
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 437

Session of
1975

INTRODUCED BY MRS. CRAWFORD, MESSRS. BUTERA, HILL, TADDONIO,
FISHER, MEBUS, MRS. FAWCETT, MESSRS. VROON, SALVATORE, YOHN,
KATZ, GLEASON, PARKER, TURNER, HOPKINS AND KNEPPER,
FEBRUARY 11, 1975

REFERRED TO COMMITTEE ON HEALTH AND WELFARE FEBRUARY 11, 1975

AN ACT

1 To facilitate health planning through regulating the quality and
2 quantity of health care in this Commonwealth; providing for
3 the licensure of facilities and the certification of need for
4 expansion of services; and prescribing penalties.

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

7 ARTICLE I

8 PRELIMINARY PROVISIONS

9 Section 101. Short Title.--This act shall be known and may
10 be cited as the "Health Care Planning and Facility Control Act."

11 Section 102. Purpose.--The purpose of this act is to insure
12 that the delivery of the highest possible quality of health care
13 is available to all of the citizens of the Commonwealth; and is
14 available throughout our State in the quantity needed at the
15 lowest possible cost. This act intends through proper, timely,
16 and efficient Statewide health care planning to accomplish these
17 purposes in such a manner that hospital costs will be contained,
18 unnecessary and over expensive new hospital construction will be

1 avoided, and that the unneeded and duplication of expensive
2 health care facilities or services for patients will be
3 eliminated.

4 Section 103. Definitions.--As used in this act, the
5 following terms shall have the meanings ascribed to them in this
6 section:

7 "Advisory council" means the advisory council established by
8 this act.

9 "Certificate of need" means the certificate issued by the
10 Department of Health under the provisions of this act.

11 "Consumer" means a person (i) whose major occupation is
12 neither the provision, administration nor financing of any type
13 of health service nor teaching or research in health, and (ii)
14 who does not have a major financial interest in any health
15 activity.

16 "Department" means the Department of Health of the
17 Commonwealth of Pennsylvania.

18 "Equipment" means equipment used for diagnostic or clinical
19 testing or therapeutic treatment.

20 "Health care facility" means, for the purpose of licensure, a
21 diagnostic center, treatment center or home health agency. It
22 shall not mean offices or facilities used exclusively for the
23 private practice of the healing arts in individual or associated
24 practice, except for practice constituting a diagnostic center
25 or treatment center substantially similar to health care
26 services normally offered by a health care provider. It also
27 means any establishment, whether governmental or
28 nongovernmental, providing bed facilities for two or more
29 persons not related to the provider, with physician or nursing
30 services on an inpatient basis, including general and special

1 hospitals, skilled nursing facilities and intermediate care
2 facilities, but it shall not include dispensaries, infirmaries,
3 and first aid stations located within business, industrial,
4 religious and governmental establishments solely for use of
5 officers, personnel or employees, or located within educational
6 or correctional institutions and solely for students, inmates or
7 staff, or operated on a temporary basis for athletic contests,
8 fairs, conventions, religious gatherings and other similar
9 public gatherings; nor shall it include institutions for the
10 education of the blind or the deaf, or which provides treatment
11 of residents or patients solely on the basis of prayer or
12 spiritual means in accordance with the creed or tenets of any
13 church or religious denomination. For the purpose of certificate
14 of need, the health care facility shall be the same but shall
15 also exclude drug treatment centers and those health care
16 facilities that do not accept, directly or indirectly, any
17 Federal or State governmental fund for either capitalization,
18 depreciation, interest, research or reimbursements.

19 "Hearing" means publicly conducted sessions, with a set
20 agenda at a set time and the right to appear and be heard in
21 person and by counsel, to adduce testimony, cross examine
22 witnesses, present oral argument and to obtain process for
23 production of witnesses and documents, issuance of commissions
24 for taking depositions and all discovery procedures available in
25 Commonwealth courts. All testimony shall be taken by a competent
26 court reporter.

27 "License" means the license issued by the Department of
28 Health under the provisions of this act.

29 "Local agency" means a health planning agency approved by the
30 secretary.

