
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 564 Session of
2013

INTRODUCED BY MUNDY, FRANKEL, HARKINS, COHEN AND FREEMAN,
FEBRUARY 8, 2013

REFERRED TO COMMITTEE ON HEALTH, FEBRUARY 8, 2013

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," reenacting and amending
10 provisions relating to definitions, powers and duties of
11 Department of Health and State health services plan;
12 reenacting provisions relating to regulations; reenacting and
13 amending provisions relating to certificates of need and
14 issuance of license; prohibiting certain referrals and claims
15 of payment; and repealing sunset provisions.

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

18 Section 1. Section 103 of the act of July 19, 1979 (P.L.130,
19 No.48), known as the Health Care Facilities Act, amended
20 December 18, 1992 (P.L.1602, No.179) and October 16, 1998 (P.L.
21 777, No.95), is reenacted and amended to read:

22 Section 103. Definitions.

23 The following words and phrases when used in this act shall
24 have, unless the context clearly indicates otherwise, the

1 meanings given to them in this section:

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

3 "Board." The Health Policy Board established under section
4 401.1.

5 "Certificate of need." A notice of approval issued by the
6 [department] Department of Health under the provisions of this
7 act, including those notices of approval issued as an amendment
8 to an existing certificate of need.

9 "Certification of need (CON) review board." The CON review
10 board, which consists of technical experts in the fields of
11 medicine, health facility administration, health economics,
12 health care cost inflation and the like, including experts from
13 within the Commonwealth agencies, together with consumers of
14 health care, all of whom are appointed by the Secretary of
15 Health.

16 "Clinically related health service." Certain diagnostic,
17 treatment or rehabilitative services as determined in section
18 701.

19 ["Community-based health services planning committee." A
20 committee established in accordance with procedures approved by
21 the Department of Health which includes representatives of local
22 or regional groups of consumers, business, labor, health care
23 providers, payors or other affected interests.]

24 "Conflict of interest." [For the purpose of section 501,
25 the] The interest of any person, whether financial, by
26 association with, or as a contributor of money or time to, any
27 nonprofit corporation or other corporation, partnership,
28 association, or other organization, and whenever a person is a
29 director, officer or employee of such organization, but shall
30 not exist whenever the organization in which such person is

1 interested is being considered as part of a class or group for
2 whom regulations are being considered, if the material facts as
3 to the relationship or interest are disclosed or are known to
4 the board.

5 "Consumer." A natural person who is not involved in the
6 provision of health services or health insurance. For the
7 purpose of this act, any person who holds a fiduciary position
8 in any health care facility, health maintenance organization or
9 third party payor shall not be considered a consumer.

10 "Council." The Health Care Cost Containment Council.

11 "Department." The Department of Health of the Commonwealth.

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

17 "Health care facility." [For purposes of Chapter 7, any] A
18 health care facility providing clinically related health
19 services, including, but not limited to, a general or special
20 hospital, including psychiatric hospitals, rehabilitation
21 hospitals, ambulatory surgical facilities, diagnostic imaging
22 centers, MRI facilities, long-term care nursing facilities,
23 cancer treatment centers using radiation therapy on an
24 ambulatory basis and inpatient drug and alcohol treatment
25 facilities, both profit and nonprofit and including those
26 operated by an agency or State or local government. The term
27 shall also include a hospice. The term shall not include an
28 office used primarily for the private or group practice by
29 health care practitioners where no reviewable clinically related
30 health service is offered, a facility providing treatment solely

1 on the basis of prayer or spiritual means in accordance with the
2 tenets of any church or religious denomination or a facility
3 conducted by a religious organization for the purpose of
4 providing health care services exclusively to clergy or other
5 persons in a religious profession who are members of the
6 religious denominations conducting the facility.

7 "Health care practitioner." An individual who is authorized
8 to practice some component of the healing arts by a license,
9 permit, certificate or registration issued by a Commonwealth
10 licensing agency or board.

11 "Health care provider" or "provider." An individual, a trust
12 or estate, a partnership, a corporation (including associations,
13 joint stock companies and insurance companies), the
14 Commonwealth, or a political subdivision or instrumentality
15 (including a municipal corporation or authority) thereof, that
16 operates a health care facility.

17 "Health planning area." A geographic area within the
18 Commonwealth designated by the Department of Health for purposes
19 of health planning.

