

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 853

Session of  
1975

INTRODUCED BY MRS. KELLY, MESSRS. IRVIS, HAMMOCK, MANDERINO, BERLIN, WOJDAK, BERSON, GALLAGHER, RAPPAPORT, PIEVSKY, FEE, MRKONIC, HOPKINS, TAYOUN, JOHNSON, MRS. TOLL, MR. OLIVER, MRS. KERNICK, MESSRS. GREEN, LINCOLN, ROSS, RUGGIERO, BLACKWELL, REED, KOWALYSHYN, ECKENSBERGER, RITTER, DOMBROWSKI, BELLOMINI, GARZIA, MILLIRON, O'KEEFE, ROSS, GIAMMARCO, MUSTO, VANN, VALICENTI, SCHMITT, FLAHERTY, M. M. MULLEN, TRELLO, ABRAHAM, ROMANELLI, NOVAK, MRS. GILLETTE, MESSRS. YAHNER, PRENDERGAST, LaMARCA, SHUPNIK, DeMEDIO, PETRARCA AND PERRY, MARCH 19, 1975

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MARCH 20, 1975

AN ACT

1 Relating to health care, prescribing the powers and duties of  
2 the Department of Health, establishing and providing the  
3 powers and duties of the Health Care Policy Board; providing  
4 for licensure, rate approval, certification of need of health  
5 care providers; creating a health advocate; prescribing  
6 penalties; and making an appropriation.

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

9 ARTICLE I

10 Preliminary Provisions

11 Section 101. Short Title.--This act shall be known and may  
12 be cited as the "Comprehensive Health Care Act."

13 Section 102. Purposes.--The General Assembly finds as a fact  
14 that the continuously increasing cost of health care services  
15 threatens the health and welfare of citizens of the Commonwealth  
16 by impairing the ability of citizens to obtain high quality,

1 economical and readily available health care. The General  
2 Assembly also finds that the health and welfare of Pennsylvania  
3 citizens will be enhanced by the orderly and economical  
4 distribution of health care resources. To achieve such  
5 distribution of resources requires governmental intervention to  
6 insure the development and organization of a coordinated and  
7 comprehensive system of health care. The goal of such a system  
8 is to enhance the public health and welfare by insuring that  
9 needed health care is available to everyone at a fair and  
10 reasonable cost; that the health care delivery system is  
11 responsive and adequate to the needs of all citizens; that  
12 health care services and facilities are most efficiently and  
13 effectively used; that consumers have meaningful input regarding  
14 the delivery of care; that health care cost inflation is  
15 limited; that unnecessary duplication, fragmentation, and  
16 dehumanization of health care services and facilities are  
17 minimized; that health care services and facilities meet high  
18 quality standards; that relevant information on the cost and  
19 quality of health care is disclosed to the public to the maximum  
20 extent possible; and, that all citizens receive humane,  
21 courteous and dignified treatment. In developing such a  
22 coordinated and comprehensive health care system, it is the  
23 policy of the Commonwealth to foster responsible private  
24 operation and ownership of health care facilities, to encourage  
25 innovation and continuous development of improved methods of  
26 health care and to aid efficient and effective planning using  
27 local agencies.

28 Section 103. Definitions.--As used in this act:

29 "Consumer" means a natural person who uses or potentially  
30 will use the services of a provider of health care, provided,

1 however, that the consumer is not any of the following: a  
2 provider of health care; an administrator, employee or  
3 representative of a provider of health care, an administrator,  
4 employee or representative of a third party payor as defined in  
5 this act; a member of the governing board of a provider or a  
6 third party payor, unless serving on such board as a designated  
7 consumer representative; or a person with a substantial  
8 financial interest in a provider, a third party payor or a major  
9 vendor of goods and services to providers or third party payors.

10 "Department" means the Department of Health.

11 "Health care facility" means a general, tuberculosis, mental,  
12 chronic disease or other type of hospital, except a Federal  
13 facility or State mental hospital; an ambulatory surgical  
14 center; a physical rehabilitation facility; a skilled or  
15 intermediate care nursing facility; a radiology laboratory; a  
16 renal dialysis center; a diagnostic center; a home health care  
17 agency; or a clinical laboratory; regardless of whether such  
18 health care facility is for-profit, nonprofit or governmental;  
19 but not an office used exclusively for the private practice of  
20 the healing arts or a program which renders treatment or care  
21 for drug or alcohol abuse or dependence unless located within a  
22 health care facility or a facility providing treatment solely on  
23 the basis of prayer or spiritual means. A health care facility,  
24 as defined, which is conducted by a religious organization for  
25 the purpose of providing health care services exclusively to  
26 clergymen or other persons in a religious profession who are  
27 members of a religious denomination, is included for the purpose  
28 of licensure only.

29 "Health care provider" means a person who operates a health  
30 care facility.

1 "Local agency" means any area-wide comprehensive health  
2 planning agency qualified under Federal Public Law 89-749 or a  
3 successor agency qualified under Federal Public Law 93-641 or  
4 subsequent Federal law.

5 "Person" means a natural person, corporation, partnership,  
6 association, the Commonwealth and any local governmental unit,  
7 authority and agency thereof.

8 "Policy Board" means the Health Care Policy Board created  
9 under the provisions of section 301.

10 "Rates" mean all moneys payable to providers for health care  
11 services, including fees, charges, and cost reimbursement.

12 "Secretary" means the Secretary of the Department of Health  
13 of the Commonwealth of Pennsylvania.

14 "SHCC" means the Statewide Health Coordinating Council  
15 established pursuant to Federal Public Law 93-641.

16 "Third party payor" means: (i) any stock or mutual insurance  
17 company, association or exchange issuing or servicing any  
18 hospitalization, accident and health, or major medical insurance  
19 policy; (ii) any hospital plan corporation, as defined in 40  
20 Pa.C.S. § 6101 (relating to definitions), added November 15,  
21 1972 (P.L.1063, No.271); (iii) any professional health service  
22 corporation, as defined in 40 Pa.C.S. § 6101; or (iv) any person,  
23 partnership, corporation, joint venture or other association  
24 which administers the provision of health care services on a  
25 prepaid basis; or which administers reimbursements for the  
26 provision of health care services by any health care provider or  
27 health care facility subject to the provisions of this act.

