

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2782 Session of
1978

INTRODUCED BY IRVIS, SEPTEMBER 19, 1978

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, SEPTEMBER 19, 1978

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 Statewide Health Coordinating
4 Council and Policy Board; providing for certification of need
5 of health care providers and uniform financial reporting;
6 prescribing penalties; and making an appropriation.

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

15 CHAPTER 1

16 PRELIMINARY PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the "Health Care
19 Planning and Resources Development Act."

20 Section 102. Purposes.

21 The General Assembly finds that the health and welfare of
22 Pennsylvania citizens will be enhanced by the orderly and
23 economical distribution of health care resources. Such
24 distribution of resources will be furthered by governmental
25 involvement to facilitate the development and organization of a
26 coordinated and comprehensive system of health care. The goal of
27 such a system is to enhance the public health and welfare by
28 assuring that needed health care is available to everyone; that
29 the health care delivery system is responsive and adequate to
30 the needs of all citizens; that health care services are

1 provided at a fair and reasonable cost and services and
2 facilities are efficiently and effectively used; that health
3 care services and facilities continue to meet high quality
4 standards; that health care expenditures be allocated in the
5 most effective way to improve the health status of citizens;
6 and, that all citizens receive humane, courteous, and dignified
7 treatment. In developing such a coordinated and comprehensive
8 health care system, it is the policy of the Commonwealth to
9 foster responsible private operation and ownership of health
10 care facilities, to encourage innovation and continuous
11 development of improved methods of health care and to aid
12 efficient and effective planning using local health system
13 agencies. It is the intent of the General Assembly that the
14 Department of Health foster a sound, efficient, and dynamic
15 health care system which provides for quality health care to all
16 individuals at appropriate health service facilities throughout
17 the Commonwealth.

18 Section 103. Definitions.

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

22 "Act." The Health Care Planning and Resources Development
23 Act.

24 "Annual implementation plan." The latest health systems
25 agency's annual statement of objectives to achieve the goals of
26 the health systems plan, including the priorities established
27 among the objectives.

28 "Certificate of need." A certificate issued by the
29 department under the provisions of this act, including those
30 issued for amendments or supplements thereto and increases in

1 services.

2 "Consumer." A natural person who uses or potentially will
3 use the services of a provider of health care, excluding,
4 however, the following: a health care provider, or third party
5 payor, or a practitioner of the healing arts. It shall also
6 exclude persons one-tenth or more of whose gross income is from
7 provision of health services research or instruction in health
8 care or from entities producing or supplying drugs or other
9 articles for use in health care or health care research or
10 instruction, or the parent, spouse, child, brother, or sister
11 residing in the same household with any of the above excluded
12 persons.

13 "Council." The Statewide Health Coordinating Council
14 established pursuant to Federal Public Law 93-641.

15 "Department." The Department of Health.

16 "Develop." When used in connection with health services or
17 facilities, means to undertake those activities which on their
18 completion will result in the offer of a new health service or
19 the incurring of a financial obligation in relation to the
20 offering of such a service.

21 "Health care facility." Any establishment, whether
22 governmental or nongovernmental, providing bed facilities for
23 two or more persons not related to the provider and/or health
24 services with physician or nursing services on an inpatient
25 basis, including hospitals, psychiatric hospitals, tuberculosis
26 hospitals, skilled nursing facilities, kidney disease treatment
27 centers, including freestanding hemodialysis units, intermediate
28 care facilities, ambulatory surgical facilities, home health
29 agencies and freestanding primary care centers, but it shall not
30 include institutions for the education of the blind or the deaf,

1 or which provides treatment of residents or patients solely on
2 the basis of prayer or spiritual means in accordance with the
3 creed or tenets of any church or religious denomination; nor a
4 facility which is conducted by a religious organization for the
5 purpose of providing health care services exclusively to
6 clergymen or other persons in a religious profession who are
7 members of the religious denomination conducting the facility.

8 "Health care project." As used in this act shall not include
9 expenditures of less than \$150,000 made in the preparation of
10 architectural designs, working drawings, plans and
11 specifications site acquisition and preliminary plans, studies
12 and surveys prior to review or expenditures in preparation of an
13 application.

14 "Health care provider." A person who operates a health care
15 facility or health maintenance organization.