20 "Hearing board." The State Health Facility Hearing Board
21 created in the Office of General Counsel under the provisions of
22 this act.

23 "Interested person" or "person expressing an interest." [For
24 the purposes of Chapter 7, a] A member of the public who is to
25 be served by the proposed new health service in the area to be
26 served by the applicant, a health care facility or health
27 maintenance organization or any health care provider providing
28 similar services in the area to be served by the applicant or
29 who has received a certificate of need to provide services in
30 the area to be served by the applicant or who has formally filed

1 with the [department] Department of Health a letter of intent to
2 provide similar services in the area in which the proposed
3 service is to be offered or developed and any third party payor
4 of health services provided in that area who provides written
5 notice to the [department] Department of Health that the person
6 is interested in a specific certificate of need application
7 before the [department] Department of Health.

8 "Local review committee." A committee established in
9 accordance with procedures approved by the Department of Health
10 that includes representatives of local or regional groups of
11 consumers, business, labor, health care providers, payors or
12 other affected interests.

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

21 "Policy board." The Health Policy Board created in the
22 Department of Health under the provisions of this act.

23 "Public meeting." A meeting open to the public where any
24 person has an opportunity to comment on a certificate of need
25 application or proposed State health [services] improvement plan
26 amendment.

27 "Secretary." The Secretary of [the Department of] Health of
28 the Commonwealth of Pennsylvania.

29 ["State health services plan." A document developed by the
30 Department of Health, after consultation with the policy board

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

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

15 Section 2. Sections 201 and 401.3 of the act, amended or
16 added December 18, 1992 (P.L.1602, No.179), are reenacted and
17 amended to read:

18 Section 201. Powers and duties of the department.

19 The Department of Health shall have the power and its duties
20 shall be:

21 (1) To exercise exclusive jurisdiction over health care
22 providers in accordance with the provisions of this act.

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

25 (2.1) To develop qualitative and quantitative standards
26 and criteria for the review and approval of certificate of
27 need applications.

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

1 (4) To withdraw expired certificates of need.

2 (5) To require, pursuant to regulation, submission of
3 periodic reports by providers of health services and other
4 persons subject to review respecting the development of
5 proposals subject to review.

6 [(6) Upon consultation with the policy board, to
7 research, prepare and, after approval by the Governor,
8 publish, no later than 18 months after the effective date of
9 this act and annually thereafter, a revised State health
10 services plan for the Commonwealth as defined under this act.
11 Until the State health services plan as defined in section
12 401.3 is adopted, the department shall apply the State health
13 plan in existence on the effective date of this act, along
14 with any subsequent updates to that plan.]

15 (6.1) To develop a certificate of need exceptions
16 process that permits exceptions to be granted to the
17 standards and criteria in order to reflect local experience
18 or ensure access or to respond to circumstances that pose a
19 threat to public health and safety. The exceptions process
20 shall begin only after the department issues a denial of a
21 certificate of need application. Exceptions must be publicly
22 disclosed. This provision creates no right or entitlement to
23 an exception.

24 (7) To collect and disseminate such other information as
25 may be appropriate to determine the appropriate level of
26 facilities and services for the effective implementation of
27 certification of need under this act. Where such information
28 is collected by any other agency of State government,
29 duplication shall be avoided by coordination of data
30 collection activities[.], if the coordination does not

1 otherwise unduly burden those State agencies.

2 [(8) To furnish such staff support and expertise to the
3 policy board as may be needed to perform its
4 responsibilities.]

5 (9) To receive, log and review all applications for
6 certificates of need or amendments thereof and approve or
7 disapprove the same.

8 (10) To minimize the administrative burden on health
9 care providers by eliminating unnecessary duplication of
10 financial and operational reports and to the extent possible
11 and without undue burden coordinating reviews and inspections
12 performed by Federal, State, local and private agencies.

13 (11) To adopt and promulgate regulations necessary to
14 carry out the purposes and provisions of this act relating to
15 certificate of need.

16 (12) To enforce the rules and regulations promulgated by
17 the department as provided in this act.

18 (13) To provide technical assistance to individuals and
19 public and private entities in filling out the necessary
20 forms for the development of projects and programs.

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

24 (15) To coordinate any data collection activities
25 necessary for administration of this act so as not to
26 duplicate unnecessarily the data collection activities of
27 other Federal and State agencies.