28 ARTICLE II

29 Powers and Duties of the Department

30 Section 201. Powers and Duties of the Department.--The

1 department shall have the power and its duties shall be:

2 (1) To issue licenses to health care providers qualified  
3 under the provisions of this act and to renew, suspend, and  
4 revoke licenses.

5 (2) To issue and renew certificates of need and amend  
6 certificates of need whenever it finds that the applicants  
7 qualify therefor under the provisions of this act.

8 (3) To approve rates to be paid to health care providers and  
9 to approve contracts between health care providers and third  
10 party payors.

11 (4) To conduct inspections, investigations, audits,  
12 inquiries and hearings on matters relating to health care  
13 facilities or services, and such related matters as may be  
14 necessary to carry out the purposes and provisions of this act.

15 (5) To research and prepare annually a preliminary State  
16 health plan for Pennsylvania and in conjunction with the SHCC  
17 publish a State health plan for Pennsylvania.

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

1       (7) To furnish such staff support and expertise to the  
2 Policy Board as may be needed by them to perform their  
3 responsibilities.

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

9       (9) To furnish consultation and advice to health care  
10 providers relating to financial planning and the securing of  
11 capital funds for the purchase, acquisition or construction of  
12 health care facilities.

13       (10) To make reasonable assessments against providers for  
14 the cost of conducting the inspection for licensure.

15       (11) To hold formal hearings in accordance with the act of  
16 June 4, 1945 (P.L.1388, No.442), known as the "Administrative  
17 Agency Law" and informal hearings, conferences and other oral  
18 proceedings and receive written comments, sworn affidavits and  
19 other writings on matters for decision by the department.

20       (12) To designate the local agency for purposes of  
21 certification of need and to contract with such local agencies  
22 for reimbursement by the department for conducting such  
23 certification.

24       (13) To implement a system of monitoring and evaluation by  
25 the department of the efficiency and effectiveness of its own  
26 operations and to report the results annually to the Governor,  
27 the General Assembly and the Policy Board.

28       (14) To enforce the rules and regulations adopted by the  
29 Policy Board.

30       (15) To exercise all other powers which are reasonably

1 related to the effective implementation of this act.

2 ARTICLE III

3 Organization and Powers and Duties of the Health  
4 Care Policy Board, Statewide Health Coordinating  
5 Council and the Health Advocate.

6 Section 301. Health Care Policy Board.--The Policy Board  
7 shall consist of eleven members, ten of whom shall be appointed  
8 by the Governor, and the Secretary of Health. Of the members  
9 first appointed, two shall be appointed for a term of one year,  
10 three for a term of two years, two for a term of three years and  
11 three for a term of four years. Thereafter, appointments shall  
12 be made for four-year terms. A vacancy occurring during a term  
13 shall be filled for the unexpired term. The members of the  
14 Policy Board shall be chosen for their training, experience and  
15 familiarity with the delivery of health care or for other  
16 ability and experience which will materially add to the  
17 deliberations of the board. Of the ten members appointed to the  
18 board, six shall be consumers and four shall be providers or  
19 third party payors. The Governor shall have the power to  
20 designate the chairman and adjust the composition of the board  
21 to meet changing requirements of Federal statutes and  
22 regulations. Six members shall constitute a quorum.

23 No member may participate in any action or decision  
24 concerning any matter in which the member has a substantial  
25 economic interest.

26 The board may have a professional staff of such size and  
27 qualifications as the board shall determine.

28 Section 302. Health Care Policy Board; Powers.--The Health  
29 Care Policy Board shall have the power and its duties shall be:

30 (1) To review and integrate the requirements of this act and

1 other State and Federal laws pertaining to the delivery of  
2 health care and to consult with Federal, State, local and  
3 private agencies involved in the health care system.

4 (2) To create such committees or advisory groups which it  
5 deems necessary to advise and make recommendations, suggestions  
6 or objections with respect to proposed regulations or to propose  
7 and recommend regulations.

8 (3) To annually adopt a report to the Governor, the General  
9 Assembly and the public on the regulation of health care  
10 facilities in Pennsylvania and to review and adopt in  
11 conjunction with the SHCC a State health plan, for a coordinated  
12 comprehensive Pennsylvania health care system.

13 (4) To adopt regulations for licensure and the procedures to  
14 be followed in accordance with this act.

15 (5) To adopt regulations for certification of need and the  
16 procedures to be followed in accordance with this act.

17 (6) To grant waivers upon the recommendation of the  
18 secretary from rules and regulations when found to be in the  
19 public interest and consistent with the purposes of this act.  
20 Whenever the secretary recommends to the Policy Board the grant  
21 of a waiver, notice of such recommendation, with a brief  
22 description of the content of the waiver sought, shall be  
23 published in the Pennsylvania Bulletin at least 30 days prior to  
24 consideration by the board. The Policy Board shall provide to  
25 any person interested as a provider, consumer or third party  
26 payor, reasonable opportunity to be heard prior to making a  
27 determination.

28 (7) To adopt regulations for approval of rates and contracts  
29 and the procedures to be followed in accordance with this act.

30 (8) To adopt rules and regulations regarding uniform systems



1 of accounting and reporting.

2 (9) To adopt rules and regulations in regard to disclosure  
3 of the contracts or other financial arrangements between health  
4 care providers and hospital based medical specialists pursuant  
5 to section 608.

6 (10) To establish a schedule of reasonable fees with respect  
7 to applications, renewals, or filings to cover the department's  
8 administrative cost of processing.

9 (11) To assume the existing powers and duties of the  
10 Advisory Health Board in the Department of Health.

11 (12) To adopt other regulations necessary or convenient to  
12 carry out the purposes and provisions of this act.

13 (13) To carry out such other responsibilities as may be  
14 conferred by this act.

