
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1982 Session of 1991

INTRODUCED BY PISTELLA, RICHARDSON, FLEAGLE, TRICH, BELFANTI,
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AUGUST 4, 1991

SENATOR FUMO, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED,
NOVEMBER 24, 1992

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," abolishing the State Health
10 Coordinating Council and the Health Care Policy Board;
11 further providing for health planning; establishing the
12 Health Policy Board; and making repeals.

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

15 Section 1. Sections 103, 201 and 202 of the act of July 19,
16 1979 (P.L.130, No.48), known as the Health Care Facilities Act,
17 amended or added July 12, 1980 (P.L.655, No.136), are amended to
18 read:

19 Section 103. Definitions.

20 The following words and phrases when used in this act shall

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

3 "Act." The comprehensive Health Care Facilities Act.

4 ["Affected person." A person whose proposal is being
5 reviewed for purposes of certificate of need, the health systems
6 agency for the health service area in which the proposed new
7 institutional health service is to be offered or developed,
8 health systems agencies serving contiguous health service areas,
9 health care facilities and health maintenance organizations
10 located in the health service area which provide institutional
11 health services, and those members of the public who are to be
12 served by the proposed new institutional health services and
13 those agencies, if any, which establish rates for health care
14 facilities and health maintenance organizations located in the
15 health systems area in which the proposed new institutional
16 health service is to be offered or developed.

17 "Annual implementation plan." The latest health systems
18 agency's annual statement of objectives to achieve the goals of
19 the health systems plan, including the priorities established
20 among the objectives.]

21 "Board." The Health Policy Board established under section
22 401.1 of this act.

23 "Certificate of need." A [certificate] notice of approval
24 issued by the department under the provisions of this act,
25 including those notices of approval issued as an amendment to an
26 existing certificate of need.

27 "Clinically related health service." Certain diagnostic,
28 treatment or rehabilitative services as determined in section
29 701.

30 "Community-based health services planning committee." A

1 committee established in accordance with procedures approved by
2 the Department of Health which includes representatives of local
3 or regional groups of consumers, business, labor, health care
4 providers, payors or other affected interests.

5 "Conflict of interest." For the purpose of section 501, the
6 interest of any person, whether financial, by association with,
7 or as a contributor of money or time to, any nonprofit
8 corporation or other corporation, partnership, association, or
9 other organization, and whenever a person is a director, officer
10 or employee of such organization, but shall not exist whenever
11 the organization in which such person is interested is being
12 considered as part of a class or group for whom regulations are
13 being considered, if the material facts as to the relationship
14 or interest are disclosed or are known to the board.

15 "Consumer." A natural person [who is not a "provider of
16 health care" as defined in Title XV of the Federal Public Health
17 Service Act] who is not involved in the provision of health
18 services or health insurance. For the purpose of [section 301]
19 this act, any person who holds a fiduciary position in any
20 health care facility [or], health maintenance organization or
21 third party payor shall not be considered a consumer.

22 "Department." The Department of Health.

23 "Develop." When used in connection with health services or
24 facilities, means to undertake those activities which on their
25 completion will result in the offer of a new health service or
26 the incurring of a financial obligation in relation to the
27 offering of such a service.

28 ["Health care facility." A general or special hospital
29 including tuberculosis and psychiatric hospitals, rehabilitation
30 facilities skilled nursing facilities, kidney disease treatment

1 centers including free-standing hemodialysis units, intermediate
2 care facilities and ambulatory surgical facilities, both profit
3 and nonprofit and including those operated by an agency of State
4 or local government, but shall not include an office used
5 exclusively for their private or group practice by physicians or
6 dentists, nor a program which renders treatment or care for drug
7 or alcohol abuse or dependence, unless located within, by or
8 through a health care facility, a facility providing treatment
9 solely on the basis of prayer or spiritual means in accordance
10 with the tenets of any church or religious denomination, nor a
11 facility conducted by a religious organization for the purpose
12 of providing health care services exclusively to clergymen or
13 other persons in a religious profession who are members of the
14 religious denominations conducting the facility.

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

23 "Health maintenance organization." An organization defined
24 as a health maintenance organization by section 1531(8) of the
25 Federal Public Health Service Act or an organization regulated
26 by the act of December 29, 1972 (P.L.1701, No.364), known as the
27 "Voluntary Nonprofit Health Service Act of 1972."]

28 "Health care facility." For purposes of Chapter 7 of this
29 act, any health care facility providing clinically related
30 health services, including, but not limited to, a general or

1 special hospital including psychiatric hospitals, rehabilitation
2 hospitals, ambulatory surgical facilities, long-term care
3 nursing facilities, cancer treatment centers using radiation
4 therapy on an ambulatory basis, and inpatient drug and alcohol
5 treatment facilities, both profit and nonprofit and including
6 those operated by an agency or State or local government. The
7 term shall not include an office used primarily for the private
8 or group practice by health care practitioners where no
9 reviewable clinically related health service is offered, a
10 facility providing treatment solely on the basis of prayer or
11 spiritual means in accordance with the tenets of any church or
12 religious denomination, or a facility conducted by a religious
13 organization for the purpose of providing health care services
14 exclusively to clergy or other persons in a religious profession
15 who are members of the religious denominations conducting the
16 facility.

17 "Health care practitioner." An individual who is authorized
18 to practice some component of the healing arts by a license,
19 permit, certificate or registration issued by a Commonwealth
20 licensing agency or board.

21 "Health care provider" or "provider." An individual, a trust
22 or estate, a partnership, a corporation (including associations,
23 joint stock companies and insurance companies), the
24 Commonwealth, or a political subdivision or instrumentality
25 (including a municipal corporation or authority) thereof, that
26 operates a health care facility.

27 "Health [service] planning area." [The area served by a
28 health systems agency as designated in accordance with Title XV
29 of the Federal Public Health Service Act.] A geographic area
30 within the Commonwealth designated by the Department of Health

1 for purposes of health planning.

2 ["Health services." Clinically related (i.e., diagnostic,
3 treatment or rehabilitative) services, including alcohol, drug
4 abuse and mental health services.

5 "Health systems agency" or "HSA." An entity which has been
6 conditionally or fully designated pursuant to Title XV of the
7 Federal Public Health Service Act.]

8 "Hearing board." The State Health Facility Hearing Board
9 created in the [Department of Justice] Office of General Counsel
10 under the provisions of this act.

11 ["Home health care." The provision of nursing and other
12 therapeutic services to disabled, injured or sick persons in
13 their place of residence and other health related services
14 provided to protect and maintain persons in their own home.

15 "Major medical equipment." Medical equipment which is used
16 for the provision of medical and other health services and which
17 costs in excess of \$150,000, except major medical equipment
18 acquired by or on behalf of a clinical laboratory to provide
19 clinical laboratory services if the clinical laboratory is
20 independent of a physician's office and a hospital and it has
21 been determined under the Medicare program to meet the
22 applicable requirements of section 1861(s) of the Federal Social
23 Security Act. In determining whether medical equipment has a
24 value in excess of \$150,000, the value of studies, surveys,
25 designs, plans, working drawings, specifications, and other
26 activities essential to the acquisition of such equipment shall
27 be included.]

28 "Interested person" or "person expressing an interest." For
29 the purposes of Chapter 7 of this act, a member of the public
30 who is to be served by the proposed new health service in the

1 area to be served by the applicant, a health care facility or
2 health maintenance organization or any health care provider
3 providing similar services in the area to be served by the
4 applicant, or who has received a certificate of need to provide
5 services in the area to be served by the applicant or who has
6 formally filed with the department a letter of intent to provide
7 similar services in the area in which the proposed service is to
8 be offered or developed, and any third party payor of health
9 services provided in that area who provides written notice to
10 the department that the person is interested in a specific
11 certificate of need application before the department.

12 "Offer." Make provision for providing in a regular manner
13 and on an organized basis [specified] clinically related health
14 services.

15 "Patient." A natural person receiving health care in or from
16 a health care provider.

17 "Person." A natural person, corporation (including
18 associations, joint stock companies and insurance companies),
19 partnership, trust, estate, association, the Commonwealth, and
20 any local governmental unit, authority and agency thereof. [The
21 term shall include all entities owning or operating a health
22 care facility or health maintenance organization.

23 "Persons directly affected." A person whose proposal for
24 certificate of need is being reviewed, members of the public who
25 are to be served by the proposed new institutional health
26 services, health care facilities and health maintenance
27 organizations located in the health service area in which the
28 service is proposed to be offered or developed which provide
29 services similar to the proposed services under review, and
30 health care facilities and health maintenance organizations

1 which prior to receipt by the agency of the proposal being
2 reviewed have formally indicated an intention to provide such
3 similar service in the future and those agencies, if any, which
4 establish rates for health care facilities and health
5 maintenance organizations located in the health systems area in
6 which the proposed new institutional health service is to be
7 offered or developed.]

8 "Policy board." The [Health Care Policy Board] Health Policy
9 Board created in the Department of Health under the provisions
10 of this act.

11 ["Predevelopment costs." Expenditures for preparation of
12 architectural designs, working drawings, plans and
13 specifications.]

14 "Public [hearing] meeting." A meeting open to the public
15 where any person has an opportunity to [present testimony held
16 without imposition of a fee] comment on a certificate of need
17 application or proposed State health services plan amendment.

18 ["Rehabilitation facility." An inpatient facility which is
19 operated for the primary purpose of assisting in the
20 rehabilitation of disabled persons through an integrated program
21 of medical and other services which are provided under competent
22 professional supervision.]

23 "Secretary." The Secretary of the Department of Health of
24 the Commonwealth of Pennsylvania.

25 ["Statewide Health Coordinating Council" or "SHCC", or
26 "council." The council established in compliance with Title XV
27 of the Federal Public Health Service Act.]

28 "State health services plan." A document developed by the
29 Department of Health, after consultation with the policy board
30 and approved by the Governor, that is consistent with section

1 401.3, that meets the current and projected needs of the
2 Commonwealth's citizens. The State health services plan shall
3 contain, in part, the standards and criteria against which
4 certificate of need applications are reviewed and upon which
5 decisions are based.

6 "Third party payor." A person who makes payments on behalf
7 of patients under compulsion of law or contract who does not
8 supply care or services as a health care provider or who is
9 engaged in issuing any policy or contract of individual or group
10 health insurance or hospital or medical service benefits[, but].
11 The term shall not include the Federal, State, or any local
12 government unit, authority, or agency thereof or a health
13 maintenance organization.

