circulation in the area at least ten days before the hearing, and by the department in the Pennsylvania Bulletin before the hearing. The applicant and any persons shall be afforded the opportunity to submit testimony at the hearing. A summary of the oral testimony at the hearing shall be made and copies made available at cost to the parties. Any party shall have the right to require additional testimony given at the hearing to be included in the summary, but the decision of the health systems agency as to the testimony at the hearing shall be final.

Section 704. Hearings before the department.

(a) If a public hearing has been held by the health systems agency, no hearing need be held by the department in reaching its final decision. If there has been no provision for such hearings before the health systems agency, the department shall comply with the provisions of section 703(a) in the manner provided for hearings as to the health systems agency; and objections may be filed within ten days of publication of the notice.

(b) Any person may, for good cause shown, request, in writing, a public hearing for the purpose of reconsideration of a decision of the department within ten days of service of the decision of the department. The department shall set forth the cause for the hearing and the issues to be considered at such hearing. If such hearing is granted, it shall be held no sooner than six days and no later than 14 days after such request is made, and may be limited to the issues submitted for reconsideration. A summary of the oral testimony shall be made of the hearing, and copies thereof supplied at cost to the parties. The department shall affirm or reverse its decision and submit the same to the parties, the persons requesting the hearing, and the health systems agency within 14 days of the conclusion of such hearing. Any change in the decision shall be supported by the reasons therefor.

(c) Where hearings are held on more than two days, consecutive days of hearings and intervening weekends and holidays shall be excluded in

calculating the time permitted for the department to conduct its review, and if briefs are to be filed, ten days subsequent to the adjournment of the hearing shall also be excluded.

Section 705. Good cause.

Good cause shall be deemed to have been shown if:

- (1) there is significant, relevant information not previously considered;
- (2) there is significant change in factors or circumstances relied on in making the decision;
- (3) there has been material failure to comply with the procedural requirements of this act; or
- (4) the department determines that there is good cause shown for some other reason.

If good cause as to items (1) and (2) above is found by the department, the application shall be remanded for consideration with respect to such factors to the health systems agency for consideration of the same. The time, not to exceed 45 days, that the application is before the health systems agency for such consideration shall not be counted in determining the time within which the department shall take action on the application.

Section 706. Information during review.

During the course of review the health systems agency and the department shall upon request of any person, set forth the status, any findings then made in the proceeding and other appropriate information requested.

Section 707. Criteria for review of applications for certificates of need or amendments.

(a) An application for a certificate of need shall be recommended, approved, and issued when:

- (1) The relationship of the application with the applicable health systems plan and annual implementation plan has been considered.
- (2) The services are compatible to the long-range development plan (if any) of the applicant.
- (3) There is a need by the population served or to be served by the services.
- (4) There is no appropriate, less costly, or more effective alternative methods of providing the services available.
- (5) The service or facility is economically feasible, considering anticipated volume of care, the capability of the service area to meet reasonable charges for the service or facility and the availability of financing.

(6) The proposed service or facility is financially feasible both on an intermediate and long term basis and the impact on cost of and charges for providing services by the applicant is appropriate.

(7) The proposed service or facility is compatible with the existing health care system in the area.

(8) The service or facility is justified by community need and within the financial capabilities of the institution both on an intermediate and long term basis and will not have an inappropriate, adverse impact on the overall cost of providing health services in the area.

(9) There are available resources (including health manpower, management personnel, and funds for capital and operating needs) to the applicant for the provision of the services proposed to be provided, and there is no greater need for alternative uses for such resources for the provision of other health services.

(10) The proposed service or facility will have available to it appropriate ancillary and support services and an appropriate organizational relationship to such services.

(11) The proposed services are consistent with the special needs and circumstances of those entities which provide services or resources both within and without the health service area in which the proposed services are to be located, including medical and other health professional schools, multidisciplinary clinics, and specialty centers.

(12) The special needs and circumstances of health maintenance organizations shall be considered to the extent required by Federal law and regulation now or hereafter enacted or adopted.

(13) The proposed services are not incompatible with any biomedical or behavioral research projects designed for national need for which local conditions offer special advantages.

(14) Consideration of the need and availability in the community for services and facilities for allopathic and osteopathic physicians and their patients; and the religious orientation of the facility and the religious needs of the community to be served. This provision is not intended to create duplicative systems of care.

(b) If the application is for a proposed service or facility which includes a construction project, a certificate of need shall be recommended, approved and issued when the provisions of subsection (a) are found, and:

(1) the costs and methods of proposed construction including the costs and methods of energy provision are appropriate; and

(2) the impact on the costs of providing health services by the applicant resulting from the construction is appropriate.