15 Section 303. Statewide Health Coordinating Council.---(a)  
16 The SHCC shall review and integrate the requirements of this act  
17 and State and Federal laws, rules and regulations relating to  
18 certification of need. It shall review and make recommendations,  
19 suggestions or objections to any rule or regulation submitted to  
20 it by the Policy Board.

21 (b) The Policy Board may request the SHCC to study and  
22 review all or any portion of the laws, rules and regulations  
23 relating to certification of need. The SHCC shall report to the  
24 Policy Board within the time prescribed by the Policy Board in  
25 making its request for the study.

26 (c) The department may assign to the SHCC any  
27 responsibilities required by Federal law or regulations  
28 pertaining to need certification of health care facilities.

29 Section 304. Policy Board and SHCC; Compensation;  
30 Expenses.--Each member of the SHCC shall be paid traveling and

1 other necessary expenses, and compensation at a rate to be  
2 determined by the Executive Board. The SHCC may appoint such  
3 committees or advisory groups as it deems necessary to advise  
4 and assist it in its studies, but nonmembers of the SHCC shall  
5 receive no compensation for services or expenses. Members of the  
6 Policy Board, except the secretary, shall be paid traveling and  
7 other necessary expenses and compensation at a rate to be  
8 determined by the Executive Board.

9 Section 305. Health Advocate.--(a) There is hereby created  
10 the Health Advocate to represent the interests of users and  
11 potential users of health care services in the Commonwealth.

12 (b) The Health Advocate shall be appointed by the Governor  
13 for a term of four years to run concurrently with the  
14 gubernatorial term. The compensation shall be set by the  
15 Executive Board. The Health Advocate shall possess the  
16 background, independence and judgment required to represent  
17 responsibly the interests of users and potential users of health  
18 care services.

19 (c) The Health Advocate shall issue an annual report to the  
20 public on the activities of the Health Advocate's office,  
21 including the types of complaints received, the results achieved  
22 pursuant to such complaints, and continuing problems.

23 (d) The Health Advocate shall have the power upon petition  
24 of consumers or on his own motion:

25 (1) to initiate or participate in formal or informal  
26 proceedings regarding any matter of the department;

27 (2) to initiate or participate in litigation on behalf of  
28 consumers regarding health care or health related matters;

29 (3) to hold public hearings from time to time in various  
30 parts of the Commonwealth to solicit consumer views;

1 (4) to examine any relevant information and records in the  
2 possession of any Commonwealth department, board, commission or  
3 instrumentality, provided that no confidential information is  
4 disclosed or utilized in violation of law; and

5 (5) to publicize issues relating to matters of health care.

6 (e) The Health Advocate shall have authority to employ  
7 adequate professional and clerical staff, set their salaries and  
8 define their duties as may be necessary to carry out the powers  
9 and responsibilities imposed by this act. For administrative  
10 purposes the office of the Health Advocate shall be under the  
11 jurisdiction of the Governor's office.

#### 12 ARTICLE IV

##### 13 Administration of the Act

14 Section 401. Promulgation of Rules and Regulations.--(a) The  
15 rules and regulations under this act shall be promulgated by the  
16 Policy Board under the provisions of the act of July 31, 1968  
17 (P.L.769, No.240), known as the "Commonwealth Documents Law" and  
18 shall provide fair access and due process to all interested  
19 parties in proceedings held to carry out the provisions of this  
20 act.

21 (b) A brief statement of the reason for each substantive  
22 provision shall accompany publication of proposed regulations  
23 and subsequent changes in the Pennsylvania Bulletin, but such  
24 statement shall not have the effect of law.

25 Section 402. Opportunity to Be Heard.--(a) Opportunity to be  
26 heard may be granted by means of formal or informal hearings,  
27 conferences or other oral proceedings or by written comments,  
28 sworn affidavits or other writings on matters for decision by  
29 the department as may be deemed necessary by the department to  
30 make fair and informed decisions.

1 (b) Departmental hearings or other oral proceedings may be  
2 conducted by such persons as the secretary may designate,  
3 provided that no determination or order of the department shall  
4 become effective until approved and confirmed by the secretary  
5 or such representatives as he may designate for such purpose.

6 (c) Persons conducting proceedings under this act shall have  
7 the power to subpoena witnesses, to administer oaths and examine  
8 witnesses and receive evidence in any locality which the  
9 department, having regard to the public convenience and proper  
10 discharge of its functions and duties, may designate.

11 Section 403. Enforcement of Orders.--Orders of the  
12 department from which the time for appeal has expired may be  
13 enforced by the department in the court of common pleas of the  
14 county in which the health care facility is located or in the  
15 Commonwealth Court.

16 Section 404. Investigations and Inquiries.--Any  
17 investigation or inquiry authorized by this act shall be limited  
18 to the purposes set forth in the departmental order, rule or  
19 regulation authorizing the same.

20 Section 405. Appeals.--The appeal from any action of the  
21 department shall be to the Commonwealth Court.

## 22 ARTICLE V

### 23 Certificate of Need

24 Section 501. Certificate of Need Requisite for Licensure.--  
25 No license or renewal thereof to provide health care services  
26 shall be issued unless the applicant has a valid certificate of  
27 need issued by the department authorizing the use of the  
28 facility and the rendering of the services for which the license  
29 is to be issued.

30 Section 502. Certificate of Need; When Required.--(a) No

1 person shall operate, lease or construct a health care facility  
2 without first obtaining a certificate of need from the  
3 department, authorizing such operation, lease or construction.

4 (b) No person operating an existing health care facility  
5 under a certificate of need shall make expenditures toward any  
6 project which will involve a total capital project cost  
7 including the fair market value of any leased property in excess  
8 of \$100,000 in which he will (i) lease, erect, construct, alter,  
9 modernize or improve any building, or (ii) acquire any real  
10 property to be used now or in the future for health care  
11 purposes except by gift, devise or option, or (iii) lease or  
12 acquire equipment. No person shall make a substantial change in  
13 services, as defined by the department, or permanently increase  
14 or decrease the bed complement beyond limits set by the  
15 department unless such person has first been authorized to do so  
16 by the department through the issuance of a new or amended  
17 certificate of need.