14 Section 201. Powers and duties of the department.

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

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

21 (2)] (1) To exercise exclusive jurisdiction over health
22 care providers[, and jurisdiction over health maintenance
23 organizations] in accordance with the provisions of this act.

24 (2) To issue determinations of reviewability or
25 nonreviewability of certificate of need proposals.

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

29 (4) [With respect to health care facilities, to
30 investigate, and report to the Auditor General, upon every

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

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

15 (6) To prepare, in accordance with applicable Federal
16 law, an inventory of the health care facilities located in
17 the Commonwealth and evaluate on an on-going basis the
18 physical condition of such facilities. The inventory and
19 evaluation shall be periodically reported to every HSA.

20 (7)] (5) To require, pursuant to regulation, submission
21 of periodic reports by providers of health services and other
22 persons subject to review respecting the development of
23 proposals subject to review.

24 [(8) To research, prepare and after approval by the SHCC
25 and the Governor publish triennially a State health plan for
26 the Commonwealth based on the various health systems plans.

27 (9) To provide coordination with the National Center for
28 Health Statistics of the activities of the department for the
29 collection, retrieval, analysis, reporting and publication of
30 statistical and other information relating to health and

1 health care and to require health care providers doing
2 business in the Commonwealth to make statistical and other
3 reports of information required by Federal law to be
4 submitted to the National Center for Health Care Statistics;
5 and to collect such other information as may be appropriate
6 to determine the appropriate level of facilities and services
7 for the effective implementation of certification of need
8 under this act.

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

14 (6) Upon consultation with the policy board, to
15 research, prepare and, after approval by the Governor,
16 publish, no later than 18 months after the effective date of
17 this act and annually thereafter, a revised State health
18 services plan for the Commonwealth as defined under this act.
19 Until the State health services plan as defined in section
20 401.4 is adopted, the department shall apply the State health
21 plan in existence on the effective date of this act, along
22 with any subsequent updates to that plan.

23 (7) To collect and disseminate such other information as
24 may be appropriate to determine the appropriate level of
25 facilities and services for the effective implementation of
26 certification of need under this act. Where such information
27 is collected by any other agency of State government,
28 duplication shall be avoided by coordination of data
29 collection activities.

30 (8) To furnish such staff support and expertise to the

1 policy board as may be needed to perform its
2 responsibilities.

3 [(11)] (9) To receive, [docket] log and review all
4 applications for certificates of need or amendments thereof
5 and approve or disapprove the same.

6 [(12)] To determine the Statewide health needs of the
7 Commonwealth after providing reasonable opportunity for the
8 submission of written recommendations respecting such needs
9 by State agencies responsible for planning with regard to
10 mental health, mental retardation and other developmental
11 disabilities, and drug and alcohol abuse, as well as other
12 agencies of State Government designated by the Governor for
13 the purpose of making such recommendations and after
14 consulting with SHCC.

15 [(13)] (10) To minimize the administrative burden on
16 health care providers by eliminating unnecessary duplication
17 of financial and operational reports and to the extent
18 possible coordinating reviews and inspections performed by
19 Federal, State, local and private agencies.

20 [(14)] (11) To adopt and promulgate[, after consultation
21 with the policy board,] regulations necessary to carry out
22 the purposes and provisions of this act relating to
23 certificate of need.

24 [(15)] (12) To enforce the rules and regulations
25 promulgated by the department as provided in this act.

26 [(16)] To consult with the SHCC in the administration of
27 this act.

28 [(17)] (13) To provide technical assistance to
29 individuals and public and private entities in filling out
30 the necessary forms for the development of projects and

1 programs.

2 (14) To establish and publish in the Pennsylvania
3 Bulletin a fee schedule for certificate of need applications
4 and letters of intent in accordance with section 902.1.

5 (15) To coordinate any data collection activities
6 necessary for administration of this act so as not to
7 duplicate unnecessarily the data collection activities of
8 other Federal and State agencies.

9 (16) To modify the list of reviewable clinically related
10 health services established under section 701.

11 Section 202. Encouragement of competition and innovation.

12 The [health systems agencies and the] department shall in
13 [their] its planning and review activities foster competition
14 [and] to promote cost efficiency, quality and access to care.
15 The department shall encourage cooperative health care
16 arrangements which focus on the health care needs of a health
17 planning area and foster the prudent and economical control of
18 the area's resources. The department shall also encourage
19 innovations in the financing and delivery systems for clinically
20 related health services that will promote economic behavior by
21 consumers and providers of clinically related health services
22 [and] that [lead] leads to appropriate investment in, supply and
23 use of health services. [To this end, the health systems plan
24 and the annual implementation plan adopted by the health systems
25 agencies and State health plan shall include an assessment of
26 the current and potential scope of competition and market forces
27 to establish appropriate investment and utilization patterns in
28 the Commonwealth and shall specify the public and private
29 actions needed to strengthen these forces. Revisions of the plan
30 shall assess individual services or types of providers as to

1 whether the conditions for competition have improved in the
2 period since the last plan.]

3 Section 2. Sections 301, 302, 303, 401, 402, 403, 404 and
4 405 of the act are repealed.

5 Section 3. The act is amended by adding sections to read:

6 Section 401.1. Health Policy Board.

7 (a) An advisory board is hereby established in the
8 department, known as the Health Policy Board. The membership of
9 the board shall consist of:

10 (1) The Secretary of Health, or his designee, who shall
11 act as chairman.

12 (2) One representative of hospitals.

13 (3) One physician.

14 (4) One representative of a long-term care facility.

15 (5) Two health care providers not already designated,
16 one of whom shall be a provider of home health services.

17 (6) One representative of Blue Cross or Blue Shield.

18 (7) One representative of health maintenance
19 organizations.

20 (8) One representative of commercial insurance carriers.

21 (9) One representative of business.

22 (10) One representative of organized labor.

23 (11) Three consumers.

24 (12) One representative of county or municipal
25 government.

26 (b) All members shall be appointed to the policy board by
27 the Governor and confirmed by a majority vote of the Senate. The
28 Governor shall make all appointments to the policy board within
29 90 days of the effective date of this act, and the operations of
30 the policy board shall begin immediately upon confirmation of

1 the full board. The secretary shall convene the first meeting
2 within 30 days after the confirmation of the full board.

3 (1) Appointments shall be made in a manner that provides
4 representation of the various geographical regions of this
5 Commonwealth, including those medically underserved areas in
6 rural and inner-city locations. AT LEAST TWO OF THE <—
7 APPOINTMENTS SHALL BE INDIVIDUALS KNOWLEDGEABLE OF RURAL
8 HEALTH CARE NEEDS.

9 (2) Of the ~~14~~ 15 members first appointed, ~~four~~ FIVE <—
10 shall be appointed for a term of one year, five for a term of
11 two years and five for a term of three years. Thereafter,
12 appointments shall be made for a term of three years.

13 (3) No appointed member shall serve more than two full
14 consecutive terms of three years.

15 (4) No policy board member, other than the secretary,
16 may act or attend through a designee or a proxy.

17 (c) A simple majority of those members with current
18 appointments of the policy board shall constitute a quorum for
19 the transaction of any business. The act by the majority of the
20 members present at any meeting in which there is a quorum shall
21 be deemed to be an act of the board.

22 (d) All meetings of the policy board shall be advertised and
23 conducted pursuant to the act of July 3, 1986 (P.L.388, No.84),
24 known as the "Sunshine Act." The board shall meet at least four
25 times a year and may provide for special meetings as may be
26 necessary.

27 (e) The members of the policy board shall not receive any
28 compensation for serving as members of the board but shall be
29 reimbursed at established Commonwealth rates for necessary
30 expenses incurred in the performance of their duties.

1 Section 401.2. Powers and duties of policy board.

2 The policy board shall exercise all powers necessary and
3 appropriate to carry out its duties, including the following:

4 (1) Advise and assist the department in development and
5 revision of the State health services plan.

6 (2) Annually review a work plan developed by the
7 department which identifies those provisions of the State
8 health services plan which must be revised, reconsidered or
9 developed within the succeeding calendar year.

10 (3) Annually review the list of clinically related
11 health services subject to review developed by the department
12 pursuant to the provisions of section 701.

13 Section 401.3. State health services plan.

14 The State health services plan shall consist of, at a
15 minimum:

16 (1) An identification of the clinically related health
17 services necessary to serve the health needs of the
18 population of this Commonwealth, including those medically
19 underserved areas in rural and inner-city locations.

20 (2) An analysis of the availability, accessibility and
21 affordability of the clinically related health services
22 necessary to meet the health needs of the population of this
23 Commonwealth.

24 (3) Qualitative and quantitative standards and criteria
25 for the review of certificate of need applications by the
26 department under this act.

27 (4) An exceptions process which permits exceptions to be
28 granted to the standards and criteria in order to reflect
29 local experience or ensure access or to respond to
30 circumstances which pose a threat to public health and

1 safety.

2 Section 4. Section 501 of the act is amended to read:

3 Section 501. State Health Facility Hearing Board.

4 There is hereby created the State Health Facility Hearing
5 Board in the [Department of Justice] Office of General Counsel
6 which shall consist of [three] five members who shall initially
7 be appointed for terms of one, two and three years respectively
8 by the Governor and confirmed by a majority vote of the Senate.
9 Thereafter, appointments shall be by the Governor for four year
10 terms and confirmed by a majority vote of the Senate. Members
11 shall be chosen for their familiarity and experience with health
12 care facilities or for relevant training and experience which
13 will assist the board to perform its functions. Appointments
14 shall be made to ensure that at least one of the members shall
15 be a member of the bar of the Supreme Court of Pennsylvania. No
16 person shall be chosen who is at the time of appointment an
17 employee of the Commonwealth or of any health care provider. No
18 member shall participate in any action or decision concerning
19 any matter in which the member has an economic interest or other
20 conflict of interest.

21 Section 5. Section 502 of the act, amended July 12, 1980
22 (P.L.655, No.136), is amended to read:

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

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

26 (1) To hear appeals by the applicant or interested
27 persons from departmental decisions on applications for
28 certificates of need or amendments thereto and from
29 determinations of reviewability.

