

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2760 Session of  
2004

INTRODUCED BY BAKER, STERN, BOYD, CREIGHTON, DAILEY, HESS,  
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YOUNGBLOOD AND DeLUCA, JUNE 28, 2004

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
JUNE 28, 2004

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 certificates of need.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

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

AN ACT

17 Relating to health care; prescribing the powers and duties of  
18 the Department of Health; establishing and providing the  
19 powers and duties of the [State Health Coordinating Council,  
20 health systems agencies and] Health [Care] Policy Board in

1 the Department of Health[, and State Health Facility Hearing  
2 Board in the Department of Justice]; and providing for  
3 certification of need of health care providers and  
4 prescribing penalties.

5 Section 2. Section 103 of the act, amended December 18, 1992  
6 (P.L.1602, No.179) and October 16, 1998 (P.L.777, No.95), is  
7 reenacted and amended to read:

8 Section 103. Definitions.

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

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

13 "Board." The Health Policy Board established under section  
14 401.1.

15 "Certificate of need." A notice of approval issued by the  
16 department under the provisions of this act, including those  
17 notices of approval issued as an amendment to an existing  
18 certificate of need.

19 "Clinically related health service." Certain diagnostic,  
20 treatment or rehabilitative services as determined in section  
21 701.

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

27 "Conflict of interest." For the purpose of section 501, the  
28 interest of any person, whether financial, by association with,  
29 or as a contributor of money or time to, any nonprofit  
30 corporation or other corporation, partnership, association, or

1 other organization, and whenever a person is a director, officer  
2 or employee of such organization, but shall not exist whenever  
3 the organization in which such person is interested is being  
4 considered as part of a class or group for whom regulations are  
5 being considered, if the material facts as to the relationship  
6 or interest are disclosed or are known to the board.

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

12 "Department." The Department of Health.

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

18 "Health care facility." For purposes of Chapter 7, any  
19 health care facility providing clinically related health  
20 services, including, but not limited to, a general or special  
21 hospital, including psychiatric hospitals, rehabilitation  
22 hospitals, ambulatory surgical facilities, long-term care  
23 nursing facilities, cancer treatment centers using radiation  
24 therapy on an ambulatory basis and inpatient drug and alcohol  
25 treatment facilities, both profit and nonprofit and including  
26 those operated by an agency or State or local government. The  
27 term shall also include a hospice. The term shall also include  
28 an office where reviewable clinically related health services  
29 are offered. The term shall not include an office used primarily  
30 for the private or group practice by health care practitioners

1 where no reviewable clinically related health service is  
2 offered, a facility providing treatment solely on the basis of  
3 prayer or spiritual means in accordance with the tenets of any  
4 church or religious denomination or a facility conducted by a  
5 religious organization for the purpose of providing health care  
6 services exclusively to clergy or other persons in a religious  
7 profession who are members of the religious denominations  
8 conducting the facility.

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

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

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

22 ["Hearing board." The State Health Facility Hearing Board  
23 created in the Office of General Counsel under the provisions of  
24 this act.]

25 "Interested person" or "person expressing an interest." For  
26 the purposes of Chapter 7, a member of the public who is to be  
27 served by the proposed new health service in the area to be  
28 served by the applicant, a health care facility or health  
29 maintenance organization or any health care provider providing  
30 similar services in the area to be served by the applicant or

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

9 "Offer." Make provision for providing in a regular manner  
10 and on an organized basis clinically related health services.

11 "Patient." A natural person receiving health care in or from  
12 a health care provider.

13 "Person." A natural person, corporation (including  
14 associations, joint stock companies and insurance companies),  
15 partnership, trust, estate, association, the Commonwealth, and  
16 any local governmental unit, authority and agency thereof.

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

19 "Public meeting." A meeting open to the public where any  
20 person has an opportunity to comment on a certificate of need  
21 application or proposed State health services plan amendment.

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

24 "State health services plan." A document developed by the  
25 Department of Health, after consultation with the policy board  
26 and approved by the Governor, that is consistent with section  
27 401.3, that meets the current and projected needs of the  
28 Commonwealth's citizens. The State health services plan shall  
29 contain, in part, the standards and criteria against which  
30 certificate of need applications are reviewed and upon which

1 decisions are based.

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

10 Section 3. Section 201 of the act, amended December 18, 1992  
11 (P.L.1602, No.179), is reenacted and amended to read:

12 Section 201. Powers and duties of the department.

13 The Department of Health shall have the power and its duties  
14 shall be:

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

17 (2) To issue determinations of reviewability or  
18 nonreviewability of certificate of need proposals.