18 (c) At least 30 days prior to substantial reduction of a  
19 service or a permanent decrease in the bed complement, the  
20 provider shall notify the local agency and the department of its  
21 intended action. If the local agency does not notify the  
22 provider of its objection within 30 days, the provider may make  
23 the specified change and an amended certificate of need will be  
24 issued automatically. If the local agency does notify the  
25 provider of its objections within 30 days, the procedures of  
26 section 504 shall apply.

27 Section 503. Changes Without Issuance of Certificate of Need  
28 or Mandated Changes of Use.--(a) A certificate of need shall not  
29 be required whenever a provider of health care services is  
30 directed to alter, modernize or improve a building or acquire

1 equipment under a Federal or State law, rule, regulation or  
2 order, but in such event, notice of the specific changes to be  
3 made shall be given by the health care provider to the  
4 department and the local agency, and the certificate of need of  
5 such facility shall be amended accordingly.

6 (b) When other changes are made which do not require a new  
7 or amended certificate of need, such changes must be reported to  
8 the department and the local agency at a reasonable time before  
9 such change is made.

10 Section 504. Certificates of Need; Application; Issuance.--

11 (a) A person desiring to obtain or amend a certificate of need  
12 shall apply by sending a letter of intent to the department,  
13 which will then direct such person and the local agency in the  
14 manner to proceed. Said person shall supply such information as  
15 is required by rules and regulations. A copy of the application  
16 shall be given simultaneously to the department and the local  
17 agency. The local agency's recommendations or objections shall  
18 be forwarded to the department and considered by the SHCC if  
19 filed with the department within 60 days of the date the  
20 applicant submitted the completed application to the local  
21 agency. SHCC recommendations or objections, if any, shall be  
22 filed with the department within 60 days of the receipt of a  
23 copy of the application by the department or within 15 days of  
24 the timely filing of the local agency recommendations or  
25 objections whichever shall last occur. The department shall  
26 consider recommendations or objections of the SHCC or local  
27 agency unless they are not timely filed with the department. If  
28 not timely filed, the department shall act upon the application  
29 without the recommendations or objections. Failure of the local  
30 agency to timely file recommendations or objections shall not

1 have the effect of a positive determination and the department  
2 may extend the review period by 30 days in order to provide  
3 adequate time for study and review of the proposal by the  
4 department in the absence of such recommendations or objections.  
5 Whenever objections are timely filed, the department shall  
6 promptly set a date for a hearing on the application. The  
7 department may on its own motion or at the request of any person  
8 hold a hearing on any application.

9 (b) The department shall act upon the application within 30  
10 days of the recommendation of the local agency or of the SHCC,  
11 whichever shall last occur, by granting, amending or refusing  
12 the requested certificate of need or by conducting a hearing on  
13 the application. Notice of filing applications for certificates  
14 of need or amendments or renewals thereof under subsection (a)  
15 shall be published in the Pennsylvania Bulletin and shall be  
16 provided to the appropriate news media serving the area in which  
17 the proposed project will be located. Any person interested as a  
18 consumer, provider or third party payor may file objections  
19 within 30 days of publication with the department setting forth  
20 specifically the reasons therefor.

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

23 (1) there is a community need for the facility;

24 (2) the necessary resources are available to operate the  
25 facility;

26 (3) it is a prudent use of resources considering the  
27 alternative uses for such resources considering the scope of  
28 types of services to be offered and considering existing  
29 facilities in adjacent areas. Noncompliance with the State plan  
30 adopted by the Policy Board may be considered by the department

1 as a proper basis for refusal of a certificate of need;

2 (4) the applicant is reasonably likely to fulfill licensure  
3 requirements;

4 (5) the proposed health care facility is economically  
5 feasible considering anticipated volume of care and the rates to  
6 be charged.

7 If the health care facility or service is to be used  
8 primarily for patients from an area larger than the immediate  
9 locality or community in which it is located, certificate of  
10 need shall not be refused on the ground that the immediate  
11 locality or community has no need for the health care facility  
12 or service and the application shall be considered in terms of  
13 need of the larger area.

14 The local agency may take into consideration the religious  
15 orientation of a health care provider and the community to be  
16 served; it may also take into consideration, as may be  
17 appropriate, different methodologies of treatment.

18 Section 505. Waiver from Rules.--If the local agency has  
19 recommended a certificate of need which has been refused by the  
20 department on the ground that the issuance of such a certificate  
21 is in violation of the rules and regulations or of the State  
22 plan, the applicant may upon recommendation by the secretary  
23 apply to the Policy Board for a waiver from the rules and  
24 regulations or plan which may be granted where there is a proven  
25 exceptional need and it is consistent with the purposes of this  
26 act. No appeal shall be allowed from the refusal of the Policy  
27 Board to grant a waiver.

28 Section 506. Expiration of Certificate of Need.--(a) A  
29 certificate of need shall remain effective for a period of at  
30 least three but no more than six years, as determined by the



1 board, providing the facilities and services authorized are in  
2 use. In cases of establishment of any new health care service or  
3 of construction or renovation of facilities, certificates of  
4 need shall remain in effect for one year from the date of issue.  
5 Failure to obligate funds for construction or initiation of  
6 services within one year will cause the certificate of need to  
7 be withdrawn unless the applicant, not less than 60 days before  
8 the date of expiration, requests an extension of time. Such  
9 extension may not be for a period longer than six months.  
10 Granting of an extension shall be determined by the department  
11 only after review and recommendation by the local agency.

12 (b) Any application for renewal for a certificate of need  
13 for all or part of a health care facility shall be granted  
14 unless the department finds, upon recommendation by the local  
15 agency, that such facility or part thereof no longer meets the  
16 standards for issuance of a certificate of need and that the  
17 public interest would be better served by nonrenewal. The  
18 department shall also take into consideration when transfer of a  
19 service or services to another facility will better serve the  
20 interests of the community and will provide more efficient  
21 utilization of health care services.

