

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1602 Session of
1985

INTRODUCED BY SAURMAN, D. R. WRIGHT, E. Z. TAYLOR, SIRIANNI,
NAHILL, CORNELL, DISTLER, BUNT, GLADECK AND LEVDANSKY,
JUNE 28, 1985

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JUNE 28, 1985

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," providing for an annual capital
10 expenditure limit; further providing for the powers and
11 duties of the Department of Health and the State Health
12 Facility Hearing Board, and for criteria for review of
13 applications for certificates of need; and making editorial
14 changes.

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

17 Section 1. The title of the act of July 19, 1979 (P.L.130,
18 No.48), known as the Health Care Facilities Act, is amended to
19 read:

AN ACT

21 Relating to health care; prescribing the powers and duties of
22 the Department of Health; establishing and providing the
23 powers and duties of the State Health Coordinating Council,

1 health systems agencies and Health Care Policy Board in the
2 Department of Health, and State Health Facility Hearing Board
3 in the [Department of Justice] Office of General Counsel;
4 providing for certification of need of health care providers;
5 establishing an annual limit on certain expenditures; and
6 prescribing penalties.

7 Section 2. The definition of "health care facility" in
8 section 103 of the act, amended July 12, 1980 (P.L.655, No.136),
9 is amended and the section is amended by adding a definition to
10 read:

11 Section 103. Definitions.

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

15 * * *

16 "Annual capital expenditure limit." The maximum amount of
17 money that may be spent in a fiscal year on "new institutional
18 health services" as defined in section 701.

19 * * *

20 "Health care facility." A general or special hospital
21 including tuberculosis and psychiatric hospitals, rehabilitation
22 facilities, skilled nursing facilities, kidney disease treatment
23 centers including free-standing hemodialysis units, lithotripsy
24 facilities, magnetic resonance imaging facilities, computerized
25 axial tomography facilities, intermediate care facilities and
26 ambulatory surgical facilities, both profit and nonprofit and
27 including those operated by an agency of State or local
28 government, but shall not include an office used exclusively for
29 their private or group practice by physicians or dentists, nor a
30 program which renders treatment or care for drug or alcohol

1 abuse or dependence, unless located within, by or through a
2 health care facility, a facility providing treatment solely on
3 the basis of prayer or spiritual means in accordance with the
4 tenets of any church or religious denomination, nor a facility
5 conducted by a religious organization for the purpose of
6 providing health care services exclusively to clergymen or other
7 persons in a religious profession who are members of the
8 religious denominations conducting the facility.

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

18 * * *

19 Section 3. Section 201 of the act is amended by adding
20 clauses to read:

21 Section 201. Powers and duties of the department.

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

24 * * *

25 (11.1) To ensure that the annual capital expenditure
26 limit is not exceeded.

27 * * *

28 (14.1) To adopt and promulgate regulations necessary to
29 carry out the purposes and provisions of this act relating to
30 the annual capital expenditure limit.

1 * * *

2 Section 4. Sections 502(a) and 505(c) of the act, amended
3 July 12, 1980 (P.L.655, No.136), are amended to read:

4 Section 502. Powers and duties of the hearing board.

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

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

9 (1.1) To hear appeals from departmental decisions
10 relating to administration of the annual capital expenditure
11 limit.

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

17 (3) To hear appeals from decisions of the department
18 which require a person to obtain a certificate of need for
19 major medical equipment or the acquisition of an existing
20 health care facility.

21 (4) To fix the place of hearings in the area from which
22 the application arises in matters relating to certificate of
23 need and matters relating to administration of the annual
24 capital expenditure limit.

25 * * *

26 Section 505. Hearings before the hearing board.

27 * * *

28 (c) Notice of hearings before the hearing board shall be
29 given to the parties at least 21 days in advance of the hearing.
30 In appeals to the board from the decision of the department on

1 an application for certificate of need or amendment thereof or
2 administration of the annual capital expenditure limit, notice
3 of the same shall be published in a newspaper in general
4 circulation in the health service area and to the areas affected
5 and in the Pennsylvania Bulletin at least 14 days before the
6 hearing.