1 "Secretary" means the Secretary of Health of the Commonwealth
2 of Pennsylvania.

3 "Service" includes care customarily furnished on either an
4 inpatient or outpatient basis by a health care facility but
5 shall not include the lawful practice of any profession or
6 vocation conducted independently of a health care facility and
7 in accordance with applicable licensing laws of the
8 Commonwealth.

9 ARTICLE II

10 CERTIFICATE OF NEED

11 Section 201. Certificate Requisite for Licensure.--No
12 license or renewal thereof to maintain, operate or conduct a
13 health care facility shall be issued unless the applicant has a
14 valid certificate of need issued by the department.

15 Section 202. When Certificate Required.--(a) No person shall
16 operate, lease, or construct a health care facility without
17 first obtaining a certificate of need from the department
18 authorizing such operation, lease or construction.

19 (b) No person operating an existing health care facility
20 under a certificate of need shall make expenditures toward any
21 project in which he will (i) lease, erect, construct, alter,
22 modernize or improve any building, or (ii) acquire any real
23 property to be used now or in the future for health care
24 purposes except by gift, devise or option, or (iii) lease or
25 acquire equipment, which will involve a total capital project
26 cost including the fair market value of any leased property in
27 excess of \$100,000 nor shall any person offer or engage in any
28 new health care services or permanently increase the bed
29 complement or terminate any health care service unless such
30 person has first been authorized to do so by the department

1 through the issuance of a new, modified or amended certificate
2 of need.

3 Section 203. Modification of Certificate.--(a) No person
4 operating an existing health care facility under a certificate
5 of need shall materially increase or change any health care
6 services without giving 90 days written notice of its nature and
7 extent, together with a brief statement of the reasons therefor
8 to the department and the local agency before such changes shall
9 be put into effect. The procedures in section 205 shall be
10 followed as to such notice as though it were a request to modify
11 a certificate of need, but no fee or publication of notice shall
12 be required. If no hearing is set by the department within 60
13 days, the change may be made without further action of the
14 department, and the certificate of need of such facility shall
15 be modified accordingly.

16 (b) No certificate of need shall be required whenever a
17 provider of health care services is directed to alter, modernize
18 or improve a building or acquire equipment under a Federal or
19 State law, rule, regulation or order, but in such event, notice
20 of the specific changes to be made shall be given by the health
21 care provider to the department, and the certificate of need of
22 such facility shall be modified accordingly.

23 Section 204. Application for Certificate.--(a) A person
24 desiring to obtain a certificate of need or an amended
25 certificate of need shall apply to both the department and local
26 planning agency, supplying to it the following information:

27 (1) The anticipated market area to be served based on
28 population census data both current and projected.

29 (2) The type of service to be rendered and anticipated
30 patient mix by age and income range.

(3) A list of all existing facilities providing similar service in the same market area and those facilities age and occupancy rate.

(4) Proposed construction plans and the cost of depreciation and interest.

(5) Proposed manpower and assured adequate capital financing capability.

(6) Proposed forms of reimbursement and rates of reimbursement.

(7) The service or facility meets the needs of the comprehensive health plan of the Department of Health for the immediate locality or community, and such plan encompasses a ten-year period and is updated annually and is currently on file with the department.

(b) Fees shall be established by the secretary with the approval of the advisory council to cover the costs of administering this act and be charged on the basis of facility capitalization growth.

(c) The local agency shall charge the applicant a fee to cover the costs of the hearing.

Section 205. Action on Application.--(a) The department shall consider recommendations or objections of the regional comprehensive health planning agency unless they are not filed within 60 days of receipt with the department. If not filed within the 60 days, the department shall act upon the application without the recommendations or objections. Whenever objections are filed, the department shall, or without objections may, set a date for hearing within 30 days on the application.

(b) The department shall act upon the application within 90

1 days of the date the applicant submitted the application to the
2 department or a designated local planning agency or the
3 expiration of the time for filing the same by granting,
4 modifying or upon refusing the requested certificate of need,
5 setting a hearing on the application if the local planning
6 agency took no action.