16 "Health service area." The area served by a health systems
17 agency as designated in accordance with Section 1511 of Federal
18 Public Law 93-641.

19 "Health services." Clinically related (i.e. diagnostic,
20 treatment or rehabilitative) services, and includes alcohol,
21 drug abuse and mental health services.

22 "Health systems agency" or "HSA." An entity which has been
23 conditionally or fully designated pursuant to Section 1515 of
24 Federal Public Law 93-641.

25 "Patient." A natural person receiving health care in or from
26 a licensed health care provider.

27 "Person." A natural person, corporation, partnership,
28 association, the Commonwealth, and any local governmental unit,
29 authority, and agency thereof.

30 "Policy board." The Health Care Policy Board created in the

1 Department of Health under the provisions of this act.

2 "Public hearing." A meeting open to the public where there
3 is an opportunity for any person to present testimony.

4 "Secretary." The Secretary of the Department of Health of
5 the Commonwealth of Pennsylvania.

6 "Services." Health care services provided at or by a health
7 care facility.

8 "State health plan." The statement of goals for the State
9 health care system based on the various HSA plans as annually
10 approved by the SHCC.

11 "State medical facilities plan." The statement of needs and
12 priorities consistent with the State health plan prepared
13 annually to serve as a guide for allocation of Federal and State
14 funds in support of capital expenditures of health care
15 facilities and for consideration in issuing certificates of
16 need.

17 "Statewide Health Coordinating Council" or "SHCC." The
18 council established in compliance with Federal Public Law 93-
19 641.

20 "Third party payor." A person who makes payments on behalf
21 of patients under compulsion of law or contract who does not
22 supply care or services as a health care provider, but shall not
23 include the Federal, State, or any local government unit,
24 authority, or agency thereof.

25 CHAPTER 2

26 POWERS AND DUTIES OF THE DEPARTMENT

27 Section 201. Powers and duties of the department.

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

30 (1) To issue certificates of need and amended or

1 supplemental certificates of need in accordance with the
2 provisions of this act.

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

17 (3) To exercise jurisdiction over health care providers
18 and health care facilities in accordance with the provisions
19 of this act.

20 (4) To act as a single State agency through its staff,
21 and the policy board, to administer and enforce duties and
22 responsibilities conferred upon the State under Federal
23 Public Law 93-641.

24 (5) To compile, maintain and publish a Statewide
25 inventory of health care facilities and their types of
26 services.

27 (6) To require submission of periodic reports by
28 providers of health services and other persons subject to
29 review respecting the development of proposals subject to
30 review.

1 consumers, (including at least one representative of organized
2 labor and one representative of business) one hospital provider,
3 one skilled nursing or intermediate care provider, one physician
4 and one third party payor. Five members shall constitute a
5 quorum. No member shall participate in any action or decision
6 concerning any matter in which the member has a substantial
7 economic interest.

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

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

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

13 (2) Review and approve or disapprove proposed
14 regulations of the department pursuant to this act, relating
15 to certificate of need.

16 (3) Review and approve or disapprove proposed
17 regulations of the department pursuant to this act relating
18 to uniform reporting, taking into consideration the
19 principles of accounting established by the American
20 Institute of Certified Public Accountants, the chart of
21 accounts established by the American Hospital Association,
22 and any other appropriate standards utilized by health care
23 providers.

24 (4) To consider recommendations of the council relating
25 to certification of need and to report periodically on its
26 activities to the department and the council.

27 Section 303. Policy board compensation; expenses.

28 Each member of the policy board shall be paid travel and
29 other necessary expenses, and compensation at the rate of \$100
30 per day for attending meetings of the board.

1 CHAPTER 4

2 STATEWIDE HEALTH COORDINATING COUNCIL

3 AND HEALTH SYSTEMS AGENCIES

4 Section 401. Statewide Health Coordinating Council.

5 The Statewide Health Coordinating Council as established or
6 designated under Federal Law shall perform such functions as are
7 provided in agreements with the Secretary of Health, Education
8 and Welfare.

9 Section 402. Statewide Health Coordinating Council; powers.

10 The Statewide Health Coordinating Council shall consult with
11 the department and the policy board and make recommendations as
12 to the carrying out of their functions in acting as the single
13 State agency under the certificate of need provisions of this
14 act.