22 (c) In cases where nonrenewal is contemplated, the local  
23 agency and the department shall seek in cooperation with the  
24 provider to determine and implement a satisfactory alternative  
25 use for the facility.

26 Section 507. Limitations upon Nonrenewal; Burden of Proof;  
27 Hearing; Outstanding Debt.--(a) The local agency shall have the  
28 burden of proving to the department that a certificate of need  
29 should not be renewed. Procedures for review of an application  
30 for renewal, when challenged, shall be in accordance with

1 section 504. The health care facility whose application for  
2 renewal of a certificate of need is being challenged has the  
3 right to a hearing before the local agency and before the  
4 department.

5 (b) No application for renewal of a certificate of need for  
6 all or part of a health care facility shall be denied when such  
7 denial would make it impossible for the health care facility to  
8 amortize or retire outstanding capital debt: Provided, That such  
9 debt was incurred prior to the enactment of this act or, if such  
10 debt was incurred or refinanced after enactment of this act, the  
11 incurrence or refinancing thereof was approved by the department  
12 in accordance with the procedures established in section 504.

13 Section 508. Appeals.--The action of the department upon an  
14 application for a certificate of need or for renewal or  
15 amendment thereof may be appealed to the Commonwealth Court by  
16 the applicant. Appeals shall be taken by filing notice of appeal  
17 with the Commonwealth Court within 30 days of notice of the  
18 department's action.

## 19 ARTICLE VI

### 20 Licensure

21 Section 601. Licensure.--No person shall establish, maintain  
22 or operate a health care facility without first having obtained  
23 a license therefor issued by the department.

24 Section 602. Application for License.--Any person desiring  
25 to secure a license for conducting, maintaining and operating a  
26 health care facility shall submit an application therefor to the  
27 department upon forms prepared and furnished by it, containing  
28 such information as the department considers necessary to  
29 determine that the health care provider and the health care  
30 facility meet the requirements of licensure under the provisions

1 of this act and the rules and regulations relating to licensure.  
2 Application for renewal of a license shall be made upon forms  
3 prepared and furnished by the department and shall contain such  
4 information as may be necessary to determine whether the license  
5 should be renewed.

6 Section 603. Issuance of License.--(a) A health care  
7 provider to which a certificate of need has been issued, making  
8 application, shall be issued a license when the following  
9 standards have been met:

10 (1) that there is compliance with section 501;

11 (2) that there is a compliance with the department's rules  
12 and regulations pertaining to licensure. In developing rules and  
13 regulations for licensure the department shall take into  
14 consideration the standards of the Joint Commission on  
15 Accreditation of Hospitals, the Committee on Hospital  
16 Accreditation of the American Osteopathic Association and such  
17 other accrediting bodies as the board may find appropriate.

18 (b) When a health care provider operates more than one  
19 health care facility, each health care facility providing  
20 services to a different segment of the population and operating  
21 in autonomous or semi-autonomous fashion with respect to other  
22 facilities operated by the same provider shall require a  
23 separate license.

24 Section 604. Provisional License.--When there are numerous  
25 deficiencies or a serious specific deficiency in compliance with  
26 applicable statutes, ordinances or regulations, and when the  
27 department finds the applicant is taking appropriate steps to  
28 correct the deficiencies in accordance with a timetable agreed  
29 upon by the department, the department may issue a provisional  
30 license for a specified period of not more than six months which

1 may be renewed twice at the discretion of the department. Upon  
2 overall compliance, a regular license shall be issued  
3 immediately.

4 Section 605. Issuance of a Modified License.--When the  
5 certificate of need for a facility is amended as to services  
6 which can be offered, the department shall automatically issue a  
7 modified license for those services contained in the amended  
8 certificate of need.

9 Section 606. Term and Content of License.--(a) All licenses  
10 issued by the department under this act:

11 (1) shall expire unless renewed one year from the day on  
12 which issued, except for a provisional or modified license;

13 (2) shall be on a form prescribed by the department;

14 (3) shall not be transferable except upon prior written  
15 approval of the department;

16 (4) shall be issued only to the health care provider for the  
17 health care facility or facilities named in the application; and

18 (5) shall specify the maximum number of beds, if any, to be  
19 used for the care of patients in the facility at any one time.

20 (b) The license shall at all times be posted in a  
21 conspicuous place on the provider's premises. Except in case of  
22 extreme emergency, no licensee shall permit the use of beds for  
23 inpatient use in the licensed facility in excess of the maximum  
24 number set forth in the license without first obtaining written  
25 permission from the department. The department may grant  
26 temporary use of beds without a certificate of need.

27 (c) The department shall require reasonable public notice of  
28 a hospital or nursing home provider's application for license  
29 renewal and any person interested as a consumer, provider or  
30 third party payor may file objections within 30 days with the

1 department setting forth specifically the reasons therefor.

2 Section 607. Right to Enter and Inspect.--(a) For the  
3 purpose of determining the suitability of the applicants, the  
4 premises and the operations or the continuing conformity of the  
5 licensees to this act and to applicable State and Federal  
6 regulations, any authorized agent of the department shall, upon  
7 proper identification made to the individual in charge of the  
8 health care facility, have the right to enter, visit and inspect  
9 any provider licensed or requiring a license under this act and  
10 shall have full and free access to the records of the facility  
11 reasonably related to its purpose, to the patients and employees  
12 therein, and shall have full opportunity to interview the  
13 patients and employees, giving due regard to protection of the  
14 health and sanitary conditions, confidentiality of medical  
15 information and the patients' rights to protection against  
16 violation of their privacy involved in any such interview. No  
17 inspection made hereunder shall unduly interfere with the  
18 operation of the facility. The inspection result and any  
19 violations cited by the department shall be made public by the  
20 department within a reasonable time thereafter.

21 (b) The department may disclose to the public or require  
22 providers to disclose to the public any data or information as  
23 may be prescribed by regulation.