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

30 (17) To establish and publish in the Pennsylvania

1 Bulletin a detailed schedule of the review process for each
2 certificate of need application submitted to the department.

3 Section 401.3. State health [services] improvement plan.

4 The State health [services] improvement plan shall consist of
5 at a minimum:

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

10 (2) An analysis of the availability, accessibility and
11 affordability of the clinically related health services
12 necessary to meet the health needs of the population of this
13 Commonwealth.

14 [(3) Qualitative and quantitative standards and criteria
15 for the review of certificate of need applications by the
16 department under this act.

17 (4) An exceptions process which permits exceptions to be
18 granted to the standards and criteria in order to reflect
19 local experience or ensure access or to respond to
20 circumstances which pose a threat to public health and
21 safety.]

22 Section 3. Section 602 of the act is reenacted to read:

23 Section 602. Regulations.

24 The department is hereby authorized and empowered pursuant to
25 the provisions of this act to adopt rules and regulations
26 establishing procedures required by this act for administration
27 of certificate of need.

28 Section 4. Sections 603, 701 and 702 of the act, amended
29 December 18, 1992 (P.L.1602, No.179), are reenacted and amended
30 to read:

1 Section 603. Enforcement of orders relating to certificate of
2 need.

3 (a) (1) No certificate of need shall be granted to any
4 person for a health care facility or reviewable clinically
5 related health service unless such facility or clinically
6 related health service is found by the department and CON
7 review board to be needed.

8 (2) No person shall offer or develop a health care
9 facility or reviewable clinically related health service
10 without obtaining a certificate of need as required by this
11 act.

12 (3) No binding arrangement or commitment for financing
13 the offering or development of a health care facility or
14 reviewable clinically related health service shall be made by
15 any person unless a certificate of need for such clinically
16 related health service or facility has been granted in
17 accordance with this act.

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

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

25 (d) Any person operating a reviewable clinically related
26 health service or health care facility within this Commonwealth
27 for which no certificate of need has been obtained, after
28 service of a cease and desist order of the department, [or after
29 expiration of the time for appeal of any final order on appeal,
30 upon conviction thereof,] shall be [sentenced to pay] subject to

1 a fine of not less than [\$100] \$1,000 or more than [\$1,000]
2 \$10,000 and costs of [prosecution] enforcement. Each day of
3 operating a clinically related health service or health care
4 facility after issuance of a cease and desist order shall
5 constitute a separate offense.

6 (e) Any person who violates this act by failing to obtain a
7 certificate of need, by deviating from the provisions of the
8 certificate, by beginning construction, by providing services,
9 or by acquiring equipment after the expiration of a certificate
10 of need shall be subject to a penalty of not less than [\$100]
11 \$1,000 per day and not more than [\$1,000] \$10,000 per day. Each
12 day of each such violation shall be considered a separate
13 offense.

14 (f) The department may seek injunctive relief to prevent
15 continuing violations of this act. In seeking such relief, the
16 department need not prove damages or irreparable harm.

17 (g) No license to operate a health care facility or
18 reviewable clinically related health service by any person in
19 this Commonwealth shall be granted and any license issued shall
20 be void and of no effect as to any facility, organization,
21 service or part thereof for which a certificate of need is
22 required by this act and not granted.

23 Section 701. Certificate of need required; clinically related
24 health services subject to review.

25 (a) Any person, including, but not limited to, a health care
26 facility, health maintenance organization or health care
27 provider who offers, develops, constructs, renovates, expands or
28 otherwise establishes or undertakes to establish within the
29 State a clinically related health service that is included in
30 the department's list of reviewable services developed under

1 subsections (d) and (e) or a health care facility as defined in
2 section 103 must obtain a certificate of need from the
3 department and CON review board if one or more of the following
4 factors applies:

5 (1) [The proposal requires a capital expenditure in
6 excess of \$2,000,000 under] Under generally accepted
7 accounting principles, consistently applied[.], the proposal
8 requires a capital expenditure in excess of:

9 (i) for a new high-cost technology or high-cost
10 replacement technology in any health care facility,
11 \$500,000;

12 (ii) for equipment or other facility improvements in
13 an ambulatory surgical facility, or in an office where
14 reviewable clinically related health care services are
15 offered, whether a free-standing facility or office
16 within a hospital, \$1,000,000; or

17 (iii) for any other hospital-based improvement,
18 \$2,000,000.