30 (2) To hear upon petition objections to published

1 regulations, criteria, or standards of the [health systems
2 agency or] department as to the policies therein set forth
3 and where appropriate to request the promulgating agency to
4 reconsider such policies set forth in this chapter for
5 certificate of need.

6 [(3) To hear appeals from decisions of the department
7 which require a person to obtain a certificate of need for
8 major medical equipment or the acquisition of an existing
9 health care facility.

10 (4)] (3) To fix the place of hearings in the area from
11 which the application arises in matters relating to
12 certificate of need.

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

16 Section 6. Section 503 of the act is amended to read:

17 Section 503. Counsel.

18 The [Attorney General] Office of General Counsel shall
19 appoint counsel to serve and advise the hearing board and shall
20 replace such counsel upon request of the board.

21 Section 7. Section 505 of the act, amended July 12, 1980
22 (P.L.655, No.136), is amended to read:

23 Section 505. Hearings before the hearing board.

24 (a) All hearings before the hearing board shall be subject
25 to right of notice, hearing and adjudication in accordance with
26 2 Pa.C.S. Chaps. 5 and 7, known as the Administrative Agency
27 Law, and a written record shall be kept of said proceedings and
28 a copy thereof provided to the parties at cost.

29 (b) Persons conducting hearings under this act shall have
30 the power to subpoena witnesses and documents required for the

1 hearing, to administer oaths and examine witnesses and receive
2 evidence in any locality which the hearing body may designate,
3 having regard to the public convenience and proper discharge of
4 its functions and duties.

5 (c) Notice of hearings before the hearing board shall be
6 given to the parties at least 21 days in advance of the hearing.
7 In appeals to the board from the decision of the department on
8 an application for certificate of need or amendment thereof,
9 notice of the same shall be published in a newspaper in general
10 circulation in the [health service area and to the] areas
11 [affected] where the service is proposed and in the Pennsylvania
12 Bulletin at least 14 days before the hearing.

13 (d) The hearing board shall have the authority to adopt
14 rules and regulations establishing procedures for the taking of
15 appeals and other procedural rules and regulations as it deems
16 advisable as provided in section 601.

17 Section 8. Section 506 of the act is amended to read:

18 Section 506. Appeals to the hearing board.

19 [(a) Decisions of the department on an application for a
20 certificate of need or amendment thereto may be appealed within
21 30 days by any party or health systems agency who is involved in
22 the proceeding. The appeal to the hearing board shall be
23 commenced within 30 days of the appeal and shall be limited to
24 issues raised by the appellant in the specification of
25 objections to the decision of the department which shall raise
26 no further issues not brought to the attention of the health
27 systems agency or the department, and the board shall entertain
28 no evidence that the hearing board is satisfied the appellant
29 was able, by the exercise of reasonable diligence, to have
30 submitted before the health systems agency and the department.]

1 (a) A decision of the department on an application for a
2 certificate of need or amendment thereto or a determination of
3 reviewability may be appealed within 30 days of the mailing date
4 of the decision by the applicant or by interested persons who <—
5 participated in the initial review ANY INTERESTED PERSON WHO <—
6 REQUESTED A PUBLIC HEARING MEETING ON THE APPLICATION, AND <—
7 PARTICIPATED FULLY IN THE PUBLIC MEETING AND OR CAN FULLY <—
8 DOCUMENT AND MAKE AVAILABLE MATERIAL INFORMATION WHICH IS
9 RELEVANT TO THE REVIEW AND WHICH WAS NOT AVAILABLE DURING THE
10 PERIOD WHEN THE DEPARTMENT COMPLETED ITS REVIEW. The appeal to
11 the hearing board shall be commenced within 30 days of the
12 filing of the notice of appeal. The appellant shall raise no
13 issues not brought to the attention of the department during its
14 review, and the board shall neither hear nor receive evidence
15 unless it is satisfied the appellant was unable to submit such
16 evidence before the department. For purposes of this subsection,
17 an appeal shall be deemed to commence with the establishment by
18 the board of a schedule for the filing of briefs by the parties
19 to the appeal.

20 (b) [The] In reaching its decisions, the hearing board shall
21 be bound by the duly promulgated regulations of the department
22 and shall [give due deference to] recognize the expertise of
23 [the health systems agencies and] the department [in reaching
24 their decisions]. It shall receive any evidence as to challenges
25 of the authority of the department or the reasonableness of the
26 criteria or regulations used in the review of the application
27 for the sole purpose of creating a record for any subsequent
28 appeal to court.

29 [(c) When any decision of the hearing board is inconsistent
30 with the recommendations made with respect thereto by a health

1 systems agency, or with the applicable health systems plan or
2 annual implementation plan, the hearing board shall submit to
3 such health systems agency and all parties to the proceeding a
4 written, detailed statement of the reasons for the
5 inconsistency.]

6 (c) The hearing board shall submit to all parties to the
7 proceeding a written, detailed statement which sets forth its
8 decision and the reasoning upon which the decision is based.

9 Section 9. Section 507 of the act, repealed in part October
10 5, 1980 (P.L.693, No.142), is amended to read:

11 Section 507. Appeals and procedures on appeals.

12 The action of the hearing board may be appealed by any party
13 [or health systems agency] who is involved in [that proceeding]
14 the appeal before the board.

15 Section 10. Section 601 of the act, amended July 12, 1980
16 (P.L.655, No.136) and repealed in part June 25, 1982 (P.L.633,
17 No.181), is amended to read:

18 Section 601. Promulgation of rules and regulations.

19 [(a) All rules and regulations under this act shall be
20 prepared by the department and submitted for review by the
21 policy board and the department shall consult with the policy
22 board before proposed regulations are published.

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

28 (e) The department shall also publish a notice of the
29 availability of proposed regulations relating to certificate of
30 need and any revisions thereof in accordance with the

1 designation agreement with the Secretary of Health, Education
2 and Welfare, if any, in at least two newspapers in general
3 circulation in the Commonwealth, together with a place they may
4 be examined and copied by interested persons.

5 (f) Proposed regulations establishing certificate of need
6 review procedures and criteria or changes therein shall be
7 distributed by the department to the SHCC, each health systems
8 agency operating in the Commonwealth and Statewide health
9 agencies and organizations and those agencies, if any, which
10 establish rates for health care facilities and health
11 maintenance organizations.

12 (g) The department shall distribute copies of adopted final
13 regulations on certificate of need review procedures and
14 criteria, and any revisions thereof, to persons set forth in
15 subsection (f) and to the Departments of Health, Education and
16 Welfare and shall provide such copies to other interested
17 persons upon request.

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

27 (a) The department, in the exercise of its duties under this
28 act, shall have the power to adopt such regulations as are
29 necessary to carry out the purposes of this act. Regulations
30 shall be adopted in conformity with the provisions of the act of

1 July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
2 Documents Law, and the act of June 25, 1982 (P.L.633, No.181),
3 known as the "Regulatory Review Act."

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

9 Section 11. Section 603 of the act, amended July 12, 1980
10 (P.L.655, No.136) and repealed in part October 5, 1980 (P.L.693,
11 No.142) and December 20, 1982 (P.L.1409, No.326), is amended to
12 read:

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

15 (a) (1) No certificate of need shall be granted to any
16 person for a [new institutional] health care facility or
17 reviewable, clinically related health service unless such
18 [new institutional] facility or clinically related health
19 service is found by the department to be needed.

20 (2) [Only those new institutional health services which
21 are granted certificates of need shall be offered or
22 developed within the Commonwealth by any person.] No person
23 shall offer or develop a health care facility or reviewable
24 clinically related health service without obtaining a
25 certificate of need as required by this act.

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

(4)] No binding arrangement or commitment for financing the offering or development of a [new institutional] health care facility or reviewable clinically related health service shall be made by any person unless a certificate of need for such [new institutional] clinically related health service or facility[, or the preparation for the offering or development of the same] has been granted in accordance with this act.

(b) Orders for which the time of appeal has expired shall be enforced by the department in summary proceedings or, when necessary, with the aid of the court.

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

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

(e) Any person [violating] who violates this act by [a willful failure] failing to obtain a certificate of need, [or willfully] by deviating from the provisions of the certificate, [or] by beginning construction, [or] by providing services, or by acquiring equipment after the expiration of a certificate of

1 need shall be subject to a penalty of not less than \$100 per day
2 and not more than \$1,000 per day. Each day [after notice to them
3 of the existence] of each such violation shall be considered a
4 separate offense.

5 (f) The department [shall] may seek injunctive relief to
6 prevent continuing violations of this act. In seeking such
7 relief, the department need not prove irreparable harm.

8 (g) No license to operate a health care facility, [health
9 maintenance organization, or new institutional] or reviewable
10 clinically related health service by any person in this
11 Commonwealth shall be granted and any license issued shall be
12 void and of no effect as to any facility, organization, service
13 or part thereof for which a certificate of need is required by
14 this act and not granted.

15 [(h) No person shall acquire major medical equipment which
16 will not be owned or operated in a health care facility or
17 acquire an existing health care facility except in accordance
18 with this act.]

19 Section 12. Section 701 of the act, amended July 12, 1980
20 (P.L.655, No.136), is amended to read:

21 Section 701. Certificate of need required; [new institutional]
22 clinically related health services subject
23 to review.

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

29 (1) The construction development or other establishment
30 of a new health care facility or health maintenance

1 organization.

2 (2) Any expenditure by or on behalf of a health care
3 facility or health maintenance organization in excess of
4 \$150,000 which, under generally accepted accounting
5 principles consistently applied, is a capital expenditure.
6 Expenditures for acquisitions of existing health care
7 facilities and health maintenance organizations shall not be
8 included unless the notice required by subsection (i) of
9 section 702 is not filed or the department finds within 30
10 days of receipt of such notice that the services or bed
11 capacity of the health care facility will be changed in being
12 acquired. An acquisition by or on behalf of a health care
13 facility or health maintenance organization under lease or
14 comparable arrangement, or through donation, which would have
15 required review if the acquisition had been by purchase,
16 shall be deemed a capital expenditure subject to review.

17 (3) The obligation of any capital expenditure by or on
18 behalf of a health care facility which results in the
19 addition of a health service not provided in or through the
20 facility in the previous 12 months or which increases the
21 number of beds (or redistributes beds among various
22 categories other than levels of care in a nursing home, or
23 relocates such beds from one physical facility or site to
24 another) by more than ten beds or more than 10% of total bed
25 capacity, as defined by the regulations, whichever is less,
26 over a two-year period.