24 Section 608. Public Disclosure by Hospital Provider.--Every  
25 hospital provider shall disclose to the public annually the  
26 contracts or other financial arrangements between such provider  
27 and every hospital based medical specialist connected with it  
28 who charges a fee separate and distinct from the provider's  
29 rate. The disclosure shall include gross and net proceeds  
30 actually derived from the contract or arrangement by the

1 specialist. "Hospital based medical specialist" means any person  
2 rendering a service where there is no freedom of choice, as  
3 defined by regulation, for the patient to utilize a person  
4 offering that service who is not based in or affiliated with  
5 (except by customary staff privilege granted to numerous  
6 qualified persons in separate practices) the hospital provider.

7 Section 609. Refusal to Issue License; Suspension;  
8 Revocation; Notice.--(a) Whenever the department, upon  
9 reasonable complaint of any person and/or in the course of any  
10 inspection or investigation of a licensed health care facility  
11 shall learn of any violation of this act or of rules or  
12 regulations relating to licensure adopted pursuant to this act,  
13 or to Federal laws or regulations, it shall give written notice  
14 thereof to the health care provider. Such notice shall require  
15 the health care provider to take specific action to bring the  
16 health care facility into compliance with this act and the rules  
17 and regulations relating to licensure within a reasonable  
18 specified time.

19 (b) The department may refuse to renew a license or may  
20 revoke a license as to all or portions of a health care facility  
21 for any of the following reasons:

22 (1) substantial, numerous or continuing violations of  
23 provisions of this act or of the regulations for licensure  
24 issued pursuant to this act or to Federal laws or regulations;

25 (2) fraud or deceit in obtaining or attempting to obtain a  
26 license;

27 (3) lending, borrowing or using the license of another, or  
28 in any way knowingly aiding or abetting the improper granting of  
29 a license;

30 (4) substantial or continued incompetence, negligence or

1 misconduct in operating the health care facility or in providing  
2 services to patients;

3 (5) mistreating or abusing individuals cared for by the  
4 health care facility; or

5 (6) the operation of a health care facility or rendering of  
6 services for which a certificate of need is required under this  
7 act by a health care provider who has not obtained the requisite  
8 certificate or whose certificate has been revoked by the  
9 department.

10 (c) If the department, after examination of the application  
11 for a license or the renewal of a license or upon complaint and  
12 after such investigation as it may deem advisable, determines  
13 that there are apparent reasons for refusal of the license or a  
14 renewal as to all or a portion of the health care facility, it  
15 shall give written notice to the applicant specifying the  
16 reasons for its determination. Within 30 days of such notice,  
17 the applicant may demand a hearing which the department shall  
18 promptly provide to determine whether the license or renewal  
19 should be issued. The department may suspend or revoke a  
20 license, after due notice to the licensee of the specified  
21 charges, and a right to a hearing thereon and the department  
22 shall do so immediately in cases of imminent danger to health or  
23 safety of patients. Nothing herein contained shall impair any  
24 other enforcement powers of the department.

25 (d) Persons interested as consumers, providers or third  
26 party payors shall be entitled to participate in any hearings  
27 held pursuant to this section.

28 Section 610. Appeal to Commonwealth Court.--If the  
29 department shall refuse a license or renewal thereof or suspend  
30 or revoke or modify a license, the applicant or licensee shall

1 be entitled to appeal to the Commonwealth Court from the  
2 adjudication of the department within 30 days of the service of  
3 such order upon the applicant or licensee by filing a notice of  
4 appeal. Except in cases of imminent danger to health or safety  
5 of patients, no order of the department which is appealed which  
6 would terminate the right of any person to operate a health care  
7 facility already licensed shall be effective unless the  
8 department obtains from the Commonwealth Court a decision  
9 approving the enforcement of such order or the provider fails to  
10 perfect an appeal to Commonwealth Court within 30 days. Any  
11 license previously issued shall be deemed to continue in effect  
12 pending appeal notwithstanding the expiration of its term unless  
13 otherwise determined by Commonwealth Court.

14 Section 611. Violation; Penalty.--(a) Any person operating a  
15 health care facility within this Commonwealth without a license  
16 required by this act, shall upon conviction thereof be sentenced  
17 to pay a fine of not more than \$300, and costs of prosecution  
18 and/or to undergo imprisonment for not less than ten days nor  
19 more than 30 days. Each day of operating a health care facility  
20 without a license required by this act shall constitute a  
21 separate offense.

22 (b) Any person, regardless of whether such person is a  
23 licensee, who has committed a violation of any of the provisions  
24 of this act pertaining to licensure or of rules and regulations  
25 related to licensure shall upon conviction thereof in a summary  
26 proceeding be sentenced to pay a fine of not more than \$300, and  
27 costs of prosecution and/or to undergo imprisonment for not more  
28 than ten days: Provided, however, That the department may  
29 accept a civil forfeiture in settlement of an action. Each day  
30 the violation continues shall constitute a separate offense.



(c) These provisions shall be in addition to any other enforcement powers granted under this act.

## ARTICLE VII

### Uniform Accounting and Reporting; Rate Approval

Section 701. Findings and Legislative Intent.--The General Assembly finds that some health care providers, especially hospitals, are experiencing serious financial difficulties due to a system of rate payment that is a patchwork of Federal and State Governments, profit and nonprofit insurance plans, and private individuals who are self-insured or not insured at all; and also due to fragmented State responsibility for rate regulation. It is the intent of the General Assembly that the Department of Health foster sound, efficient and dynamic health care institutions and administer this act with the goal of reducing and eventually eliminating the dysfunctions in health care financing that exist today.

Section 702. Uniform Financial Reporting.--(a) The Policy Board shall by rule, after consultation and public hearings, prescribe a uniform system of financial reporting for health care providers, specifying the information to be reported and the manner of its reporting. It shall include:

(1) a balance sheet detailing all assets, liabilities and the net worth of the institution;

(2) a statement of income and expenses for the fiscal year; and

(3) such other reports as the Policy Board may prescribe.