19 (2) The proposal involves the establishment of a health
20 care facility or a reviewable clinically related health
21 service.

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

25 (i) If the additional beds are acute care beds and
26 are not beds in a distinct-part psychiatric,
27 rehabilitation or long-term care unit, all licensed beds
28 of the acute-care facility shall be counted in
29 determining whether the increased number of beds exceeds
30 10%.

1 (ii) If the additional beds are beds in a distinct-
2 part psychiatric, rehabilitation or long-term care unit
3 of an acute care facility, only the beds within that unit
4 shall be counted in determining whether the increased
5 number of beds exceeds 10%.

6 (iii) If the additional beds are in a freestanding
7 psychiatric, rehabilitation or long-term care facility,
8 all licensed beds of the freestanding facility shall be
9 counted in determining whether the increased number of
10 beds exceeds 10%.

11 (4) The proposal substantially expands an existing
12 clinically related health service as determined by the
13 department [in the State health services plan].

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

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

28 (d) A list of reviewable clinically related health services
29 shall be published by the department and the CON review board
30 within 30 days of the effective date of this act and may be

1 modified by regulation on an annual basis. Exclusive of new
2 high-cost technology, the initial list published by the
3 department and the CON review board as required under this
4 subsection shall be no more extensive than those services
5 reviewable on the effective date of this act. Criteria for
6 inclusion of reviewable services shall include, but not be
7 limited to:

8 (1) the quality of the service to be offered is likely
9 to be compromised through insufficient volumes or
10 utilization;

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

13 (3) the operating costs associated with the service are
14 reimbursed by major third party payors on a cost
15 reimbursement basis; or

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

17 (e) Any changes to the list required under subsection (d)
18 and proposed by regulation shall be developed by the department
19 [after consultation with the policy board.] and the CON review
20 board.

21 (f) A facility providing treatment solely on the basis of
22 prayer or spiritual means in accordance with the tenets of any
23 church or religious denomination or a facility conducted by a
24 religious organization for the purpose of providing health care
25 services exclusively to clergy or other persons in a religious
26 profession who are members of the religious denomination
27 conducting the facility shall not be considered to constitute a
28 health service subject to review under this act.

29 (g) As used in this section, "new high-cost technology"
30 means new technological equipment with an aggregate purchase

1 cost of greater than \$500,000. The department and the CON review
2 board shall consult with national medical and surgical
3 speciality organizations recognized by the American Board of
4 Medical Specialities (ABMS) and other nationally recognized
5 scientific resources in the determination of what constitutes
6 new technological equipment.

7 Section 702. Certificates of need; notice of intent;
8 application; issuance.

9 (a) Projects requiring a certificate of need shall, at the
10 earliest possible time in their planning, but not later than
11 April 1 of the calendar year prior to the year of the proposed
12 project start date, be submitted to the department and the CON
13 review board in a letter of intent in such detail advising of
14 the scope and nature of the project as required by regulations.
15 Within 30 days after receipt of the letter of intent, the
16 department and the CON review board shall inform the applicant
17 providing the letter of intent whether the proposed project is
18 subject to a certificate of need review or if additional
19 information is required to make that determination. If the
20 department [determines] and the CON review board determine that
21 the project is subject to a certificate of need review, the
22 project shall be subject to the remaining provisions of this
23 act.

24 (b) A person desiring to obtain or amend a certificate of
25 need shall apply in writing to the department, supplying such
26 information as is required by the department and the CON review
27 board, including, but not limited to, a cost impact analysis as
28 further defined by the department in regulations implementing
29 this act, and certifying that all data, information and
30 statements are factual to the best of their knowledge,

1 information and belief. The department and the CON review board
2 shall have 60 days after receipt of the application within which
3 to assess the application and in which to request specific
4 further information. If further information is requested, the
5 department and the CON review board shall complete its
6 preliminary assessment of the application within 45 days of
7 receipt of the same. No information shall be required that is
8 not specified in the rules and regulations promulgated by the
9 department.

10 (c) Timely notice of the beginning of review of the
11 application by the department shall be published after
12 preliminary assessment of the application is completed by the
13 department and the CON review board. The "date of notification"
14 of the beginning of review shall be the date such notice is
15 sent, or the date such notice is published in the Pennsylvania
16 Bulletin or in a newspaper of general circulation, whichever is
17 latest.