7 (c) Notice of filing applications for certificates of need
8 or amendments or supplements thereto under section 204 shall be
9 published in the Pennsylvania Bulletin and any person interested
10 may file objections within 30 days of publication with the
11 department setting forth specifically the reasons therefor.

12 (d) An application for a certificate of need shall be
13 recommended, approved and issued when the department determines
14 that the applicant has met all of the criteria specified in
15 section 204, and that reasonable objections have been satisfied
16 unless the department finds upon reliable information and data
17 that the project will result in uneconomic or unnecessary
18 duplication of existing health care facilities and services.

19 (e) If the health care facility or service is to be used
20 primarily for patients from an area larger than the immediate
21 locality or community in which it is located, as determined by
22 census tract data, certificate of need should not be refused on
23 the ground that the immediate locality or community has no need
24 for the health care facility or service and the application
25 should be considered in terms of need of the larger area.

26 Section 206. Appeal from Action on Certificate.--(a) The
27 action of the department upon an application for a certificate
28 of need may be appealed to the secretary by the applicant, any
29 agency having timely filed its recommendations or objections, or
30 any person having timely filed objections thereto or having

1 entered an appearance at the hearing. Appeals shall be taken by
2 filing notice of appeal with the secretary within 15 days of
3 notice of the department's action.

4 (b) If a hearing was held before the department, the issues
5 upon appeal shall be limited to issues raised at the hearing. In
6 other cases, the appellant shall file a statement of the reasons
7 for the appeal within 30 days of filing an appeal which shall be
8 served upon the department by registered letter return receipt
9 requested and the applicant. An answer may be filed by any party
10 served within 20 days of service upon them of a statement.
11 Issues on the appeal shall be limited to those raised in the
12 statement or any answer filed.

13 Section 207. Expiration of Certificate.--A certificate of
14 need shall remain effective until amended or revoked by the
15 department providing the facilities and services authorized are
16 in being. In the absence of substantial implementation of a
17 proposal for which a certificate of need was issued the
18 certificate shall automatically expire 1 year after issuance and
19 become invalid unless the department extends the time of
20 expiration for a definite period not to exceed one additional
21 year.

22 Section 208. Revocation and Modification of Certificate.--
23 The department may, after due notice to the holder thereof and
24 hearing thereon, revoke or modify a certificate of need, having
25 due regard for the financial burden such changes may impose,
26 should it find that the quality of the service of the health
27 care facility no longer meets the standards set by the
28 department. The department also may withdraw a certificate of
29 need of one health care facility, as to any service instituted
30 after the effective date of this act, to permit the furnishing

1 of the same service by another health care facility applying to
2 furnish the service if the department shall find that the
3 quality of the service is below the standards set by the
4 department.

5 Section 209. Review of Departmental Effectiveness.--(a) The
6 department, as the sole agency responsible for implementing this
7 act, shall prepare an annual report to the General Assembly by
8 December 31 of each year setting forth the Comprehensive Health
9 Facilities Plan for the Commonwealth for a ten-year period. At a
10 minimum, this report shall summarize the goals of the overall
11 program in meeting community needs at a reasonable cost. The
12 department may designate local planning agencies to submit goals
13 for their own localities with valid statistics indicating their
14 progress toward meeting these previously-defined goals.

15 (b) The following statistical measures shall be included in
16 the final report of the department for each designated locality
17 and in total for the Commonwealth:

18 (1) Current and projected utilization of all existing health
19 care facilities.

20 (2) Expected patient days per 1,000 population by census
21 tract.

22 (3) Projected need for all inpatient facilities, including,
23 additional beds, replacement of unsuitable beds, outpatient
24 facilities and ancillary services.

25 (4) Summary of approved health facilities construction,
26 total authorized capital expenditures, projected health
27 facilities needs, and new or other approaches to capital cost
28 containment.

29 (5) Other data deemed necessary by the General Assembly or
30 the secretary.

1 ARTICLE III

2 LICENSURE

3 Section 301. When License Required.--No person shall
4 establish, conduct, maintain or operate a health care facility
5 without first having obtained a license therefor issued by the
6 department.