15 Section 403. Health systems agencies.

16 The health systems agencies as established and designated by
17 the Secretary of Health, Education and Welfare, shall perform
18 such functions as are provided in agreements with the Secretary
19 of Health, Education and Welfare and such other functions as are
20 not inconsistent therewith.

21 Section 404. Health systems agencies; powers.

22 The health systems agencies shall have in addition to its
23 functions as provided under Federal Public Law 93-641 the
24 following powers and duties: to receive and review for their
25 respective geographic areas all applications for certificates of
26 need or terminations and all notices of reductions or increases
27 in services, and, after due deliberation, prepare
28 recommendations or objections for submission to the department.

29 CHAPTER 5

30 ADMINISTRATION OF THE ACT

1 Section 501. Promulgation of rules and regulations.

2 All rules and regulations under this act relating to uniform
3 reporting and certificate of need shall be approved by the
4 policy board and promulgated by the department, pursuant to the
5 provisions of the act of July 31, 1968 (P.L.769, No.240), known
6 as the "Commonwealth Documents Law" and shall provide fair
7 access and due process to all interested parties in proceedings
8 held to carry out the provisions of this act. In addition, the
9 policy board shall publish (other than as a legal notice or
10 classified advertisement) in at least two newspapers in general
11 circulation in the Commonwealth, notice of the proposed
12 regulations and where they may be examined by interested
13 persons. It shall also send the proposed regulations to
14 Statewide health agencies and organizations, and to each health
15 systems agency.

16 Section 502. Enforcement of orders.

17 (a) Orders from which the time for appeal has expired may be
18 enforced by the department in summary proceedings or, when
19 necessary, with the aid of the Commonwealth Court.

20 (b) No collateral attack on any order including
21 jurisdictional issues shall be sought in the enforcement
22 proceeding but shall be sought in the Commonwealth Court when
23 such relief has not been barred by the failure to take an
24 appeal.

25 CHAPTER 6

26 CERTIFICATE OF NEED

27 Section 601. Certificate of need requisite for licensure.

28 No license or renewal thereof to maintain or operate a health
29 care facility shall be issued unless the applicant has a valid
30 certificate of need issued by the department authorizing the use

1 of the facility and the rendering of the services offered at the
2 facility for which the license is to be issued.

3 Section 602. Certificate of need, when required.

4 (a) No person shall develop, operate, lease, or construct a
5 health care facility or health maintenance organization as
6 defined by Federal law without first obtaining a certificate of
7 need from the department authorizing such development,
8 operation, lease, or construction. No person operating an
9 existing health care facility or health maintenance organization
10 under a certificate of need shall make expenditures toward any
11 health care project including the fair market value of any
12 leased or donated property in which he will:

13 (1) lease, erect, construct, alter, modernize, or
14 improve any building;

15 (2) acquire any real property except land acquisition by
16 gift, devise, or option; or

17 (3) lease or acquire equipment;

18 which will involve a total capital health care project cost in
19 excess of \$150,000, nor shall any person offer or engage in any
20 new health care service not offered on a regular basis in the
21 prior 12 months or increase the bed complement (except for a
22 temporary emergency increase), nor shall any person redistribute
23 beds among various categories or relocate beds from one physical
24 facility or site to another by more than ten beds or 10% of its
25 total licensed bed capacity, whichever is less, over a two year
26 period unless such person has first been authorized to do so by
27 the department through the issuance of a new or amended
28 certificate of need. No person shall enter into a fixed
29 arrangement or commitment for the financing of a health care
30 project covered under this chapter with a total capital cost in

1 excess of \$150,000 without a certificate of need. Should a
2 higher dollar limitation for review requirements of health care
3 projects be permitted by Federal law, such higher amount shall
4 apply throughout this act each time a dollar limit appears. No
5 person shall purchase, lease, acquire or operate any major
6 medical equipment costing over \$150,000, regardless of location
7 or ownership, without a certificate of need.

8 (b) A substantial decrease of a health care service requires
9 only notice to the health systems agency and the department
10 within 30 days after the decrease.

11 Section 603. Certificates of need; notice of intent
12 application; issuance.

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

18 (b) A person desiring to obtain or amend a certificate of
19 need shall apply to the local health systems agency, if any, and
20 to the department simultaneously supplying to them such
21 information as is required by the health systems agency provided
22 such requirements are not in conflict with any department
23 regulations. The health systems agency and the department shall
24 have 30 days after receipt of the application within which to
25 determine whether the application is complete and in which to
26 request specific further information. If further information is
27 requested, the agency requiring the same shall determine whether
28 the application is complete within 15 business days of receipt
29 of the same.