18 (d) The department and the CON review board shall approve or
19 disapprove the application within 90 days from the date of
20 notification of the beginning of the review unless the period
21 for review is extended by the applicant in writing.

22 (e) (1) Certificates of need shall be granted or refused by
23 the department. They shall not be conditioned upon the
24 applicant changing other aspects of its facilities or
25 services or requiring the applicant to meet other specified
26 requirements, and no such condition shall be imposed by the
27 department in granting or refusing approval of certificates
28 of need.

29 (2) A certificate of need shall state the maximum amount
30 of expenditures which may be obligated under it and

1 applicants proceeding with an approved project may not exceed
2 this level of expenditure except as allowed under the
3 conditions and procedures established by the department
4 through regulation.

5 (f) (1) The department and the CON review board shall make
6 written findings which state the basis for any final decision
7 made by the department. Such findings shall be served upon
8 the applicant and provided to all persons expressing an
9 interest in the proceedings and shall be made available to
10 others upon written request.

11 (2) All decisions of the department and the CON review
12 board shall be based solely on the record. No ex parte
13 contact regarding the application between any employee of the
14 department or the CON review board who exercises
15 responsibilities respecting the application and the
16 applicant, any person acting on behalf of the applicant or
17 any person opposed to the issuance of the certificate of need
18 shall occur after the commencement of a hearing on the
19 application and before a decision is made by the department.

20 (g) Modification of the application at any stage of the
21 proceeding shall not extend the time limits provided by this act
22 unless the department and the CON review board expressly [finds]
23 find that the modification represents a substantial change in
24 the character of the application.

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

1 the applications.

2 (i) The department and the CON review board may provide that
3 categories of projects shall receive simultaneous and
4 comparative review.

5 (j) Once the department and the CON review board have
6 finished the initial review of an application and determined
7 that the application shall be reviewed by a local review
8 committee, the department and the CON review board shall notify
9 the council in writing that a community review is pending and
10 request analyses to assist the review process. The council shall
11 offer its analyses to the department and the CON review board
12 prior to the completion of the review process. The department
13 and the CON review board shall share these analyses with the
14 local review committee. If the council determines that it does
15 not have the requisite data and information to provide analyses
16 to the department and the CON review board, the council shall
17 notify the department in writing. The department and the CON
18 review board shall notify the local review committee about the
19 council's determination. In carrying out its responsibilities,
20 the council shall have all the powers and duties of the council
21 enumerated by the act of July 8, 1986 (P.L.408, No.89), known as
22 the "Health Care Cost Containment Act."

23 Section 5. Section 703 of the act, amended July 12, 1980
24 (P.L.655, No.136), is reenacted and amended to read:

25 Section 703. Notice and hearings before [health systems
26 agencies] the department and CON review board.

27 (a) Notice of completed applications for certificates of
28 need or amendment thereto and of the beginning of review shall
29 be published by the [health systems agency] department in the
30 appropriate news media and by the department in the Pennsylvania

Bulletin in accordance with 45 Pa.C.S. [Chap. 7B] Ch. 7 Subch. B
(relating to publication of documents), and the [health systems
agency] department shall notify all affected persons with notice
of the schedule for review, the date by which a public hearing
must be demanded, and of the manner notice will be given of a
hearing, if one is to be held. Notice to affected persons (other
than members of the public who are to be served by the proposed
new institutional health service) shall be by mail (which may be
part of a newsletter). Members of the public may be notified
through newspapers of general circulation. Directly affected
persons may file objections within 15 days of such publication
with the [local health systems agency] department setting forth
specifically the reasons such objections were filed. Persons
filing the objections shall be parties to the proceeding, unless
and until such objections are withdrawn.

(b) Affected persons may request a public hearing or the
[health systems agency] department may require a public hearing
during the course of such review. Fourteen days written notice
of the hearing shall be given to affected persons in the same
manner as a notice of a completed application is provided in
subsection (a). In the hearing, any person shall have the right
to be represented by counsel and to present oral or written
arguments and relevant evidence. Any person directly affected
may conduct reasonable questioning of persons who make relevant
factual allegations. A record of the hearing shall be
maintained.

Section 6. Sections 704 and 705 of the act, amended December
18, 1992 (P.L.1602, No.179), are reenacted to read:

Section 704. Notice of public meetings.