27 (4) The addition of a health service which is offered in
28 or through a health care facility having an operating expense
29 in excess of the minimum annual operating expense established
30 in accordance with Title XV of the Federal Public Health

1 Service Act, and which were not offered on a regular basis in
2 or through such health care facility or health maintenance
3 organization within the 12-month period prior to the time
4 such services would be offered.

5 (5) Major medical equipment not owned by or located in a
6 health care facility which will:

7 (i) be used to provide service for inpatients of a
8 health care facility; or

9 (ii) for which a notice was not provided in
10 accordance with subsection (i) of section 702.

11 (b) (1) Any expenditure by or on behalf of health care
12 facilities or a health maintenance organization in excess of
13 \$150,000 made in preparation for the offering or development
14 of a new institutional health service and any binding
15 arrangement or commitment by either of them for financing the
16 offering or development of the new institutional health
17 service shall be subject to review under this chapter.

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

24 (c) Notwithstanding the provisions of subsection (a) or (b)
25 a new institutional health service acquired, owned or operated
26 by a health maintenance organization and home health care shall
27 be subject to the provisions of this act only to the extent
28 required by Federal law.

29 (d) As higher minimum expenditures requiring review are set
30 by the Federal Government, those limits shall immediately apply

1 in lieu of the minimum expenditure limits set by this act.]

2 (a) Any person, including, but not limited to, a health care
3 facility, health maintenance organization or health care
4 provider who offers, develops, constructs, renovates, expands or
5 otherwise establishes or undertakes to establish within the
6 State a clinically related health service that is included in
7 the department's list of reviewable services developed under
8 subsections (d) and (e) or a health care facility as defined in
9 section 103 must obtain a certificate of need from the
10 department if one or more of the following factors applies:

11 (1) The proposal requires a capital expenditure in
12 excess of \$2,000,000 under generally accepted accounting
13 principles, consistently applied.

14 (2) The proposal involves the establishment of a health
15 care facility or a reviewable clinically related health
16 service.

17 (3) The proposal increases the number of licensed beds
18 by more than ten beds or 10%, whichever is less, every two
19 years.

20 (i) If the additional beds are acute-care beds and
21 are not beds in a distinct-part psychiatric,
22 rehabilitation or long-term care unit, all licensed beds
23 of the acute-care facility shall be counted in
24 determining whether the increased number of beds exceeds
25 10%.

26 (ii) If the additional beds are beds in a distinct-
27 part psychiatric, rehabilitation or long-term care unit
28 of an acute-care facility, only the beds within that unit
29 shall be counted in determining whether the increased
30 number of beds exceeds 10%.

1 (iii) If the additional beds are in a freestanding
2 psychiatric, rehabilitation or long-term care facility,
3 all licensed beds of the freestanding facility shall be
4 counted in determining whether the increased number of
5 beds exceeds 10%.

6 (4) The proposal substantially expands an existing
7 clinically related health service, as determined by the
8 department in the State health services plan.

9 (b) For the purposes of this act, an expenditure for the
10 purpose of acquiring an existing health care facility or
11 replacement of equipment where there is no change in service
12 shall not be considered to be a capital expenditure subject to
13 review. Expenditures for nonclinical activities or services,
14 such as parking garages, computer systems or refinancing of
15 debt, and research projects involving premarket approval of new
16 equipment shall not be subject to review.

17 (c) The capital expenditure threshold identified in
18 subsection (a)(1) may be modified periodically by the department
19 to reflect any increase in the construction cost or other
20 factors influencing health care-related capital expenditures.
21 The department shall publish a modification of the expenditure
22 threshold through the regulatory review process.

23 (d) A list of reviewable clinically related health services
24 shall be published by the department within 30 days of the
25 effective date of this act and may be modified by regulation on
26 an annual basis. Exclusive of new high cost technology, the
27 initial list published by the department as required under this
28 subsection shall be no more extensive than those services
29 reviewable on the effective date of this act. Criteria for
30 inclusion of reviewable services shall include, but not be

1 limited to:

2 (1) the quality of the service to be offered is likely
3 to be compromised through insufficient volumes or
4 utilization;

5 (2) the service is dependent upon the availability of
6 scarce natural resources such as human organs;

7 (3) the operating costs associated with the service are
8 reimbursed by major third party payors on a cost
9 reimbursement basis; or

10 (4) the service involves the use of new technology.

11 (e) Any changes to the list required under subsection (d)
12 and proposed by regulation shall be developed by the department
13 after consultation with the policy board.

14 (f) A facility providing treatment solely on the basis of
15 prayer or spiritual means in accordance with the tenets of any
16 church or religious denomination, or a facility conducted by a
17 religious organization for the purpose of providing health care
18 services exclusively to clergy or other persons in a religious
19 profession who are members of the religious denomination
20 conducting the facility shall not be considered to constitute a
21 health service subject to review under this act.

22 (g) As used in this section, "new high cost technology"
23 means new technological equipment with an aggregate purchase
24 cost of greater than \$500,000. The department shall consult with
25 national medical and surgical speciality organizations
26 recognized by the American Board of Medical Specialities (ABMS)
27 and other nationally recognized scientific resources in the
28 determination of what constitutes new technological equipment.

29 Section 13. Section 702 of the act, amended July 12, 1980
30 (P.L.655, No.136) and repealed in part December 20, 1982

1 (P.L.1409, No.326), is amended to read:

2 Section 702. Certificates of need; notice of intent;

3 application; issuance.

4 (a) Projects [for facilities, services or equipment]

5 requiring a certificate of need shall, at the earliest possible

6 time in their planning, be submitted to [the health systems

7 agency and] the department in a letter of intent in such detail

8 advising of the scope and nature of the project as required by

9 regulations. Within 30 days after receipt of the letter of

10 intent, the department shall inform the applicant providing the

11 letter of intent whether the proposed project is subject to a

12 certificate of need review or if additional information is

13 required to make that determination. If the department

14 determines that the project is subject to a certificate of need

15 review, the project shall be subject to the remaining provisions

16 of this act.

17 (b) A person desiring to obtain or amend a certificate of

18 need shall apply in writing to the [local health systems agency,

19 if any, and to the department simultaneously supplying to them

20 such information as is required by rules and regulations]

21 department, supplying such information as is required by the <—

22 department AND CERTIFYING THAT ALL DATA, INFORMATION AND <—

23 STATEMENTS ARE FACTUAL TO THE BEST OF THEIR KNOWLEDGE,

24 INFORMATION AND BELIEF. The [health systems agency and the]

25 department shall have [20] 60 [business] days after receipt of <—

26 the application within which to [determine whether] assess the

27 application [is complete] and in which to request specific

28 further information. If further information is requested, the

29 [agency requiring the same shall determine whether] department

30 shall complete its preliminary assessment of the application [is

1 complete] within [15] 45 [business] days of receipt of the same. <—
2 No information shall be required that is not specified in the
3 rules and regulations promulgated by the department.

4 (c) Timely notice of the beginning of review of the
5 application by the [health systems agency shall be sent with the
6 notice of a completed application, upon the expiration of the
7 time to determine that an application is complete, or 60 days or
8 more after the filing of the application upon written demand by
9 the applicant that review begin, whichever shall first occur,
10 and the review shall be completed within 60 days of the "date of
11 notification" unless the applicant agrees in writing to a
12 specified extension of time for the review by the health systems
13 agency. A health systems agency shall have, at least, 60 days to
14 complete its review unless the health systems agency waives such
15 time in writing.] department shall be published after
16 preliminary assessment of the application is completed by the
17 department. The "date of notification" of the beginning of
18 review shall be the date such notice is sent, or the date such
19 notice is published in the Pennsylvania Bulletin or in a
20 newspaper of general circulation, whichever is [later] latest.

21 (d) The department shall [consider the timely filed
22 recommendations or objections of the health systems agency in
23 reviewing the application and shall approve or disapprove the
24 application, unless there is an agreed extension in writing,
25 within 30 days from receipt of the health systems agency report
26 or report on a hearing for reconsideration before the health
27 systems agency, whichever is later, or upon the expiration of
28 the time for filing the same. If no action is taken within the
29 time permitted the department to make its findings, the
30 applicant may, following expiration of that time period, bring

1 an action in Court to require the department to approve or
2 disapprove the application and the court shall promptly issue
3 such an order upon proof that the period has been exceeded. If
4 permitted by amendment of the Federal law or regulation any
5 application upon which action is not taken within the prescribed
6 time shall be deemed needed and the department shall have no
7 right of appeal with respect thereto. No new institutional
8 health service shall be granted a certificate of need unless
9 found or deemed to be found needed by the department or on
10 appeal therefrom.] approve or disapprove the application within
11 90 days from the date of notification of the beginning of the
12 review unless the period for review is extended by the applicant
13 in writing.

14 (e) (1) Certificates of need shall be granted or refused.
15 They shall not be conditioned upon the applicant changing
16 other aspects of its facilities or services or requiring the
17 applicant to meet other specified requirements, and no such
18 condition shall be imposed by the department [or the health
19 systems agency] in granting or refusing approval [or
20 recommendation] of certificates of need.

21 (2) A certificate of need shall state the maximum amount
22 of expenditures which may be obligated under it and
23 applicants proceeding with an approved project may not exceed
24 this level of expenditure except as allowed under the
25 conditions and procedures established by the department
26 through regulation.

27 (f) (1) The department shall make written findings which
28 state the basis for any final decision made by the
29 department. Such findings shall be [served upon the
30 applicant, the health systems agency or agencies, and all

1 parties to the proceedings, and shall be made available to
2 others upon request.] served upon the applicant and provided
3 to all persons expressing an interest in the proceedings and
4 shall be made available to others upon written request.

5 (2) All decisions of the department shall be based
6 solely on the record. No ex parte contact regarding the
7 application between any employee of the department who
8 exercises responsibilities respecting the application and the
9 applicant, any person acting on behalf of the applicant or
10 any person opposed to the issuance of the certificate of need
11 shall occur after the commencement of a hearing on the
12 application and before a decision is made by the department.

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

21 (h)] (g) Modification of the application at any stage of the
22 proceeding shall not extend the time limits provided by this act
23 unless the [health systems agency] department expressly finds
24 that the modification represents a substantial change in the
25 character of the application.