7 Section 5. Section 506 of the act is amended to read:

8 Section 506. Appeals to the hearing board.

9 (a) Decisions of the department on an application for a
10 certificate of need or amendment or administration of the annual
11 capital expenditure limit thereto may be appealed within 30 days
12 by any party or health systems agency who is involved in the
13 proceeding. The appeal to the hearing board shall be commenced
14 within 30 days of the appeal and shall be limited to issues
15 raised by the appellant in the specification of objections to
16 the decision of the department which shall raise no further
17 issues not brought to the attention of the health systems agency
18 or the department, and the board shall entertain no evidence
19 that the hearing board is satisfied the appellant was able, by
20 the exercise of reasonable diligence, to have submitted before
21 the health systems agency and the department.

22 (b) The hearing board shall be bound by the duly promulgated
23 regulations of the department and shall give due deference to
24 the expertise of the health systems agencies and the department
25 in reaching their decisions. It shall receive any evidence as to
26 challenges of the authority of the department or the
27 reasonableness of the criteria or regulations used in the review
28 of the application or administration of the annual capital
29 expenditure limit for the sole purpose of creating a record for
30 any subsequent appeal to court.

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

8 Section 6. Section 601 of the act, amended July 12, 1980
9 (P.L.655, No.136), is amended to read:

10 Section 601. Promulgation of rules and regulations.

11 (a) All rules and regulations under this act shall be
12 prepared by the department and submitted for review by the
13 policy board and the department shall consult with the policy
14 board before proposed regulations are published.

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

20 (e) The department shall also publish a notice of the
21 availability of proposed regulations relating to certificate of
22 need and any revisions thereof and administration of the annual
23 capital expenditure limit in accordance with the designation
24 agreement with the [Secretary of Health, Education and Welfare]
25 Secretary of Health and Human Services, if any, in at least two
26 newspapers in general circulation in the Commonwealth, together
27 with a place they may be examined and copied by interested
28 persons.

29 (f) Proposed regulations establishing certificate of need
30 review procedures and criteria or changes therein and proposed

1 regulations relating to administration of the annual capital
2 expenditure limit shall be distributed by the department to the
3 SHCC, each health systems agency operating in the Commonwealth
4 and Statewide health agencies and organizations and those
5 agencies, if any, which establish rates for health care
6 facilities and health maintenance organizations.

7 (g) The department shall distribute copies of adopted final
8 regulations on certificate of need review procedures and
9 criteria, and any revisions thereof, and adopted final
10 regulations on administration of the annual capital expenditure
11 limit to persons set forth in subsection (f) and to the
12 [Departments of Health, Education and Welfare] Department of
13 Health and Human Services and shall provide such copies to other
14 interested persons upon request.

15 (h) Prior to review by the department of new institutional
16 health services under this act, the department shall disseminate
17 to all health care facilities and health maintenance
18 organizations within the Commonwealth, and shall publish in one
19 or more newspapers in general circulation within the
20 Commonwealth a description of coverage of the certificate of
21 need program for review, as determined under regulations, and
22 [any] an explanation of the annual capital expenditure limit.
23 Any revisions thereof shall be similarly disseminated and
24 published.

25 Section 7. Section 602 of the act is amended to read:
26 Section 602. Regulations.

27 The department is hereby authorized and empowered pursuant to
28 the provisions of this act to adopt rules and regulations
29 establishing procedures required by this act for administration
30 of certificate of need and administration of the annual capital

1 expenditure limit.