(a) Notification of the beginning of review of a certificate

1 of need application shall be published by the department in the
2 appropriate news media and in the Pennsylvania Bulletin in
3 accordance with 45 Pa.C.S. Ch. 7 Subch. B (relating to
4 publication of documents). The notice shall identify the
5 schedule for review, the date by which a public meeting must be
6 requested and the manner in which notice will be given of a
7 meeting, if one is held.

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

25 (c) The applicant may, for good cause shown, request in
26 writing a public hearing for the purpose of reconsideration of a
27 decision of the department within ten days of service of the
28 decision of the department. The department shall treat the
29 request in accordance with the provisions of 1 Pa. Code § 35.241
30 (relating to application for rehearing or reconsideration). The

1 department shall set forth the cause for the hearing and the
2 issues to be considered at such hearing. If such hearing is
3 granted, it shall be held no sooner than six days and no later
4 than 30 days after the notice to grant such a hearing and shall
5 be limited to the issues submitted for reconsideration. A
6 transcript shall be made of the hearing and a copy of the
7 transcript shall be provided at cost to the applicant. The
8 department shall affirm or reverse its decision and submit the
9 same to the person requesting the hearing within 30 days of the
10 conclusion of such hearing. Any change in the decision shall be
11 supported by the reasons for the change.

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

18 Section 705. Good cause.

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

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

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

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

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

27 Section 7. Sections 706, 707 and 708.1 of the act, amended
28 or added December 18, 1992 (P.L.1602, No.179), are reenacted and
29 amended to read:

30 Section 706. Information during review.

1 During the course of review the department and the CON review
2 board shall upon request of any person set forth the status, any
3 findings made in the proceeding and other appropriate
4 information requested. The department and the CON review board
5 may require such request in writing.

6 Section 707. Criteria for review of applications for
7 certificates of need or amendments.

8 (a) An application for certificate of need shall be
9 considered for approval when the department [determines] and the
10 CON review board determine that the application substantially
11 meets the requirements listed below:

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

14 (2) The proposed service or facility will provide care
15 consistent with quality standards established by the [State
16 health services plan] department.

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

22 (4) The applicant has submitted a data-based cost
23 analysis that includes an analysis demonstrating that:

24 (i) There is not a more appropriate, less costly or
25 more effective alternative method of providing the
26 proposed services.

27 (ii) The service or facility is financially and
28 economically feasible, considering anticipated volume of
29 care and the availability of reasonable financing based
30 on information from the applicant and other sources

1 during the review process.

2 (iii) The proposed service or facility will not have
3 an inappropriate, adverse impact on the overall level of
4 health care expenditures in the area.

5 (iv) The proposed service or facility does not
6 adversely impact the maintenance and development of rural
7 and inner-city health services generally and, in
8 particular, those services provided by health care
9 providers that are based in rural and inner-city
10 locations and have an established history of providing
11 services to medically underserved populations.

12 [(b) The department shall issue a certificate of need if the
13 project substantially meets the criteria of subsection (a) (1),
14 (2) and (3) and the project is consistent with the State health
15 services plan unless the department can demonstrate:

16 (1) There is a more appropriate, less costly or more
17 effective alternative method of providing the proposed
18 services.

19 (2) The service or facility is not financially and
20 economically feasible, considering anticipated volume of care
21 and the availability of reasonable financing based on
22 information received from the applicant and other sources
23 during the review process.

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

27 (4) The proposed service or facility adversely impacts
28 the maintenance and development of rural and inner-city
29 health services generally and, in particular, those services
30 provided by health care providers which are based in rural

1 and inner-city locations and which have an established
2 history of providing services to medically underserved
3 populations.]

4 (c) Notwithstanding the provisions of [subsections (a) and
5 (b)] subsection (a), applications for projects described in
6 subsection (d) shall be approved unless the department [finds]
7 and the CON review board find that the facility or service with
8 respect to such expenditure as proposed is not needed [or that
9 the project is not consistent with the State health services
10 plan]. An application made under this subsection shall be
11 approved only to the extent that the department [determines] and
12 the CON review board determine it is required to overcome the
13 conditions described in subsection (d).