(b) Every health care provider shall file with the department the required financial reports on forms provided by the department and at specified intervals but at least annually.

(c) The Policy Board shall require the filing of all reports

1 by specified dates, and may adopt regulations which assess  
2 reasonable late filing fees for failure to file as required.

3 Section 703. Uniform System of Accounting.--(a) The Policy  
4 Board shall by rule, after consultation and public hearings,  
5 prescribe a uniform system of accounting for health care  
6 providers. It shall specify accounting procedures to be applied  
7 in connection with budgets, schedules of income and expenses,  
8 assets and liabilities, allocation of costs, units of service  
9 and such subjects as the department finds appropriate.

10 (b) Every health care provider shall maintain accounts in  
11 accordance with the accounting system prescribed by the Policy  
12 Board. Accounting forms will be developed and distributed by the  
13 department.

14 Section 704. Modifications in the Accounting and Reporting  
15 System.--The Policy Board may allow and provide for  
16 modifications in the accounting and reporting system in order to  
17 reflect differences between the various categories, sizes or  
18 types of health care providers.

19 Section 705. Rate Review; Timetable.--The rates to be paid  
20 to health care providers shall be subject to review by the  
21 department according to the following provisions:

22 (a) Rates Paid by Third Parties.--Contracts between health  
23 care providers and third party payors for the rendering of  
24 health care services, including the rates to be paid, shall  
25 require the approval of the department.

26 For contracts between hospital providers and any hospital  
27 plan corporation, as defined in 40 Pa.C.S. § 6101 (relating to  
28 definitions), added November 15, 1972 (P.L.1063, No.271),  
29 requiring the approval of the Insurance Commissioner, the  
30 secretary shall approve the rates to be charged in the contract

1 and the terms and conditions of rate payment and the Insurance  
2 Commissioner shall approve all other provisions not related to  
3 the rates or management of facilities.

4 (b) Nursing Home Rates.--All rates to be paid to nursing  
5 homes shall require the approval of the department.

6 (c) Other Rates.--All other rates to be paid to hospital  
7 providers shall require the approval of the department.

8 (d) Implementation.--The department shall implement  
9 authorized systems of accounting and reporting and mandated rate  
10 review no later than two years from the effective date of this  
11 act.

12 (e) Discretionary Rate Review.--The department shall have  
13 the authority to review the rates of all other classes of health  
14 care providers when the Policy Board finds, after public  
15 hearings, that such rate regulation is necessary to carry out  
16 the purposes of this act.

17 Section 706. Standards.-- (a) Rates, in the aggregate, when  
18 combined with available income from other sources, shall be  
19 reasonably related to the provider's total financial requirement  
20 (as defined by the board) necessary for the efficient production  
21 of services.

22 Such rates for for-profit health care providers shall allow a  
23 fair rate of return on the fair value of the investment.

24 Rates for nongovernmental health care providers shall  
25 incorporate incentives for increasing efficiency and/or  
26 improving services.

27 (b) In approving rates to be paid to health care providers,  
28 the department shall take into consideration the elements of  
29 allowable cost established by the Policy Board, the provider's  
30 total financial requirement, geographical differentials in the

1 elements of cost considered, economic factors in the areas in  
2 which the provider is located, patient mix, and costs of  
3 providers of comparable size and services.

4 (c) The Policy Board shall take into consideration the  
5 principles of accounting established by the American Institute  
6 of Public Accountants, the chart of accounts established by the  
7 American Hospital Association, and any other appropriate  
8 standards utilized by health care providers.

9 (d) The department may promote and approve alternative  
10 methods of rate determination or payment of an experimental or  
11 innovative nature.

12 Section 707. Procedures.--(a) The Policy Board shall by  
13 rule, after consultation and public hearings, establish  
14 procedures for the filing, review and determination of rates in  
15 a fair and expeditious manner.

16 (b) The department may require such information, including  
17 the provider's proposed budget, to be submitted to the  
18 department in support of a provider's rates as it deems  
19 necessary. If the department by rule limits the expenditure of  
20 funds from capital accounts, the proposed budget may be used to  
21 verify such limitation upon audit.

22 (c) The department shall review rates within a reasonable  
23 period of time, as defined by the Policy Board, after the  
24 deadline for submission. Rates not acted upon by the department  
25 within the prescribed time limit shall be deemed approved  
26 automatically.

27 Section 708. Opportunity to Be Heard.--Prior to approval of  
28 any rate by the department the provider and any person  
29 interested as a consumer or third party payor shall be entitled  
30 to an opportunity to be heard on the reasonableness of such

1 rate.

2 Section 709. Rate Exceptions; Procedures.--(a) Any provider  
3 or any person interested as a consumer or third party payor may  
4 request an exception from the rate approved by the department  
5 for good cause shown by petition to the board.

6 (b) The board may provide for the taking of evidence upon  
7 the petition, either by appointment of an impartial hearing  
8 examiner or by designation of a board member or panel of  
9 members, by the chairman. Such examiner, member or members shall  
10 be authorized to administer oaths, compel the attendance of  
11 witnesses and the production of records or other information,  
12 and examine witnesses. Other parties interested as providers,  
13 consumers or third party payors may also present evidence and  
14 participate in the hearing. After the hearing, findings of fact,  
15 conclusions and recommendations shall be presented to the board.

16 (c) Within 60 days of the petition for an exception, unless  
17 extended by the board with the consent of the provider for no  
18 more than 60 additional days, the board shall either deny the  
19 petition or grant the petition in whole or in part and approve a  
20 new rate.

21 (d) Judicial appeals may be taken pursuant to section 405.

22 Section 710. Public Inspection.--A health care provider's  
23 schedule of rates in force and a schedule of rates, if any,  
24 submitted to the department for its approval, with the required  
25 supporting information, shall be available for inspection by the  
26 public during business hours in the offices of the department,  
27 the provider and any contracting party.

28 Section 711. Compliance.--No health care provider shall  
29 charge for services at rates other than those approved by the  
30 department.