26 (h) The responsibility of performing certificate of need
27 review may not be delegated by the department. The department
28 shall consider recommendations of one or more community-based
29 health services planning committees whose localities are
30 affected by specific applications.

1 [(i) (1) Before any person enters into a contractual
2 arrangement to acquire major medical equipment which will not
3 be owned by or located in a health care facility or before
4 any person acquires an existing health care facility, such
5 person shall notify the department of such person's intent to
6 acquire such equipment or existing health care facility.

7 (2) The notice shall be in writing in a form specified
8 by the department and shall be made at least 30 days before
9 contractual arrangements are entered into to acquire the
10 major medical equipment or the existing health care facility.

11 (3) In the case of the intended acquisition of major
12 medical equipment, the notice shall contain information
13 regarding the use that will be made of the equipment. In the
14 case of the intended acquisition of an existing health care
15 facility, the notice shall contain information with regard to
16 the services to be offered in the facility and its bed
17 capacity.

18 (4) Within 30 days after the receipt of the notice, the
19 department shall inform the person providing the notice
20 whether or not the proposed acquisition is a new
21 institutional health service. If the department determines
22 that the acquisition will be a new institutional health
23 service, the acquisition shall be subject to the remaining
24 provisions of this act.

25 (5) A decision of the department that an acquisition
26 requires a certificate of need may be appealed to the Health
27 Facility Hearing Board.

28 (j) (1)] (i) The department [shall] may provide [for] that
29 categories of projects [which] shall receive simultaneous and
30 comparative review. [and periods in which applications for such

1 projects must be received (and prohibiting submission of
2 applications outside such periods). The time between the
3 beginning of any such period and the beginning of the next
4 succeeding period for submission of applications for any
5 category shall not exceed four months. No project shall be
6 subject to such submission limitations if a notice of intent to
7 submit an application for the project is submitted prior to the
8 publication in the Pennsylvania Bulletin of a notice of proposed
9 rule making by the department to establish a category subject to
10 submission limitations.

11 (2) The following projects shall be exempt from any of
12 the above batching provisions set forth in paragraph (1):

13 (i) Replacement of equipment not involving a
14 substantial change in functional capacity or capability.

15 (ii) Renovations necessary to meet code requirements
16 which do not expand the capacity of the facility or
17 involve the addition of new services.

18 (iii) Repairs or reconstruction in the cases of
19 emergency.

20 (iv) Installation of equipment or renovations which
21 will save energy but which do not expand the capacity of
22 the facility or involve the addition of a new service.]

23 Section 14. Section 704 of the act, amended July 12, 1980
24 (P.L.655, No.136), is amended to read:

25 Section 704. [Hearings before the department] Notice of public
26 meetings.

27 [(a) The function of holding a public hearing is hereby
28 delegated to the appropriate HSA unless the department and the
29 HSA agree otherwise in writing in a particular case. If a public
30 hearing has been held by the health systems agency, no hearing

1 shall be held by the department in reaching its final decision.
2 If there has been no provision for such hearings before the
3 health systems agency, the department shall provide notice of a
4 public hearing and conduct that hearing in accordance with the
5 provisions of section 703(b).

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

21 (c) Where hearings are held on more than two days,
22 consecutive days of hearings and intervening weekends and
23 holidays shall be excluded in calculating the time permitted for
24 the department to conduct its review, and if briefs are to be
25 filed, ten days subsequent to the adjournment of the hearing
26 shall also be excluded.]

27 (a) Notification of the beginning of review of a certificate
28 of need application shall be published by the department in the
29 appropriate news media and in the Pennsylvania Bulletin in
30 accordance with 45 Pa.C.S. Ch. 7 Subch. B (relating to

1 publication of documents). The notice shall identify the
2 schedule for review, the date by which a public meeting must be
3 requested, and the manner in which notice will be given of a
4 meeting, if one is held.

5 (b) Interested persons may request a public meeting within
6 15 days of publication and the department shall hold such a
7 meeting or the department may require a public meeting during
8 the course of such review. The department shall publish written
9 notice of the meeting in the appropriate news media and the
10 Pennsylvania Bulletin at least 14 days prior to the public
11 meeting date. In the meeting, the applicant and any interested
12 person providing prior notice to the department shall have the
13 right to present oral or written comments and relevant evidence
14 on the application in the manner prescribed by the department.
15 The department shall prepare a transcript of the oral testimony
16 presented at the meeting. Meetings shall be held in accordance
17 with the guidelines and procedures established by the department
18 and published in the Pennsylvania Code as a statement of policy.
19 The department may require the applicant to provide copies of
20 the application to any interested person making a request for
21 such application, at the expense of the interested person.

22 (c) The applicant may, for good cause shown, request in
23 writing a public hearing for the purpose of reconsideration of a
24 decision of the department within ten days of service of the
25 decision of the department. The department shall treat the
26 request in accordance with the provisions of 1 Pa. Code 35.241
27 (relating to application for rehearing or reconsideration). The
28 department shall set forth the cause for the hearing and the
29 issues to be considered at such hearing. If such hearing is
30 granted, it shall be held no sooner than six days and no later

1 than 30 days after the notice to grant such a hearing, and shall
2 be limited to the issues submitted for reconsideration. A
3 transcript shall be made of the hearing and a copy of the
4 transcript shall be provided at cost to the applicant. The
5 department shall affirm or reverse its decision and submit the
6 same to the person requesting the hearing within 30 days of the
7 conclusion of such hearing. Any change in the decision shall be
8 supported by the reasons for the change.

9 (d) Where hearings under subsection (b) are held on more
10 than two days, consecutive days of hearings and intervening
11 weekends and holidays shall be excluded in calculating the time
12 permitted for the department to conduct its review, and if
13 briefs are to be filed, ten days subsequent to the adjournment
14 of the hearing shall also be excluded.

15 Section 15. Sections 705 and 706 of the act are amended to
16 read:

17 Section 705. Good cause.

18 Good cause shall be deemed to have been shown if:

19 (1) there is significant, relevant information not
20 previously considered;

21 (2) there is significant change in factors or
22 circumstances relied on in making the decision;

23 (3) there has been material failure to comply with the
24 procedural requirements of this act; or

25 [(4) the department determines that there is good cause
26 shown for some other reason.

27 If good cause as to items (1) and (2) above is found by the
28 department, the application shall be remanded for consideration
29 with respect to such factors to the health systems agency for
30 consideration of the same. The time, not to exceed 45 days, that

1 the application is before the health systems agency for such
2 consideration shall not be counted in determining the time
3 within which the department shall take action on the
4 application.]

5 (4) good cause is otherwise found to exist.

6 Section 706. Information during review.

7 During the course of review [the health systems agency and]
8 the department shall upon request of any person, set forth the
9 status, any findings [then] made in the proceeding and other
10 appropriate information requested. The department may require
11 such requests to be in writing.

12 Section 16. Section 707 of the act, amended July 12, 1980
13 (P.L.655, No.136), is amended to read:

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

16 [(a) An application for a certificate of need shall be
17 recommended, approved, and issued when the application
18 substantially meets the requirements listed below; provided that
19 each decision, except in circumstances which pose a threat to
20 public health, shall be consistent with the State health plan:

21 (1) The relationship of the application with the
22 applicable health systems plan and annual implementation plan
23 has been considered.

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

26 (3) There is a need by the population served or to be
27 served by the services.

28 (4) There is no appropriate, less costly, or more
29 effective alternative methods of providing the services
30 available.

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

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

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

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

16 (9) There are available resources (including health
17 manpower, management personnel, and funds for capital and
18 operating needs) to the applicant for the provision of the
19 services proposed to be provided, and there is no greater
20 need for alternative uses for such resources for the
21 provision of other health services. The effect on the
22 clinical needs of health professional training programs in
23 the medical service area, the extent to which health
24 professional schools in the medical service area will have
25 access to the services for training purposes and the extent
26 to which the proposed service will be accessible to all
27 residents of the area to be served by such services have been
28 considered.

29 (10) The proposed service or facility will have
30 available to it appropriate ancillary and support services

1 and an appropriate organizational relationship to such
2 services.

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

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

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

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

23 (15) The factors which affect the effect of competition
24 on the supply of health services being reviewed with
25 particular reference to the existence and the capacity of
26 market conditions in advancing the purposes of quality
27 assurance, cost containment and responsiveness to consumer
28 preferences and the existence and capacity of utilization
29 review programs and other public and private cost control
30 measures to give effect to consumer preferences and to

1 establish appropriate incentives for capital allocations have
2 been considered.

3 (16) Improvements or innovations in the financing and
4 delivery of health services which foster competition and
5 serve to promote quality assurance, cost effectiveness and
6 responsiveness to consumer preferences have been given
7 preference.

8 (17) The efficiency and appropriateness of the use of
9 existing services and facilities similar to those proposed
10 has been considered.

11 (18) In the case of existing services for facilities,
12 the quality of care provided by services or facilities in the
13 past has been considered.

14 (19) The contribution of the proposed new institutional
15 health service in meeting the health related needs of members
16 of medically underserved groups has been considered in
17 written findings.

18 (20) The special circumstances of applications with
19 respect to the need for conserving energy have been
20 considered.

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

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

28 (2) the impact on the costs of providing health services
29 by the applicant resulting from the construction is found to
30 be appropriate and the impact on the costs and charges to the

1 public of providing health services by other persons is found
2 to be not inappropriate.

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

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

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

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

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

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

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

28 (7) that in the case of a proposal for the addition of
29 beds for the provision of skilled nursing or intermediate
30 care services, the addition will be consistent with the plans

1 of the agency, if any, that is responsible for the provision
2 and financing of long-term care services.

3 A certificate of need shall be issued for inpatient services
4 when the provisions of subsections (a) and (b) are satisfied and
5 the findings of this subsection can be made.]

6 (a) An application for certificate of need shall be
7 considered for approval when the department determines that the
8 application substantially meets the requirements listed below:

9 (1) There is need by the population served or to be
10 served by the proposed service or facility.

11 (2) The proposed service or facility will provide care
12 consistent with quality standards established by the State
13 health services plan.

14 (3) The proposed service or facility will meet the
15 standards identified in the State health services plan for
16 access to care by medically underserved groups, including
17 individuals eligible for medical assistance and persons
18 without health insurance.

19 (b) The department shall issue a certificate of need if the
20 project substantially meets the criteria of subsection (a)(1),
21 (2) and (3) and the project is consistent with the State health
22 services plan unless the department can demonstrate:

23 (1) There is a more appropriate, less costly or more
24 effective alternative method of providing the proposed
25 services.