14 (d) Subject to the provisions of subsection (c),
15 [subsections (a) and (b)] subsection (a) shall not apply to
16 capital expenditures required to:

17 (1) eliminate or prevent imminent safety hazards as a
18 result of violations of safety codes or regulations;

19 (2) comply with State licensure standards; or

20 (3) comply with accreditation standards, compliance with
21 which is required to receive reimbursement or payments under
22 Title XVIII or XIX of the Federal Social Security Act.

23 Section 708.1. Monitoring certificate of need; expiration of a
24 certificate of need.

25 A certificate of need or an amendment to it shall expire two
26 years from the date issued unless substantially implemented, as
27 defined by regulation. The department and the CON review board
28 may grant extensions for a specified time upon request of the
29 applicant and upon a showing that the applicant has or is making
30 a good faith effort to substantially implement the project. An

1 expired certificate of need shall be invalid, and no person may
2 proceed to undertake any activity pursuant to it for which a
3 certificate of need or amendment is required. The applicant
4 shall report to the department, on forms prescribed by the
5 department, the status of the project until such time as the
6 project is licensed or operational, if no license is required.

7 Section 8. Section 709 of the act, amended December 18, 1992
8 (P.L.1602, No.179), is reenacted to read:

9 Section 709. Emergencies.

10 Notwithstanding any other provision of this act, in the event
11 of an emergency the department may suspend the foregoing
12 application process and permit such steps to be taken as may be
13 required to meet the emergency including the replacement of
14 equipment or facilities.

15 Section 9. Section 710 of the act, added July 19, 1979
16 (P.L.130, No.48), is reenacted to read:

17 Section 710. Notice of termination of services.

18 For informational purposes only, at least 30 days prior to
19 termination or substantial reduction of a service or a permanent
20 decrease in the bed complement, the provider shall notify the
21 [health systems agency and the] department of its intended
22 action.

23 Section 10. Section 711 of the act, amended December 18,
24 1992 (P.L.1602, No.179), is reenacted and amended to read:

25 Section 711. Review of activities.

26 (a) The department and the CON review board shall prepare
27 and publish not less frequently than annually reports of reviews
28 conducted under this act, including a statement on the status of
29 each such review and of reviews completed by it and statements
30 of the decisions made in the course of such reviews since the

1 last report. The department and the CON review board shall also
2 make available to the general public for examination at
3 reasonable times of the business day all applications reviewed
4 by it. Such reports and applications shall be considered public
5 records.

6 (b) The department's and the CON review board's report which
7 shall be submitted to the members of the Health and Welfare
8 Committees of the Senate and House of Representatives shall
9 contain the following information:

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

13 (2) The assessment of the extent of competition in
14 specific service sectors that guided decisions.

15 (3) A detailed description of projects involving
16 nontraditional or innovative service delivery methods or
17 organizational arrangements and the decisions made on each of
18 these projects.

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

20 (5) The fees collected for reviews and the cost of the
21 program.

22 Section 11. Section 712 of the act, added July 12, 1980
23 (P.L.655, No.136) and repealed in part December 20, 1982 (P.L.
24 1409, No.326), is reenacted and amended to read:

25 Section 712. Actions against violations of law and rules and
26 regulations[; bonds].

27 (a) Whenever any person, regardless of whether such person
28 is a licensee, has willfully violated any of the provisions of
29 this act or the rules and regulations adopted thereunder, the
30 department may maintain any action in the name of the

Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

Section 12. Section 808 of the act, amended December 18, 1992 (P.L.1602, No.179), July 7, 2006 (P.L.334, No.69) and December 22, 2011 (P.L.563, No.122), is reenacted and amended to read:

Section 808. Issuance of license.

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

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

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

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

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

(5) that a certificate of need has been issued if one is necessary; and

(6) that, in the case of abortion facilities, such facility is in compliance with the requirements of 18 Pa.C.S. Ch. 32 (relating to abortion) and such regulations promulgated thereunder.

(b) Separate and limited licenses.--Separate licenses shall not be required for different services within a single health care facility except that home health care, home care, hospice

1 or long-term nursing care will require separate licenses. A
2 limited license, excluding from its terms a particular service
3 or portion of a health care facility, may be issued under the
4 provisions of this act.

5 (c) Addition of services.--When the certificate of need for
6 a facility is amended as to services which can be offered, the
7 department shall issue an appropriate license for those services
8 upon demonstration of compliance with licensure requirements.