1 When a provider charges a rate higher than that approved by  
2 the department, the department may order compensatory  
3 adjustments in rates for subsequent years.

4 Section 712. Penalty.--Any health care provider or officer,  
5 director or agent thereof who knowingly fails to comply with the  
6 requirements of this article shall, upon conviction thereof in a  
7 summary proceeding, be sentenced to pay a fine of not more than  
8 \$300 and costs of prosecution, and/or to undergo imprisonment  
9 for not less than ten days and not more than 30 days: Provided,  
10 however, That the department may accept a civil forfeiture in  
11 settlement of an action. Each day of noncompliance shall  
12 constitute a separate offense.

#### 13 ARTICLE VIII

#### 14 Proceedings Against Unlicensed Health Care

#### 15 Providers and Violators

16 Section 801. Actions Against Unlicensed Health Care  
17 Providers.--Whenever a license is required by this act for the  
18 establishment, operating or conduct of a health care facility,  
19 the department may maintain an action in the name of the  
20 Commonwealth for an injunction or other process restraining or  
21 prohibiting any person from establishing, conducting or  
22 operating any unlicensed health care facility.

23 Section 802. Actions Against Violations of Law and Rules and  
24 Regulations.--Whenever any person, regardless of whether such  
25 person is a licensee, has violated any of the provisions of this  
26 act pertaining to licensure or the regulations issued pursuant  
27 thereto, the department may maintain an action in the name of  
28 the Commonwealth for an injunction or other process restraining  
29 or prohibiting such person from engaging in such activity.

30 Section 803. Injunction or Restraining Order When Appeal is

1 Pending.--Whenever the department shall have refused to grant or  
2 renew a license, or shall have suspended or revoked a license  
3 required by this act to operate or conduct a health care  
4 facility, or shall have ordered the person to refrain from  
5 conduct violating the rules and regulations of the department  
6 and the person deeming himself aggrieved by such refusal or  
7 suspension or revocation or order shall have appealed from the  
8 action of the department, the Commonwealth Court may, during  
9 pendency of such appeal, issue a restraining order or injunction  
10 upon a showing that the continued operation of the health care  
11 facility adversely affects the well-being and safety of the  
12 patients of the health care facility, or the court may authorize  
13 continued operation of the facility or make such other order  
14 pending final disposition of the case as justice and equity  
15 require.

16 Section 804. Injunction or Restraining Order When No Appeal  
17 is Pending.--Should a person, who is refused a license or the  
18 renewal of a license to operate or conduct a health care  
19 facility, or whose license to operate or conduct a health care  
20 facility is suspended or revoked, fail to appeal or should such  
21 appeal be decided finally favorably to the department, then the  
22 court shall issue a permanent injunction upon proof that the  
23 person is operating or conducting a health care facility without  
24 a license as required by this act.

25 Section 805. Bonds and Costs.--No bond shall be required of  
26 the department in any legal action.

27 Section 806. Remedies Supplementary.--The provisions of this  
28 article are supplementary to any other legal rights created in  
29 this act or any other act available for the enforcement of  
30 provisions of this act and rules and regulations promulgated

1 thereunder.

2 ARTICLE IX

3 General Provisions

4 Section 901. Licenses and Certificates for Existing  
5 Facilities.--All health care providers licensed or approved on  
6 the effective date of this act to conduct, maintain or operate a  
7 health care facility or who are operating such facility which  
8 has been licensed or approved, shall be issued a license  
9 immediately upon application and all such providers shall be  
10 issued forthwith a certificate of need by the department for all  
11 buildings, real property and equipment owned, leased or being  
12 operated or under contract for construction, purchase or lease  
13 and for all services being rendered by the licensed or approved  
14 providers on the effective date of this act. To facilitate  
15 administration of this act, the department may initially grant  
16 some licenses and certificates of need for periods less than the  
17 prescribed term and may permit the running of licenses or  
18 approvals currently granted to providers, as may be required to  
19 stagger the dates for renewal.

20 Section 902. Administration of the Act.--(a) No health care  
21 provider shall be required by any provisions of this act or  
22 rules and regulations promulgated thereunder to provide  
23 facilities or render services contrary to the stated religious  
24 or moral beliefs of the provider, nor shall any applicant be  
25 denied a license or a certificate of need or the right to apply  
26 for or receive public funds on the grounds he will not provide  
27 the facilities or render the services for such reasons.

28 (b) Except as otherwise provided by law, no provider shall  
29 discriminate in the operation of a health care facility on the  
30 basis of race, creed, sex or national origin.



1 (c) Consumers shall have freedom of choice in the selection  
2 of health care facilities and nothing in this act or any rules  
3 and regulations promulgated pursuant thereto shall be  
4 interpreted to require any consumer to use any particular health  
5 care facility or to be denied the use of any particular health  
6 care facility; but such freedom shall not carry with it the  
7 right to be attended therein by the consumer's personal  
8 physician if the physician is not authorized to practice  
9 therein.

10 (d) In carrying out the provisions of this act and other  
11 statutes of this Commonwealth relating to health care  
12 facilities, the department and the departments and other  
13 agencies and officials of State and local governments shall make  
14 every reasonable effort to prevent duplication of inspections  
15 and examinations.

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

20 Section 903. Appropriation.--The sum of \$2,500,000, or as  
21 much thereof as may be necessary, is hereby appropriated to the  
22 department for the purpose of the administration and enforcement  
23 of this act.

24 Section 904. Transfer of Powers.--The Advisory Health Board  
25 is abolished and its powers, duties and functions are hereby  
26 transferred to the Health Care Policy Board.

27 Section 905. Repeals.--(a) The provisions of Articles IX and  
28 X, act of June 13, 1967 (P.L.31, No.21), known as the "Public  
29 Welfare Code" are repealed in so far as they relate to health  
30 care facilities.

1       (b) All acts and parts of acts are hereby repealed in so far  
2 as inconsistent with the provisions of this act.

3       Section 906. Effective Date.--This act shall take effect  
4 immediately.