26 (2) The service or facility is not financially and
27 economically feasible considering anticipated volume of care
28 and the availability of reasonable financing based on
29 information received from the applicant and other sources
30 during the review process.

1 (3) The proposed service or facility will have an
2 inappropriate, adverse impact on the overall level of health
3 care expenditures in the area.

4 (4) THE PROPOSED SERVICE OR FACILITY ADVERSELY IMPACTS <—
5 THE MAINTENANCE AND DEVELOPMENT OF RURAL AND INNER-CITY
6 HEALTH SERVICES GENERALLY AND, IN PARTICULAR, THOSE SERVICES
7 PROVIDED BY HEALTH CARE PROVIDERS WHICH ARE BASED IN RURAL
8 AND INNER-CITY LOCATIONS AND WHICH HAVE AN ESTABLISHED
9 HISTORY OF PROVIDING SERVICES TO MEDICALLY UNDERSERVED
10 POPULATIONS.

11 [(d)] (c) Notwithstanding the provisions of subsections
12 (a)[, (b) and (c)] and (b), applications for projects described
13 in subsection [(e)] (d) shall be approved unless the department
14 finds that the facility or service with respect to such
15 expenditure as proposed is not needed or that the project is not
16 consistent with the State health services plan. An application
17 made under this subsection shall be approved only to the extent
18 that the department determines it is required to overcome the
19 conditions described in subsection [(e)] (d).

20 [(e)] (d) Subject to the provisions of subsection [(d)] (c),
21 subsections (a)[, (b) and (c)] and (b) shall not apply to
22 capital expenditures required to:

23 (1) [Eliminate] eliminate or prevent imminent safety
24 hazards as a result of violations of safety codes or
25 regulations[.];

26 (2) [Comply] comply with State licensure standards[.];
27 or

28 (3) [Comply] comply with accreditation standards,
29 compliance with which is required to receive reimbursement or
30 payments under Title XVIII or XIX of the Federal Social

1 Security Act.

2 Section 17. Section 708 of the act is repealed.

3 Section 18. The act is amended by adding a section to read:

4 Section 708.1. Monitoring certificate of need; expiration of a
5 certificate of need.

6 A certificate of need or an amendment to it shall expire two
7 years from the date issued unless substantially implemented, as
8 defined by regulation. The department may grant extensions for a
9 specified time upon request of the applicant and upon a showing
10 that the applicant has, or is making, a good faith effort to
11 substantially implement the project. An expired certificate of
12 need shall be invalid, and no person may proceed to undertake
13 any activity pursuant to it for which a certificate of need or
14 amendment is required. The applicant shall report to the
15 department, on forms prescribed by the department, the status of
16 the project until such time as the project is licensed or
17 operational, if no license is required.

18 Section 19. Section 709 of the act is amended to read:

19 Section 709. Emergencies.

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

26 Section 20. Sections 711, 802.1, 804, 806, 807, 808, 809,
27 810, 811 and 812 of the act, amended or added July 12, 1980
28 (P.L.655, No.136), are amended to read:

29 Section 711. Review of activities.

30 (a) The department [and each health systems agency] shall

1 prepare and publish not less frequently than annually reports of
2 reviews conducted under this act, including a statement on the
3 status of each such review and of reviews completed by [them,
4 including statements of the finding and] it and statements of
5 the decisions made in the course of such reviews since the last
6 report. The department [and each health systems agency] shall
7 also make available to the general public for examination at
8 reasonable times of the business day all applications reviewed
9 by [them and all written materials on file at the agency
10 pertinent to such review.] it. Such reports and applications
11 shall be considered public records.

12 (b) The [department in its] department's report which shall
13 be submitted to the members of the Health and Welfare Committees
14 of the Senate and House of Representatives shall contain the
15 following information [classified by health system areas]:

16 (1) The volume of applications submitted, by project
17 type, their dollar value, and the numbers and costs
18 associated with those approved and those not approved.

19 [(2) An estimate of the operating cost impact of the
20 approved projects.

21 (3) The average time for review, by project type.

22 (4)] (2) The assessment of the extent of competition in
23 specific service sectors that guided decisions.

24 [(5)] (3) A detailed description of projects involving
25 nontraditional or innovative service delivery methods or
26 organizational arrangements and the decisions made on each of
27 these projects.

28 (4) The average time for review, by level of review.

29 (5) The fees collected for reviews and the cost of the
30 program.

1 Section 802.1. Definitions.

2 The following words and phrases when used in this chapter
3 shall have, unless the context clearly indicates otherwise, the
4 meanings given them in this section:

5 "Ambulatory surgical facility." A facility or portion
6 thereof not located upon the premises of a hospital which
7 provides specialty or multispecialty outpatient surgical
8 treatment. Ambulatory surgical facility does not include
9 individual or group practice offices of private physicians or
10 dentists, unless such offices have a distinct part used solely
11 for outpatient surgical treatment on a regular and organized
12 basis. For the purposes of this provision, outpatient surgical
13 treatment means surgical treatment to patients who do not
14 require hospitalization, but who require constant medical
15 supervision following the surgical procedure performed.

16 "Birth center." A facility not part of a hospital which
17 provides maternity care to childbearing families not requiring
18 hospitalization. A birth center provides a home-like atmosphere
19 for maternity care, including prenatal labor delivery and
20 postpartum care related to medically uncomplicated pregnancies.

21 "Health care facility." [A general, tuberculosis,] For
22 purposes of Chapter 8, a health care facility includes, but is
23 not limited to, a general, chronic disease or other type of
24 hospital, [a skilled nursing facility,] a home health care
25 agency, [an intermediate care] a long-term care nursing
26 facility, cancer treatment centers using radiation therapy on an
27 ambulatory basis, an ambulatory surgical facility, a birth
28 center regardless of whether such health care facility is
29 operated for profit, nonprofit or by an agency of the
30 Commonwealth or local government. The department shall have the

1 authority to license other health care facilities as may be
2 necessary due to emergence of new modes of health care. When the
3 department so finds, it shall publish its intention to license a
4 particular type of health care facility in the Pennsylvania
5 Bulletin in accordance with the act of June 25, 1982 (P.L.633,
6 No.181), known as the "Regulatory Review Act." The term health
7 care facility shall not include an office used primarily for the
8 private practice of [medicine, osteopathy, optometry,
9 chiropractic, podiatry or dentistry,] a health care
10 practitioner, nor a program which renders treatment or care for
11 drug or alcohol abuse or dependence unless located within a
12 health facility, nor a facility providing treatment solely on
13 the basis of prayer or spiritual means. [A mental retardation
14 facility is not a health care facility except to the extent that
15 it provides skilled nursing care.] The term health care facility
16 shall not apply to a facility which is conducted by a religious
17 organization for the purpose of providing health care services
18 exclusively to clergymen or other persons in a religious
19 profession who are members of a religious denomination.

20 ["Health care provider" or "provider." An individual, a
21 trust or estate, a partnership, a corporation (including
22 associations, joint stock companies and insurance companies),
23 the Commonwealth, or a political subdivision or instrumentality
24 (including a municipal corporation or authority) thereof, that
25 operates a health care facility.]

26 "Home health care agency." An organization or part thereof
27 staffed and equipped to provide nursing and at least one
28 therapeutic service to persons who are disabled, aged, injured
29 or sick [persons] in their place of residence. The agency may
30 also provide other health-related services to protect and

1 maintain persons in their own home.

2 "Hospital." An institution having an organized medical staff
3 [which is primarily engaged in] established for the purpose of
4 providing to inpatients, by or under the supervision of
5 physicians, diagnostic and therapeutic services for the care of
6 persons who are injured, disabled, pregnant, diseased [or], sick
7 or mentally ill [persons], or rehabilitation services for the
8 rehabilitation of persons who are injured, disabled, pregnant,
9 diseased [or], sick or mentally ill [persons]. The term includes
10 facilities for the diagnosis and treatment of disorders within
11 the scope of specific medical specialties, but not facilities
12 caring exclusively for the mentally ill.

13 ["Intermediate care facility." An institution which provides
14 on a regular basis health-related care and services to resident
15 individuals who do not require the degree of care and treatment
16 which a hospital or skilled nursing facility is designed to
17 provide, but who because of their mental or physical condition
18 require health-related care and services above the level of room
19 and board. Intermediate care facilities exclusively for the
20 mentally retarded commonly called ICF/MR shall not be considered
21 intermediate care facilities for the purpose of this act and
22 shall be licensed by the Department of Public Welfare.

23 "Skilled nursing facility." Any facility or part of a
24 facility in which professionally supervised nursing care and
25 related medical and other health services are provided for a
26 period exceeding 24 hours for two or more individuals who are
27 not in need of hospitalization and are not relatives of the
28 nursing home administrator, but who because of age, illness,
29 disease, injury convalescence or physical or mental infirmity
30 need such care.]

1 "Long-term care nursing facility." A facility that provides
2 either skilled or intermediate nursing care or both levels of
3 care to two or more patients, who are unrelated to the licensee,
4 for a period exceeding 24 hours. Intermediate care facilities
5 exclusively for the mentally retarded commonly called ICF/MR
6 shall not be considered long-term care nursing facilities for
7 the purpose of this act and shall be licensed by the Department
8 of Public Welfare.

9 Section 804. Administration.

10 (a) Discrimination prohibited.--Except as otherwise provided
11 by law, no provider shall discriminate in the operation of a
12 health care facility on the basis of race, creed, sex or
13 national origin.

14 (b) Prevention of duplication.--In carrying out the
15 provisions of this chapter and other statutes of this
16 Commonwealth relating to health care facilities, the department
17 and other departments and agencies of the State and local
18 governments shall make every reasonable effort to prevent
19 duplication of inspections and examinations. [Within 12 months
20 of the enactment date of this chapter, the department shall
21 establish subject to the approval of the Governor a method of
22 scheduling inspections whereby inspections of health care
23 facilities by all departments and agencies of the Commonwealth
24 shall be coordinated insofar as reasonably possible. Within 24
25 months of the enactment date of this chapter, the department
26 shall make the dates of expiration of Medicaid and Medicare
27 certification coincide with licensure and shall subsequently]
28 The department may make the dates of licensure expiration
29 coincide with medical assistance and Medicare certification or
30 applicable nationally recognized accrediting agencies

1 accreditation and shall combine these surveys and inspections
2 where practical.