7 Section 302. Application for License.--(a) Any person
8 desiring to secure a license for conducting, maintaining and
9 operating a health care facility shall submit an application
10 therefor to the department upon forms prepared and furnished by
11 it, containing such information as the department considers
12 necessary to determine that the health care providers and the
13 health care facilities meet the requirements of licensure under
14 the provisions of this act.

15 (b) Application for renewal of a license shall be made upon
16 forms prepared and furnished by the department and shall contain
17 such information as may be necessary to determine whether the
18 license should be renewed.

19 (c) A fee shall be set by the department and advisory
20 council, not to exceed \$500 and shall accompany the application.

21 Section 303. Issuance of License.--(a) A health care
22 facility for which a valid certificate of need has been issued
23 upon making application, shall be issued a license when the
24 following standards have been met:

25 (1) The applicant for a license is a responsible person.

26 (2) The place to be used as a health care facility is
27 currently suitable for the purpose and is appropriately staffed
28 and equipped.

29 (3) The applicant and the place to be used as a health care
30 facility meet the minimum standards as prescribed by the

1 department in its rules and regulations relating to licensure
2 for the care and treatment of patients.

3 (4) Patient care and treatment is regulated in a humane and
4 considerate manner.

5 (b) When a health care provider operates more than one
6 health care facility as a separate free standing institution at
7 a different location, a separate license for each such
8 institution shall be required.

9 (c) When a health care provider operates a health care
10 complex as an integrated institution in the same immediate area
11 with more than one health care facility, only one license shall
12 be required. Such license shall specify the different health
13 care facilities which the provider is authorized to operate
14 under its certificate of need.

15 Section 304. Provisional License.--When there is a serious
16 specific deficiency in compliance with applicable statutes,
17 ordinances and/or regulations, and when the applicant is taking
18 appropriate steps to correct the deficiencies, the department
19 shall issue a provisional license for a specified period of not
20 more than 3 months which may be renewed one time. Upon
21 compliance, a regular license shall be issued immediately.

22 Section 305. Term, Content and Posting of License.--(a) All
23 licenses issued by the department under this act shall:

24 (1) expire 1 year from the day on which issued;

25 (2) be on a form provided by the department;

26 (3) not be transferable except upon prior approval of the
27 department;

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

30 (5) specify the maximum number of beds normally to be used

1 for the varying levels of care of patients in the facility at
2 any one 90-day period of time.

3 (b) The license shall at all times be posted in a
4 conspicuous place available to visitors and consumers on the
5 applicant's premises.

6 Section 306. Authorizing Use of Additional Beds.--No
7 licensee shall permit the use of beds for inpatient use in the
8 licensed facility in excess of the maximum number set forth in
9 the license without first obtaining a revised certificate of
10 need from the department for a term specified by the department.
11 In case of emergency, the department may grant temporary use of
12 beds without a certificate of need for a period of 120 days.

13 Section 307. Inspection of Facilities and Records.--(a) For
14 the purpose of determining the suitability of the applicants and
15 of the premises or the continuing conformity of the licensees to
16 this act and to the applicable rules and regulations of the
17 department, any authorized agent of the department shall, upon
18 proper identification made to the individual in charge of the
19 health care facility, have the right to enter, visit and inspect
20 any facility licensed or requiring a license under this act and
21 shall have full and free access to the records of the facility
22 reasonably related to its purpose and shall have reasonable
23 opportunity to interview the patients and employees, giving due
24 regard to protection of all health and sanitary conditions,
25 confidentiality of medical information and the patients' rights
26 to protection against violation of their privacy involved in any
27 such interview. No inspection made hereunder shall unduly
28 interfere with the operation of the facility. Inspection results
29 shall be made public by the department within a reasonable time
30 after the inspection.

1 (b) The department shall require reasonable public notice of
2 a provider's application for license renewal and any person
3 interested as a consumer, provider or third party payor may file
4 objections within 30 days with the department setting forth
5 specifically the reasons therefor.