30 (c) Review of the application by the health systems agency

1 shall begin with the giving of notice of a completed application
2 and shall be completed within 60 days thereof unless the
3 applicant agrees in writing to a specified extension of time for
4 such review by the health systems agency. If the health systems
5 agency recommendations or objections are not so completed, the
6 application shall be deemed favorable recommended by the health
7 systems agency.

8 (d) The department shall consider the timely filed
9 recommendations or objections of the health systems agency in
10 reviewing the application and shall take action on the
11 application within 30 days from receipt of the health systems
12 agency report or upon the expiration of the time for filing the
13 same by granting, granting in part and refusing in part, or
14 refusing the requested certificate of need. Conditions may be
15 incorporated when an application is approved in whole or in
16 part.

17 (e) No review may take longer than 90 days, as provided in
18 subsections (c) and (d), to the extent practicable. A period
19 longer than 90 days may be employed for certain proposals if
20 they meet criteria adopted in advance by the department for
21 determining when it would not be practicable to complete a
22 review within 90 days.

23 (f) Where the decision of the department is inconsistent
24 with the goals of the health systems plan, if any, or the
25 recommendations or objections of the health systems agency, the
26 department shall provide a detailed statement of the reasons for
27 the inconsistency and forward the statement along with the
28 decision to the parties and the health systems agency.

29 Section 604. Notice and hearings before health systems
30 agencies.

1 (a) Notice of filing applications for certificate of need or
2 amendments thereto shall be published by the health systems
3 agency in the appropriate news media and in the Pennsylvania
4 Bulletin in accordance with the act of July 31, 1968 (P.L.769,
5 No.240), known as the "Commonwealth Documents Law," and the
6 health systems agency shall notify all affected persons with
7 notice of the schedule for review, the date by which a public
8 hearing must be demanded, and of the manner notice will be given
9 of a hearing, if one is to be held. Such notice shall be sent by
10 mail to the applicant, contiguous health systems agency's, and
11 health care facilities and health maintenance organizations
12 located within the health service agency; and any person
13 directly affected including another health systems agency if the
14 service will affect its area or a consumer, provider, or third
15 party payor may file objections within 20 days of such
16 publication with the local health systems agency setting forth
17 specifically the reasons therefor. Persons filing objections
18 shall be parties to the proceeding unless or until such
19 objections are withdrawn.

20 (b) When a public hearing is requested by the applicant, by
21 a member of the public to be served by the proposed project, by
22 a health care facility or health maintenance organization
23 located in the health service area where the service is to be
24 offered which provides services similar to those proposed or by
25 a health care facility or health maintenance organization which,
26 prior to receipt by the agency of the proposal being reviewed,
27 formally indicated intention to provide similar services, the
28 health systems agency shall, and when requested by other persons
29 filing objections may, hold a public hearing. Written notice of
30 the hearing shall be given to the applicant and any objecting

1 party. In addition, notice shall be published (other than by
2 legal notice of classified advertisement) in a newspaper of
3 general circulation in the area and in the Pennsylvania Bulletin
4 before the hearing. The applicant and any interested person
5 shall be afforded the opportunity to submit testimony at the
6 hearing.

7 (c) The recommendations or objections of the health systems
8 agency shall be served on the parties, and the department.

9 (d) The period from the giving of notice to the parties of a
10 hearing until the adjournment of a hearing shall not be included
11 in calculating the time permitted for the health systems agency
12 to conduct its review.

13 (e) Modification of the application shall not extend the
14 time limits herein provided unless the health systems agency
15 expressly finds that the modification represents a substantial
16 change in the character of the application.

17 Section 605. Appeal of department's decision.

18 (a) A decision by the department on an application for a
19 certificate of need may be appealed by the applicant and, where
20 the department's decision is inconsistent with the
21 recommendation of the appropriate health systems agency, by that
22 health systems agency.

23 (b) A request for an appeal hearing must be directed in
24 writing to the secretary within 30 days of the department's
25 decision.