3 (c) Health care innovation.--The department shall administer
4 this chapter so as to encourage innovation and experimentation
5 in health care and health care facilities consistent with the
6 provisions of this chapter and shall encourage contributions of
7 private funds and services to health care facilities.

8 (d) Reports.--The department shall report annually to the
9 General Assembly on the effectiveness of the licensing and
10 enforcement of this chapter. Such report shall include
11 appropriate data according to nature of facility relating to
12 provisional licenses issued, nature of violations of
13 regulations, and number of facilities against which sanctions
14 had to be taken, [and the number of facilities with pending
15 serious violations. The report shall also include
16 recommendations for statutory and administrative changes which
17 the department deems desirable to enhance the quality of care
18 provided by health care facilities.]

19 Section 806. Licensure.

20 (a) License required.--No person shall maintain or operate a
21 health care facility without first having obtained a license
22 therefor issued by the department. No health care facility can
23 be a provider of medical assistance services unless it is
24 licensed by the department and certified as a medical assistance
25 provider.

26 (b) Development of regulations.--In developing rules and
27 regulations for licensure the department shall take into
28 consideration [conditions for participation in government and]
29 Federal certification standards and the standards of other third
30 party [payments] payors for health care services and [the

1 standards of the Joint Commission on Accreditation of Hospitals,
2 the Committee on Hospital Accreditation of the American
3 Osteopathic Association and such other accrediting bodies] such
4 nationally recognized accrediting agencies as the department may
5 find appropriate.

6 (c) Fire and emergency standards.--Notwithstanding any other
7 provision of law other than standards required [by the Federal
8 Government as a condition of participation] for Federal
9 certification by that type of health care facility in the
10 Medicare or Medicaid program, no health care facility shall be
11 required to satisfy any regulation relating to fire or similar
12 emergency circumstance more stringent than those required of
13 hospitals by the Joint Commission on Accreditation of
14 [Hospitals] Health Organizations or such nationally recognized
15 accrediting agencies as the department may find appropriate and
16 the department shall adopt and enforce the appropriate
17 standards.

18 (d) Home health care agency regulations.--In developing
19 rules and regulations for licensure of home health care agencies
20 the department shall take into consideration the standards of
21 [the National Association of Home Health Agencies, National
22 League of Nursing, Joint Commission on the Accreditation of
23 Hospitals and National Council for Homemakers, Home Health Aides
24 and other accrediting bodies] nationally recognized accrediting
25 agencies as the department may find appropriate. Home health
26 care agencies certified as providers by the department to the
27 Federal Government for purposes of the Medicare program shall be
28 deemed to comply with and satisfy the department's regulations
29 governing home health care agencies.

30 (e) Public disclosure.--[Rules and regulations of the

department shall require:

(1) The licensee to provide to the appropriate health systems agency information that the health systems agency is required to collect pursuant to section 1513(b) of the Federal National Health Planning and Resources Development Act.

(2) The licensee to make available to the public upon request the licensee's current daily cost reimbursement under Blue Cross, medical assistance and Medicare as well as the average daily charge to other insured and noninsured private pay patients.

(3) Disclosure of the persons owning 5% or more of the licensee as well as the licensee's officers and members of the board of directors.] The department shall require disclosure of the persons owning 5% or more of the health care facility as well as the health care facility's officers and members of the board of directors.

(f) Ambulatory surgical facilities standards.--Within one year of the effective date of this act, to the extent possible, the department shall publish in the Pennsylvania Bulletin proposed regulations establishing revised standards for licensure of ambulatory surgical facilities. Such standards shall provide for separate licensure criteria for office-based surgical facilities and for comprehensive freestanding ambulatory surgical facilities, including, but not limited to:

(1) fire and safety standards;

(2) personnel and equipment requirements; and

(3) quality assurance procedures.

The purpose of such criteria shall be to assure quality care delivery in said facilities. Until such time the revised

1 regulations are adopted, the existing rules and regulations
2 governing the licensure of ambulatory surgical facilities shall
3 apply.

4 Section 807. Application for license.

5 (a) Submission to department.--Any person desiring to secure
6 a license to maintain and operate a health care facility shall
7 submit an application therefor to the department upon forms
8 prepared and furnished by it, containing such information as the
9 department considers necessary to determine that the health care
10 provider and the health care facility meet the requirements of
11 licensure under the provisions of this act and the rules and
12 regulations relating to licensure. Application for renewal of a
13 license shall be made upon forms prepared and furnished by the
14 department in accordance with the rules and regulations of the
15 department.

16 (b) Fees.--Application for a license or for renewal of a
17 license shall be accompanied by [a fee of \$50 plus \$2 for each
18 inpatient bed in excess of 75 beds.] the following fees:

19 (1) Regular or Special License:

20	<u>Home Health Agency</u>	<u>\$250.00</u>
21	<u>Ambulatory Surgical Facility</u>	<u>250.00</u>
22	<u>Birth Center</u>	<u>70.00</u>
23	<u>Long-Term Care Nursing Facility</u>	<u>250.00</u>
24	<u>Plus Per Each Long-Term Care Bed in Excess of</u>	
25	<u>75 Beds</u>	<u>2.00</u>
26	<u>Hospital</u>	
27	<u>Every Two Years</u>	<u>500.00</u>
28	<u>Plus Per Each Inpatient Bed</u>	
29	<u>Every Two Years</u>	<u>4.00</u>
30	<u>Other Health Care Facility</u>	<u>\$100.00</u>

1 (2) Provisional License All Facilities:

2	Provisional I	\$400.00
3	Plus Per Each Inpatient Bed	4.00
4	Provisional II	600.00
5	Plus Per Each Inpatient Bed	6.00
6	Provisional III	800.00
7	Plus Per Each Inpatient Bed	8.00
8	Provisional IV	1,000.00
9	Plus Per Each Inpatient Bed	10.00

10 (c) Bond.--The department, by regulations, may require new
11 applicants for a license to post a bond.

12 Section 808. Issuance of license.

13 (a) Standards.--The department shall issue a license to a
14 health care provider when it is satisfied that the following
15 standards have been met:

16 (1) that the health care provider is a responsible
17 person;

18 (2) that the place to be used as a health care facility
19 is adequately constructed, equipped, maintained and operated
20 to safely and efficiently render the services offered;

21 (3) that the health care facility provides safe and
22 efficient services which are adequate for the care, treatment
23 and comfort of the patients or residents of such facility;

24 (4) that there is substantial compliance with the rules
25 and regulations adopted by the department pursuant to this
26 act; and

27 (5) that a certificate of need has been issued if one is
28 necessary.

29 (b) Separate and limited licenses.--Separate licenses shall
30 not be required for different services within a single health

1 care facility except that home health care or [skilled or
2 intermediate] long-term nursing care will require separate
3 licenses. [A single facility providing both skilled and
4 intermediate care shall need only one separate license to cover
5 those services.] A limited license, excluding from its terms a
6 particular service or portion of a health care facility, may be
7 issued under the provisions of this act.

8 (c) [Modification of license] Addition of services.--When
9 the certificate of need for a facility is amended as to services
10 which can be offered, the department shall issue [a modified] an
11 appropriate license for those services upon demonstration of
12 compliance with licensure requirements.

13 Section 809. Term and content of license.

14 (a) Contents.--All licenses issued by the department under
15 this chapter shall:

16 (1) [with the exception of provisional licenses for
17 health care facilities other than hospitals expire one year
18 from the date on which issued and for hospitals expire two
19 years from the date on which issued unless renewed;] be
20 issued for a specified length of time as follows, including
21 the provision of section 804(b):

22 (i) all health care facilities, other than
23 hospitals, for a period of one year, and for hospitals
24 for a period of two years with the expiration date to be
25 the last day of the month in which license is issued;

26 (ii) provisional licenses for the length of time to
27 be determined by the department upon issuance of the
28 provisional license;

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

30 (3) not be transferable except upon prior written

1 approval of the department;

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

5 (5) specify the maximum number of beds, if any, to be
6 used for the care of patients in the facility at any one
7 time; and

8 (6) specify [whether the license has been granted to the
9 health care facility as a whole or, if not, shall specify
10 those portions of or services offered by the facility which
11 have been excluded from the terms of the license] limitations
12 which have been placed on the facility.

13 (b) Posting.--The license shall at all times be posted in a
14 conspicuous place on the provider's premises.

15 (c) Visitation.--Whenever practicable, the department shall
16 make its visitations and other reviews necessary for licensure
17 contemporaneously with similar visitations and other reviews
18 necessary for provider certification in the Medicare and medical
19 assistance programs and the department shall endeavor to avoid
20 duplication of effort by the department and providers in the
21 certificate of need, medical assistance and Medicare provider
22 certification and licensure procedures. This shall not preclude
23 the department from unannounced visits.

24 (d) Use of beds in excess of maximum.--Except in case of
25 extreme emergency, no license shall permit the use of beds for
26 inpatient use in the licensed facility in excess of the maximum
27 number set forth in the license without first obtaining written
28 permission from the department: Provided, That during the period
29 of a license, a health care facility may without the prior
30 approval of the department increase the total number of beds by

1 not more than ten beds or 10% of the total bed capacity,
2 whichever is less.

3 Section 810. Reliance on accrediting agencies and Federal
4 Government.

5 (a) Reports of other agencies.--After a provider has been
6 licensed or approved to operate a health care facility for at
7 least [three] two years under this or prior acts, none of which
8 has been pursuant to a provisional license, the department may
9 rely on the reports of the Federal Government or nationally
10 recognized accrediting agencies [if the government or agency
11 standards are substantially] to the extent those standards are
12 determined by the department to be similar to regulations of the
13 department and if the provider agrees to:

14 (1) direct the agency or government to provide a copy of
15 its findings to the department; and

16 (2) permit the department to inspect those areas or
17 programs of the health care facility not covered by the
18 agency or government inspection or where the agency or
19 government report discloses more than a minimal violation of
20 department regulations.