(c) Whenever new institutional health services for inpatients are proposed, a finding shall be made in writing by the reviewing authority:

(1) as to the efficiency and appropriateness of the existing use of the inpatient facilities similar to those proposed;

(2) as to the capital and operating costs, efficiency and appropriateness of the proposed new service and its potential impact on patient charges;

(3) that less costly alternatives which are more efficient and more appropriate to such inpatient service are not available and the development of such alternatives has been studied and found not practicable;

(4) that existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner;

(5) that in the case of new construction, alternatives to new construction such as modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

(6) that patients will experience serious problems in terms of cost, availability, accessibility or such other problems as are identified by the reviewing agency in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(7) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of the agency, if any, that is responsible for the provision and financing of long-term care services.

A certificate of need shall be issued for inpatient services when the findings of this subsection can be made.

Section 708. Expiration of certificate of need.

A certificate of need shall remain in effect, providing the facilities and services authorized are in use. In the absence of substantial implementation of a proposal for which a certificate of need was issued, the certificate shall expire one year after issuance, unless the department extends the time of expiration for a definite period, not to exceed six months. In case of projects which are approved to be carried out in phases, the certificate of need shall remain in effect after the first phase is substantially implemented unless the project is abandoned. Annual reports of progress shall be made to the department by the applicant from the time a certificate of need is granted until the facility or service is in use.

Section 709. Emergencies.

Notwithstanding any other provision of this act, and pursuant to an agreement with the United States Department of Health, Education and Welfare, in the event of an emergency the department may suspend the foregoing application process and permit such steps to be taken as may be required to meet the emergency including the replacement of equipment or facilities.

Section 710. Notice of termination of services.

For informational purposes only, at least 30 days prior to termination or substantial reduction of a service or a permanent decrease in the bed complement, the provider shall notify the health systems agency and the department of its intended action.

Section 711. Review of activities.

The department and each health systems agency shall prepare and publish not less frequently than annually reports of reviews conducted under this act, including a statement on the status of each such review and of reviews completed by them, including statements of the finding and decisions made in the course of such reviews since the last report. The

department and each health systems agency shall also make available to the general public for examination at reasonable times of the business day all applications reviewed by them and all written materials on file at the agency pertinent to such review.

CHAPTER 8
PROCEEDING AGAINST HEALTH CARE
INSTITUTIONS; VIOLATORS

Section 801. Actions against violations of law and rules and regulations.

Whenever any person, regardless of whether such person is a licensee, has willfully violated any of the provisions of this act or the rules and regulations adopted thereunder, the department may maintain any action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

Section 802. Bonds.

No bond shall be required of the department in any legal action.

CHAPTER 9
GENERAL PROVISIONS;
REPEALS; EFFECTIVE DATE

Section 901. Certificates for existing facilities and institutions.

All health care providers operating a health care facility shall be issued forthwith a certificate of need by the department to all buildings, real property and equipment owned, leased or being operated under contract for construction, purchase or lease and for all services being rendered by the licensed, approved or certified providers upon the effective date of this act.

Section 902. Administration of act.

(a) No health care provider shall be required by any provisions of this act or rules and regulations promulgated thereunder, to provide facilities or render services contrary to the stated religious or moral beliefs of the provider, nor shall any applicant be denied a certificate of need or the right to apply for or receive public funds on the grounds he will not provide the facilities or render the services for such reasons.

(b) In making determinations under this act, consideration shall be given to the needs of patients having preferences as to theories of medical practice, both allopathic and osteopathic, or religious affiliations or other preferences, the need for teaching facilities for various theories of medical practice, as well as to the size or functions of the health care provider involved, subject, however, to the other provisions of this act.

(c) In carrying out the provisions of this act and other statutes of this Commonwealth relating to health care facilities or institutions, the department and other agencies and officials of State and local governments shall make every reasonable effort to prevent duplication of inspections and examinations.

(d) The department shall not administer this act in a way that will stifle innovation or experimentation in health care and health care facilities or that will discourage contributions of private funds and services to health care facilities or institutions.

Section 903. Compliance with Federal law.

It is the intent of this act to meet minimal Federal requirements for compliance with Federal law and regulations under Title XV of the Public Health Service Act requiring State certificate of need legislation as interpreted by the General Assembly. Should any provisions be found by a court to violate such requirements, such provisions shall be invalid and severable.

Section 904. Elimination of section 1122 reviews.

No further reviews shall be performed under section 1122 of the Federal Social Security Act, 42 U.S.C. §1320a-1, one year after implementation of reviews under this act.

Section 905. Repeals.

All acts or parts thereof are hereby repealed insofar as they may be inconsistent with the provisions of this act.

Section 906. Effective date.

This act shall take effect October 1, 1979.

APPROVED—The 19th day of July, A. D. 1979.

DICK THORNBURGH