26 (c) The appeal hearing shall be started within 45 days of
27 the department's receipt of such request or later, at the option
28 of the person requesting the appeal; shall be held before an
29 impartial hearing officer appointed by the Attorney General from
30 a list of qualified persons; and shall be conducted in

1 accordance with the "Administrative Agency Law," Title 2 Pa.
2 C.S. § 103 et. seq.

3 (d) The appeal hearing shall be limited in scope to:

4 (1) whether the findings and decision of the department
5 are supported by substantial evidence;

6 (2) whether there was any prejudicial procedural error
7 in the review of the application;

8 (3) whether there was any violation of the
9 constitutional or statutory rights of the applicant.

10 (e) The decision of the hearing officer shall be issued in
11 writing within 45 days after the conclusion of the appeal
12 review. The decision of the hearing officer shall be considered
13 the final decision of the department, but the hearing officer
14 may remand the matter to the department or health systems agency
15 for further action or consideration. The written findings of the
16 hearing officer shall be sent to the applicant, the appropriate
17 health systems agency and the department.

18 Section 606. Criteria for review of applications for
19 certificate of need or amendments.

20 (a) The department shall adopt and utilize as appropriate,
21 specific criteria for conducting reviews covered by this act.
22 The criteria shall include at least the following general
23 considerations:

24 (1) The health services being reviewed are consistent
25 with or compatible to the applicable health services plan and
26 annual implementation plan, State health plan, and State
27 medical facilities plan.

28 (2) The services are compatible to the long-range
29 development plan (if any) of the applicant.

30 (3) There is a need by the population served or to be

1 served by the services.

2 (4) There are no less costly, and more effective
3 alternative methods of providing the services available.

4 (5) The service or facility is economically feasible,
5 considering anticipated volume of care, the capability of the
6 service area to meet reasonable charges for the service or
7 facility, and the availability of financing.

8 (6) The service or facility is justified by community
9 need and within the financial capabilities of the institution
10 both on an intermediate and long-term basis and is compatible
11 with the existing system in the health service area, and will
12 not have an inappropriate, adverse impact on the overall cost
13 of providing health services in the area.

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

20 (8) The proposed service or facility will have available
21 to it appropriate ancillary and support services.

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

28 (10) The proposed services are not incompatible with any
29 health maintenance organization existing in the area.

30 (11) The proposed services are not incompatible with any

1 biomedical or behavioral research projects designed for
2 National need for which local conditions offer special
3 advantages.

4 Criteria adopted for reviews in accordance with this subsection
5 may vary according to the purpose for which a particular review
6 is being conducted or the type of health service being reviewed.

7 (b) If the application is for a proposed service or facility
8 which includes a construction project:

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

12 (2) the proposed construction will not have an
13 inappropriate adverse impact on the cost of providing health
14 services by the applicant.

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

18 (1) that less costly alternatives which are more
19 efficient, or more appropriate to such inpatient service are
20 not available and the development of such alternatives has
21 been studied and found not practicable;

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

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

29 (4) that patients will experience serious problems in
30 obtaining inpatient care of the type proposed in the absence

1 of the proposed new service; and

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

8 No certificate of need shall be issued for inpatient services
9 when any findings of this subsection cannot be made. Additional
10 findings under subsection (b) or (c) may be provided by
11 regulation as required prior to the issuance of a certificate of
12 need.

13 (d) The department by regulation shall adopt criteria for
14 review of health maintenance organizations based upon
15 subsections (a), (b) and (c) and the standards and procedures
16 established under Federal law pursuant to Title XIII of the
17 Public Health Service Act.

18 Section 607. Expiration of certificate of need.

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

1 Section 608. Emergencies.

2 Notwithstanding any other provisions of this act, in the
3 event of an emergency the department may suspend the foregoing
4 application process and permit such steps to be taken as may be
5 required to meet the emergency including the replacement of
6 equipment or facilities.

7 Section 609. Appeals and procedure on appeal.

8 The action of the department, upon an application for a
9 certificate of need, amendment or supplement thereof, may be
10 appealed by any party or health systems agency who is involved
11 in that proceeding to the Commonwealth Court as provided by law.
12 If a hearing was held on the application, the issues on appeal
13 shall be limited to issues raised at such hearings. In other
14 cases, the appellant shall file a statement of the reasons for
15 the appeal which shall be served upon the department and the
16 local health systems agency, and all parties to the proceeding
17 at the time of taking the appeal. An answer may be filed by any
18 party served within 20 days of service upon them of such
19 statement. Issues on the appeal in such cases shall be limited
20 to those raised in the statement or any answer filed.