2 Section 8. Section 707 of the act is amended by adding a
3 subsection to read:

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

6 * * *

7 (a.1) In addition to criteria listed in subsection (a)
8 applications for certificates of need that are subject to the
9 provisions of Chapter 7-A shall be considered with reference to
10 the priorities listed below, provided that each decision, except
11 in circumstances which pose a threat to public health, shall be
12 consistent with the State health plan:

13 (1) The proposed service or facility will correct
14 conditions which pose a clear and immediate threat to public
15 health.

16 (2) The proposed service or facility will correct
17 conditions cited by an appropriate accrediting authority as
18 requiring correction.

19 (3) The proposed service or facility is deemed necessary
20 by the applicable health systems plan.

21 (4) The proposed service or facility will correct
22 currently existing cost inefficiencies.

23 (5) The proposed service or facility will provide
24 patient or staff conveniences.

25 * * *

26 Section 9. The act is amended by adding a chapter to read:

27 CHAPTER 7-A

28 ANNUAL CAPITAL EXPENDITURE LIMIT

29 Section 701-A. Establishment of annual capital expenditure
30 limit.

1 (a) There is hereby established an annual capital
2 expenditure limit of \$200,000,000 for each fiscal year which
3 shall be applicable to all proposed new institutional health
4 services. All health care facilities, except skilled nursing
5 facilities and intermediate care facilities, shall be subject to
6 the annual capital expenditure limit.

7 (b) The annual capital expenditure limit shall be adjusted
8 annually by the department according to changes in the average
9 of the United States Department of Commerce Composite
10 Construction Cost Index for the 12-month period ending December
11 31 immediately preceding the beginning of the next fiscal year.

12 (c) The secretary may, in his discretion, on or before May
13 30 of each year, increase the annual capital expenditure limit
14 established in subsection (a) and as adjusted under subsection
15 (b) by an amount not exceeding \$10,000,000 if he finds that the
16 increase is necessary to authorize the following:

17 (1) Projects resulting from unforeseeable events that
18 are likely to result in an interruption of patient services.

19 (2) Projects for new technologies that substantially
20 reduce patient care risk.

21 (d) Any increase authorized by the secretary under
22 subsection (c), but not actually expended, shall lapse and shall
23 not be added to the annual capital expenditure established for
24 the next fiscal year.

25 (e) The annual capital expenditure limit established by this
26 section shall be applicable to the fiscal year ending June 30,
27 1986, and to subsequent fiscal years.

28 (f) For purposes of this chapter, "fiscal year" shall mean
29 the period beginning July 1 of a particular calendar year and
30 ending June 30 of the next calendar year.

1 Section 702-A. Allocation of annual capital expenditure limit.

2 The secretary shall, on or before May 30 of each year,
3 allocate the annual capital expenditure limit for the next
4 fiscal year among the State's health service areas on the basis
5 of need and population as determined by the most recent reports
6 of the United States Bureau of the Census.

7 Section 703-A. Submission of letter of intent.

8 Each health care facility subject to this chapter that
9 desires to offer, develop, construct or otherwise establish or
10 undertake to establish a new institutional health service shall,
11 in addition to any other requirements imposed by this act,
12 submit on or before May 30 of each year a letter of intent to
13 the health systems agency and the department advising both the
14 agency and the department of the scope and nature of the project
15 as required by regulations.

16 Section 704-A. Capital expenditures not to exceed allocation.

17 No certificate of need shall be approved if the approval
18 would cause capital expenditures within a health service area to
19 exceed the health service area's allocation of the annual
20 capital expenditure limit.

21 Section 705-A. Rules and regulations.

22 The department shall promulgate and adopt rules and
23 regulations to implement and administer this chapter.

24 Section 706-A. Construction.

25 This chapter shall be construed consistent with applicable
26 Federal laws and regulations. If necessary to implement and
27 administer this chapter, the secretary shall request from the
28 appropriate Federal agency an exception from procedures required
29 by Federal laws and regulations.

30 Section 10. This act expires in four years.

1 Section 11. This act shall take effect in 60 days.