6 (c) Whenever the department, upon inspection or
7 investigation shall learn of any violation of this act, it shall
8 give written notice immediately to the health care provider.
9 Such notice shall require the health care provider to take
10 specific action to bring the health care facility into
11 compliance with this act and the rules and regulations relating
12 to licensure within a time specified by the department.

13 Section 308. Refusal and Revocation of License.--The
14 department may refuse to issue or renew a license or may revoke
15 a license for any of the following reasons:

16 (1) Violation of or non-compliance with a provision of this
17 act.

18 (2) Fraud or deceit in obtaining or attempting to obtain a
19 license.

20 (3) Lending, borrowing or using the license of another, or
21 in any way knowingly aiding or abetting the improper granting of
22 a license.

23 (4) Substantial incompetence, substantial negligence or
24 substantial misconduct in operating the health care facility or
25 in providing services to patients.

26 Section 309. Records of Licensees.--Every person licensed
27 under this act to conduct, maintain and operate a health care
28 facility shall keep such records and make such reports
29 concerning its operation as are reasonably required by the
30 department.

1 Section 310. Penalty.--Any person operating a health care
2 facility within this Commonwealth without a license required by
3 this act shall be guilty of a summary offense and shall, upon
4 conviction thereof, be sentenced to pay a fine of not more than
5 \$1,000 and costs of prosecution. Each day of operating a health
6 care facility without a valid license required by this act shall
7 constitute a separate offense.

8 ARTICLE IV

9 MISCELLANEOUS PROVISIONS

10 Section 401. Advisory Council.--(a) An advisory council
11 appointed by the Governor shall be established for the purpose
12 of assisting the secretary in writing regulations, establishing
13 fees and advising the secretary on matters relating to planning,
14 certificate of need, licensure and administration of the act.
15 There shall be nine members of the council composed of three who
16 shall be consumers, three providers of health care, one
17 physician with active staff privileges at a hospital located
18 within the Commonwealth and two third party payors. Members of
19 the advisory council shall serve for terms of 4 years. Of the
20 members first appointed, two shall serve for 1 year, two for 2
21 years, two for 3 years and three for 4 years. Ex officio members
22 of the council shall be the Chairman of the House Health and
23 Welfare Committee or his designee and the Chairman of the Senate
24 Public Health and Welfare Committee or his designee. The
25 advisory council shall choose its own chairman and shall meet at
26 such times as the chairman shall determine. Upon request by four
27 or more members it shall be the duty of the chairman to call a
28 meeting of the advisory council.

29 (b) Members of the advisory council and of any advisory
30 committees to the advisory council, while serving on business of

1 the advisory council (inclusive of travel time), shall receive
2 compensation at rates equal to \$100 per day for such services;
3 and while so serving away from their places of residence they
4 shall be entitled to receive actual and necessary travel time
5 expenses, including per diem in lieu of subsistence.

6 (c) In lieu of establishing an advisory council pursuant to
7 this section, the advisory council established pursuant to the
8 "Health Care Facility Cost Containment Act" may exercise the
9 powers conferred and the duties imposed upon the advisory
10 council under this act.

11 Section 402. Regulations.--The department is hereby
12 authorized and empowered with the approval of the advisory
13 council to adopt rules and regulations and establish procedures
14 pursuant to this act, to include minimum standards for equipment
15 and for patient health care and treatment having regard for the
16 health, safety, welfare and proper treatment of patients. No
17 rule, regulation or guideline adopted under this section shall
18 become effective until it is acted upon by the secretary and the
19 advisory council.

20 Section 403. Judicial Review.--Any person aggrieved by any
21 action of the department or secretary may appeal to the
22 Commonwealth Court in the manner provided by law.

23 Section 404. Certification of Need for Existing
24 Facilities.--Notwithstanding the provisions of this act, any
25 person who on the effective date of this act shall be lawfully
26 operating a health care facility or shall have the same under
27 construction or under firm commitment for construction, or shall
28 be lawfully furnishing a service or shall be subject to firm
29 commitment to furnish a service, shall be entitled to be issued
30 a certificate of need for operating such health care facility or

1 furnishing such service.

2 Section 405. Effective Date.--This act shall take effect

3 December 31, 1975.