21 Section 610. Review of activities.

22 The department and each health systems agency shall prepare
23 and publish not less frequently than annually reports of reviews
24 conducted under this act, including a statement on the status of
25 each such review and of reviews completed by them, including
26 statements of the finding and decisions made in the course of
27 such reviews since the last report. The department and each
28 health systems agency shall also make available to the general
29 public for examination at reasonable times of the business day
30 all applications reviewed by them and all written materials on

1 file at the agency pertinent to such review.

2 Section 611. Immunity from legal liability.

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

9 Section 612. Penalties.

10 Any person violating this act by a failure to obtain a
11 certificate of need or deviating from the provisions of the
12 certificate or beginning construction or providing services or
13 acquiring equipment after the expiration of the certificate of
14 need shall be subject to a penalty of not less than \$100 per day
15 and not more than \$1,000 per day, and each day after notice to
16 them of the existence of such violation shall be considered a
17 separate offense. When appropriate, the department may obtain
18 injunctive relief to prevent violations of the act.

19 Section 613. Decertification of specialized hospital services.

20 (a) Definitions for the purposes of this section:

21 (1) "Specialized services." Are the specialized
22 facilities, equipment and staff necessary:

23 (i) To perform heart catheterization studies or
24 cardiac surgery.

25 (ii) To perform radiation therapy treatment of
26 cancer and other diseases.

27 (iii) For hemodialysis treatment of acute or chronic
28 renal insufficiency.

29 (iv) To perform kidney transplants.

30 (v) For the intensive care and management of high-

1 risk maternal, high-risk fetal patients or high-risk
2 neonatal patients.

3 (vi) To perform computed tomography.

4 (vii) Such other specialized services as may be
5 prescribed through regulation.

6 (2) "Specialized service certificate." Means a written
7 authorization by the department for a hospital to provide
8 specialized services.

9 (b) The department through the certificate of need process
10 shall be responsible for certifying the need for individual
11 specialized services. After certification, the responsibility
12 for monitoring compliance with standards and rules promulgated
13 under this section shall be the responsibility of the department
14 through its process for facility licensing and inspection.

15 (c) The department shall promulgate all regulations
16 necessary to implement this section and to ensure that the
17 specialized services offered are needed, reasonably accessible,
18 and provided in a manner which is consistent with quality of
19 care standards.

20 (d) (1) The department, after due notice, may decertify a
21 specialized service if the service is clearly and
22 demonstrably not needed by the community being served or the
23 resources of the hospital are incapable of maintaining the
24 service.

25 (2) The department shall issue a notice of intent to
26 decertify a service at least 90 days prior to initiating
27 formal action. Such notice shall be in writing and shall
28 specify with particularity the basis on which the department
29 reached its preliminary position. No final determination may
30 be made by the department unless a hearing has been held

1 under the "Administrative Agency Law", Title 2 Pa.C.S. § 103
2 et seq. and written findings and conclusions have been
3 prepared by the hearing officer at the hearing or the hearing
4 has been waived by the hospital.

5 (3) The appropriate health systems agency shall be
6 notified of the department's preliminary findings and shall
7 be given a minimum of 60 days to review and comment on the
8 proposed decertification.

9 (4) If the department determines a service is
10 temporarily not in full compliance with applicable standards
11 and rules promulgated under this section, but the service is
12 needed, the department shall issue a warning to the
13 certificate holder and work with the hospital to establish a
14 plan of correction with a reasonable timetable. Failure to
15 comply with such a timetable is grounds for decertification.

16 (5) The certification review process specified in this
17 section shall, after the initial review, be conducted for
18 each service not more frequently than every three years or
19 less frequently than every five years. The initial review
20 must be completed within 24 months from the date regulations
21 are published.

22 (6) The hospital shall be given a reasonable period of
23 time, not to exceed one year, to phase out a specialized
24 service.

25 (e) A hospital may appeal a decision by the department in
26 the manner provided for appeals from a certificate of need
27 decision, except that the department shall bear the burden of
28 proving that a decertification is in accordance with the
29 provisions of this section and the regulations promulgated under
30 this section.