9 (d) Monitoring.--

10 (1) One year after the certificate of need has been
11 issued, the department shall monitor quality of the facility
12 or service by requesting from the council relevant data,
13 which may include mortality rates and the number of
14 procedures performed.

15 (2) If the department finds that the facility or service
16 is not meeting the standards set forth in subsection (a), the
17 department shall take disciplinary action pursuant to this
18 act and existing regulations.

19 Section 13. The act is amended by adding a section to read:
20 Section 808.1. Prohibition of referrals and claims of payment.

21 (a) Referrals.--A provider may not:

22 (1) Refer a person for treatment and services if the
23 provider has a financial interest with the person or in the
24 entity that receives the referral.

25 (2) Enter into an arrangement or scheme, including, but
26 not limited to, a cross-referral arrangement, that the
27 provider knows or should know has a principal purpose of
28 assuring referrals by the provider to a particular entity
29 that, if the provider directly made referrals to the entity,
30 would be in violation of this act.

1 (b) Claim for payment.--No claim for payment may be
2 presented by an entity to any individual, third-party payor or
3 other entity for a service furnished pursuant to conduct
4 prohibited under subsection (a).

5 (c) Refund.--If an entity collects any amount that was
6 billed in violation of this section, the entity shall refund
7 that amount on a timely basis to the payor or individual.

8 Section 14. Section 901 of the act, amended July 12, 1980
9 (P.L.655, No.136), is reenacted and amended to read:

10 Section 901. Existing facilities and institutions.

11 (a) (1) No certificate of need shall be required for any
12 buildings, real property and equipment owned, leased or being
13 operated, or under contract for construction, purchase, or
14 lease and for all services being rendered by licensed or
15 approved providers [on April 1, 1980.] prior to the effective
16 date of this paragraph.

17 (2) Nor shall a certificate of need be required for any
18 new institutional health services for which an approval has
19 been granted under section 1122 of the Social Security Act or
20 for which an application is found pursuant to such section to
21 be in conformity with the standards, criteria or plans to
22 which such section refers, or as to which the Federal
23 Secretary of Health and Human Services makes a finding that
24 reimbursement shall be granted.[: Provided, however, That
25 such approval is in force on August 1, 1980 or such
26 application shall have been filed prior to August 1, 1980 or
27 the acceptance of applications for reviews under this act,
28 whichever shall last occur.]

29 (b) Existing facilities and institutions shall be required
30 to obtain a certificate of need for projects outlined in section

1 701.

2 Section 15. Section 902.1 of the act, added December 18,
3 1992 (P.L.1602, No.179), is reenacted and amended to read:

4 Section 902.1. Fees for review of certificate of need
5 applications.

6 (a) The department shall charge a fee of [\$150] \$500 for
7 each letter of intent filed. The letter of intent fee shall be
8 deducted from the total application fee required under
9 subsection (b) if an application is submitted on the project
10 proposed in the letter of intent.

11 (b) For each application the department shall charge a fee,
12 payable on submission of an application. The fee shall not be
13 less than \$500 plus up to [\$3] \$10 per \$1,000 of proposed
14 capital expenditure and shall not be more than [\$20,000]
15 \$50,000.

16 (c) The department shall publish a fee schedule in the
17 Pennsylvania Bulletin which shall explain the procedure for
18 filing fees.

19 (d) All fees payable under this section are due upon the
20 date of filing a letter of intent or application. If a person
21 fails to file the appropriate fee, all time frames required of
22 the department under this act, with respect to review of a
23 letter of intent or application, are suspended until the
24 applicable fee is paid in full.

25 (e) Each local review committee may apply for up to \$10,000
26 in funding from the department for administrative functions
27 associated with reviewing certificate of need proposals. This
28 funding is to be allocated from the Patient Safety Authority
29 appropriation.

30 Section 16. Section 904.1 of the act, added December 18,

1 1992 (P.L.1602, No.179), is repealed:

2 [Section 904.1. Sunset.

3 The authority, obligations and duties arising under Chapter 7
4 and all other provisions of this act pertaining to certificates
5 of need shall terminate four years after the effective date of
6 this section. Twelve months prior to this expiration, the
7 Legislative Budget and Finance Committee shall commence a review
8 of the impact of the certificate of need program on quality,
9 access and cost of health care services, including the costs of
10 appeals, reviewable under this act.]

11 Section 17. This act shall take effect immediately.