21 (b) Coordination of inspections.--[All State agencies and
22 all divisions or units of such agencies which conduct regular
23 on-site inspections of health care facilities shall, within 120
24 days of the enactment of this amendatory act, advise the
25 department of the type of inspections they conduct, the time
26 required to inspect and the frequency of such inspections. In
27 accordance with the plan approved by the Governor, the] The
28 department shall coordinate, to the extent possible, inspections
29 by State agencies other than the department [and shall advise
30 other agencies which inspections shall be made only after

1 written notice to the department and may require other State
2 agencies to make their inspections simultaneously with the
3 inspection by the department]. Nothing herein shall be
4 interpreted to preclude the department from any follow-up
5 inspection of a health care facility in which deficiencies were
6 found in the original inspections or more frequent inspections
7 of health care facilities that received provisional licenses.

8 (c) Right of inspection preserved.--This section shall not
9 be construed to be a limitation on the department's right of
10 inspection otherwise permitted by section 813.

11 Section 811. Reasons for revocation or nonrenewal of license.

12 The department may refuse to renew a license or may suspend
13 or revoke or limit a license for all or any portion of a health
14 care facility, or for any particular service offered by a
15 facility, or may suspend admissions for any of the following
16 reasons:

17 (1) A serious violation of provisions of this act or of
18 the regulations for licensure issued pursuant to this act or
19 of Federal laws and regulations. For the purpose of this
20 paragraph, a serious violation is one which poses a
21 significant threat to the health [of patients] or safety of
22 patients or residents.

23 (2) Failure of a licensee to submit a plan with a
24 reasonable timetable to correct deficiencies.

25 (3) The existence of a cyclical pattern of deficiencies
26 over a period of two or more years.

27 (4) Failure, by the holder of a provisional license, to
28 correct deficiencies in accordance with a timetable submitted
29 by the applicant and agreed upon by the department.

30 (5) Fraud or deceit in obtaining or attempting to obtain

1 a license.

2 (6) Lending, borrowing or using the license of another,
3 or in any way knowingly aiding or abetting the improper
4 granting of a license.

5 (7) Incompetence, negligence or misconduct in operating
6 the health care facility or in providing services to
7 patients.

8 (8) Mistreating or abusing individuals cared for by the
9 health care facility.

10 (9) Serious violation of the laws relating to medical
11 assistance or Medicare reimbursement.

12 (10) Serious violation of other applicable Federal or
13 State laws.

14 Section 812. Provisional license.

15 [When there are numerous deficiencies or a serious specific
16 deficiency in compliance with applicable statutes, ordinances or
17 regulations, and when the department finds:

18 (1) the applicant is taking appropriate steps to correct
19 the deficiencies in accordance with a timetable submitted by
20 the applicant and agreed upon by the department; and

21 (2) there is no cyclical pattern of deficiencies over a
22 period of two or more years, then the department may issue a
23 provisional license for a specified period of not more than
24 six months which may be renewed three times at the discretion
25 of the department.

26 Upon overall compliance, a regular license shall be issued.]

27 When there are numerous deficiencies or a serious specific
28 deficiency in compliance with applicable statutes, ordinances or
29 regulations, and when the department finds the applicant is
30 taking appropriate steps to correct the deficiencies in

1 accordance with a timetable submitted by the applicant and
2 agreed upon by the department and there is no cyclical pattern
3 of deficiencies over a period of two or more years, then the
4 department may issue a provisional license for a specified
5 period of not more than six months which may be renewed three
6 times at the discretion of the department.

7 Upon substantial compliance, including payment of any fines
8 levied pursuant to section 817(d), a regular license shall be
9 issued.

10 Section 21. Section 814 of the act, added July 12, 1980
11 (P.L.655, No.136) and repealed in part December 20, 1982
12 (P.L.1409, No.326), is amended to read:

13 Section 814. Provider violations.

14 (a) Notice of violations.--Whenever the department shall
15 upon inspection, investigation or complaint find a violation of
16 this chapter or regulations adopted by the department pursuant
17 to this chapter or pursuant to Federal law, it shall give
18 written notice thereof specifying the violation or violations
19 found to the health care provider. Such notice shall require the
20 health care provider to take action or to submit a plan of
21 correction which shall bring the health care facility into
22 compliance with applicable law or regulation within a specified
23 time. The plan of correction must be submitted within 30 days of
24 receipt of the written notice or sooner if directed to do so by
25 the department. The department may ban admissions or revoke a
26 license before a plan of correction is submitted whenever
27 deficiencies pose a significant threat to the health or safety
28 of patients or residents.

29 (b) Appointment of [master] temporary management.--When the
30 health care provider has failed to bring the facility into

1 compliance within the time [so] specified by the department, or
2 when the facility has demonstrated [a pattern of episodes of
3 noncompliance alternating with compliance over a period of at
4 least two years] that it is unwilling or unable to achieve
5 compliance, such as would convince a reasonable person that any
6 correction of violations would be unlikely to be maintained, the
7 department may petition the Commonwealth Court or the Court of
8 Common Pleas of the county in which the facility is located to
9 appoint [a master] temporary management designated as qualified
10 by the department to assume operation of the facility at the
11 facility's expense [for a specified period of time or until all
12 violations are corrected and all applicable laws and regulations
13 are complied with, or] to assure the health and safety of the
14 facility's patients or residents until improvements are made to
15 bring the facility into compliance with the laws and regulations
16 for licensure or until there is an orderly closure of the
17 facility. In the alternative, the department in its discretion
18 may proceed in accordance with this chapter.

19 Section 22. Sections 817 and 820 of the act, added July 12,
20 1980 (P.L.655, No.136), are amended to read:

21 Section 817. Actions against violations of law, rules and
22 regulations.

23 (a) Actions brought by department.--Whenever any person,
24 regardless of whether such person is a licensee, has violated
25 any of the provisions of this chapter or the regulations issued
26 pursuant thereto, the department may maintain an action in the
27 name of the Commonwealth for an injunction or other process
28 restraining or prohibiting such person from engaging in such
29 activity.

30 (b) Civil penalty.--Any person, regardless of whether such

1 person is a licensee, who has committed a violation of any of
2 the provisions of this chapter or of any rule or regulation
3 issued pursuant thereto, including failure to correct a serious
4 licensure violation (as defined by regulation) within the time
5 specified in a deficiency citation, may be assessed a civil
6 penalty by an order of the department of up to [\$100 for each
7 day that such violation continues.] \$500 for each deficiency for
8 each day that each deficiency continues. Civil penalties shall
9 be collected from the date the facility receives notice of the
10 violation until the department confirms correction of such
11 violation.

12 (c) Funds collected as a result of the assessment of a civil
13 penalty.--When all other sources of funding have been exhausted,
14 the department shall apply funds collected as a result of the
15 assessment of a civil penalty to the protection of the health or
16 property of patients or residents of the health care facility.
17 Funds may be utilized to:

18 (1) Provide payment to temporary management.

19 (2) Maintain the operation of the health care facility
20 pending correction of deficiencies or closure.

21 (3) In the case of a long-term care nursing facility,
22 relocate residents to other licensed health care facilities.

23 (4) In the case of a long-term care nursing facility,
24 reimburse residents for misappropriated personal needs
25 allowance.

26 (d) Facility closure for threat to health or safety.--
27 Whenever the department determines that deficiencies pose an
28 immediate and serious threat to the health or safety of the
29 patients or residents of the health care facility, the
30 department may direct the closure of the facility and the

1 transfer of patients or residents to other licensed health care
2 facilities.

3 Section 820. Existing rules and regulations.

4 (a) Continuation of rules and regulations.--Existing rules
5 and regulations applicable to health care facilities not clearly
6 inconsistent with the provisions of this chapter, shall remain
7 in effect until replaced, revised or amended. [In developing
8 regulations, the department shall give priority to developing
9 minimum standards for home health agencies and other health care
10 facilities not previously subject to regulation.] Sections 103.2
11 and 103.6 of Title 28 of the Pennsylvania Code are repealed.

12 (b) Expiration of licenses.--All health care providers
13 licensed[, approved or certified] on the effective date of this
14 chapter to establish, maintain or operate a health care facility
15 shall be licensed for the period remaining on the license[,
16 certification or approval. If a health care facility has a
17 license, approval or equivalent certification without an
18 expiration date, it shall be deemed for the purposes of this
19 section to expire one year after its date of issuance]. At the
20 expiration of the existing license [certification or approval],
21 the health care facility shall be subject to licensure pursuant
22 to this chapter.

23 Section 23. The act is amended by adding sections to read:

24 Section 902.1. Fees for review of certificate of need
25 applications.

26 (a) The department shall charge a fee of \$150 for each
27 letter of intent filed. The letter of intent fee shall be
28 deducted from the total application fee required under
29 subsection (b) if an application is submitted on the project
30 proposed in the letter of intent.

1 (b) For each application the department shall charge a fee,
2 payable on submission of an application. The fee shall not be
3 less than \$500 plus up to \$3 per \$1,000 of proposed capital
4 expenditure and shall not be more than \$20,000.

5 (c) The department shall publish a fee schedule in the
6 Pennsylvania Bulletin which shall explain the procedure for
7 filing fees.

8 (d) All fees payable under this section are due upon the
9 date of filing a letter of intent or application. If a person
10 fails to file the appropriate fee, all time frames required of
11 the department under this act, with respect to review of a
12 letter of intent or application, are suspended until the
13 applicable fee is paid in full.

14 Section 904.1. Sunset.

15 The authority, obligations and duties arising under Chapter 7
16 of this act and all other provisions of this act pertaining to
17 certificates of need shall terminate four years after the
18 effective date of this section. Twelve months prior to this
19 expiration, the Legislative Budget and Finance Committee shall
20 commence a review of the impact of the certificate of need
21 program on quality, access and cost of health care services, <—
22 INCLUDING THE COSTS OF APPEALS, reviewable under this act.

23 Section 904.2. Severability.

24 The provisions of this act are severable. If any provision of
25 this act or its application to any person or circumstance is
26 held invalid, the invalidity shall not affect other provisions
27 or applications of this act which can be given effect without
28 the invalid provision or application.

29 Section 24. Any cancer treatment center required to be
30 licensed pursuant to the provisions of this act shall obtain the

1 required license within two years of the effective date of this
2 act.

3 Section 25. (a) Articles IX and X of the act of June 13,
4 1967 (P.L.31, No.21), known as the Public Welfare Code, are
5 repealed insofar as they relate to health care facilities as
6 defined in Chapter 8.

7 (b) All other acts and parts of acts are repealed insofar as
8 they are inconsistent with this act.

9 Section 26. This act shall take effect immediately.