1 (f) No hospital may establish, lease or operate a
2 specialized service without a certificate. Any hospital which
3 violates this section shall be fined not less than \$100 nor more
4 than \$1,000. Each day of violation constitutes a separate
5 offense.

6 (g) The department shall make inspections and require
7 reports as are reasonably necessary under this section, but not
8 more often than annually, to assure compliance with the
9 regulations promulgated under this section. To the maximum
10 extent possible, these inspections shall be coordinated with
11 other regulatory and accrediting bodies, both governmental and
12 private.

13 (h) The department shall negotiate with nonprofit hospital
14 plans, the single State agency for medical assistance and other
15 third party payors for modification of reimbursement agreements
16 with hospitals to include as reimbursable operational costs,
17 unamortized costs, outstanding debts, phase-out costs and equity
18 associated with services which are decertified under this
19 section.

20 CHAPTER 7

21 UNIFORM REPORTING

22 Section 701. Uniform financial reporting.

23 (a) Insofar as may be necessary to obtain consistent data in
24 financial reporting the department shall by regulation, after
25 consultation and public hearings, prescribe a uniform system of
26 financial reporting of revenues and expenses for health care
27 providers, including common definitions and specifying the
28 information to be reported and the manner of its reporting. The
29 regulations shall not prohibit health care providers from
30 maintaining data in such form as they may deem proper so long as

1 appropriate consistent data can be extracted therefrom. The
2 system shall include:

3 (1) a balance sheet detailing assets and liabilities and
4 changes in the balance sheet from the previous year;

5 (2) a statement of revenue and expenses for the fiscal
6 year; and

7 (3) such other reports as the department may determine
8 to be necessary to fairly and accurately present a health
9 care provider's revenue and expenses as of the fiscal year.

10 (b) Every health care provider shall file with the
11 department the required financial reports on forms provided by
12 the department annually.

13 (c) Reports shall be filed within 120 days of the end of the
14 fiscal year unless the time for filing is extended by the
15 department, and the department may adopt regulations which
16 assess reasonable late filing fees for failure to file as
17 required.

18 Section 702. Modifications in the reporting system.

19 The department may allow and provide for modifications in the
20 reporting system in order to reflect differences between the
21 various categories, sizes, or types of health care providers.

22 Section 703. Regulation.

23 The department is hereby authorized and empowered to adopt
24 rules and regulations establishing procedures for uniform
25 reporting to be used in accordance with the provisions of this
26 act.

27 CHAPTER 8

28 PROCEEDINGS AGAINST HEALTH FACILITY

29 VIOLATORS

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

1 regulations.

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

8 Section 802. Bonds.

9 No bonds shall be required of the department in any legal
10 action.

11 CHAPTER 9

12 GENERAL PROVISIONS; APPROPRIATION: REPEALS:

13 EFFECTIVE DATE

14 Section 901. Licenses and certificates for existing
15 facilities.

16 All health care providers licensed, approved, or certified on
17 the effective date of this act to establish, maintain, or
18 operate a health care facility or who are operating such
19 facility which has been licensed, approved, or certified shall
20 be issued forthwith a certificate of need and specialized
21 service certificates, as appropriate, by the department for all
22 buildings, real property, and equipment owned, leased, or being
23 operated or under contract for construction, purchase, or lease,
24 and for all services being rendered by the licensed, approved,
25 or certified provider upon the effective date of this act.

26 Section 902. Administration of act.

27 (a) In carrying out the provisions of this act and other
28 statutes of this Commonwealth relating to health care
29 facilities, the department and other agencies and officials of
30 State and local governments shall make every reasonable effort

1 to prevent duplication of inspections and examinations.

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

6 Section 903. Appropriation.

7 The sum of \$1,500,000, or as much thereof as may be
8 necessary, is hereby appropriated to the Department of Health
9 for the purpose of the administration and enforcement of this
10 act.

11 Section 904. Severability.

12 If any provision or clause of this act or application thereof
13 to any person or circumstances is held invalid, such invalidity
14 shall not affect other provisions or applications of the act
15 which can be given effect without the invalid provision or
16 application, and to this end, the provisions of this act are
17 declared to be severable.

18 Section 905. Repeals.

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

21 Section 906. Effective date.

22 This act shall take effect in six months.