19 (3) To issue certificates of need and amended  
20 certificates of need in accordance with the provisions of  
21 this act.

22 (4) To withdraw expired certificates of need.

23 (5) To require, pursuant to regulation, submission of  
24 periodic reports by providers of health services and other  
25 persons subject to review respecting the development of  
26 proposals subject to review.

27 [(6) Upon consultation with the policy board, to  
28 research, prepare and, after approval by the Governor,  
29 publish, no later than 18 months after the effective date of  
30 this act and annually thereafter, a revised State health

1 services plan for the Commonwealth as defined under this act.  
2 Until the State health services plan as defined in section  
3 401.3 is adopted, the department shall apply the State health  
4 plan in existence on the effective date of this act, along  
5 with any subsequent updates to that plan.]

6 (6.1) Upon consultation with the policy board, to  
7 research, prepare and, after approval by the Governor,  
8 publish, no later than six months after the effective date of  
9 this paragraph and annually thereafter, a State health  
10 services plan for the Commonwealth as defined under this act.

11 (7) To collect and disseminate such other information as  
12 may be appropriate to determine the appropriate level of  
13 facilities and services for the effective implementation of  
14 certification of need under this act. Where such information  
15 is collected by any other agency of State government,  
16 duplication shall be avoided by coordination of data  
17 collection activities.

18 (8) To furnish such staff support and expertise to the  
19 policy board as may be needed to perform its  
20 responsibilities.

21 (9) To receive, log and review all applications for  
22 certificates of need or amendments thereof and approve or  
23 disapprove the same.

24 (10) To minimize the administrative burden on health  
25 care providers by eliminating unnecessary duplication of  
26 financial and operational reports and to the extent possible  
27 coordinating reviews and inspections performed by Federal,  
28 State, local and private agencies.

29 (11) To adopt and promulgate regulations necessary to  
30 carry out the purposes and provisions of this act relating to

1 certificate of need.

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

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

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

10 (15) To coordinate any data collection activities  
11 necessary for administration of this act so as not to  
12 duplicate unnecessarily the data collection activities of  
13 other Federal and State agencies.

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

16 Section 4. Section 401.3 of the act, added December 18, 1992  
17 (P.L.1602, No.179), is reenacted to read:

18 Section 401.3. State health services plan.

19 The State health services plan shall consist of at a minimum:

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

24 (2) An analysis of the availability, accessibility and  
25 affordability of the clinically related health services  
26 necessary to meet the health needs of the population of this  
27 Commonwealth.

28 (3) Qualitative and quantitative standards and criteria  
29 for the review of certificate of need applications by the  
30 department under this act.



1 (4) An exceptions process which permits exceptions to be  
2 granted to the standards and criteria in order to reflect  
3 local experience or ensure access or to respond to  
4 circumstances which pose a threat to public health and  
5 safety.

6 Section 5. Section 602 of the act is reenacted to read:

7 Section 602. Regulations.

8 The department is hereby authorized and empowered pursuant to  
9 the provisions of this act to adopt rules and regulations  
10 establishing procedures required by this act for administration  
11 of certificate of need.

12 Section 6. Sections 603, 701 and 702 of the act, amended  
13 December 18, 1992 ( P.L.1602, No.179), are reenacted and amended  
14 to read:

15 Section 603. Enforcement of orders relating to certificate of  
16 need.

17 (a) (1) [No] After December 31, 2004, no certificate of  
18 need shall be granted to any person for a health care  
19 facility or reviewable clinically related health service  
20 unless such facility or clinically related health service is  
21 found by the department to be needed.

22 (2) [No] After December 31, 2004, no person shall offer  
23 or develop a health care facility or reviewable clinically  
24 related health service without obtaining a certificate of  
25 need as required by this act.

26 (3) [No] After December 31, 2004, no binding arrangement  
27 or commitment for financing the offering or development of a  
28 health care facility or reviewable clinically related health  
29 service shall be made by any person unless a certificate of  
30 need for such clinically related health service or facility

1 has been granted in accordance with this act.

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

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

9 (d) [Any] After December 31, 2004, any person operating a  
10 reviewable clinically related health service or health care  
11 facility within this Commonwealth for which no certificate of  
12 need has been obtained, after service of a cease and desist  
13 order of the department, or after expiration of the time for  
14 appeal of any final order on appeal, upon conviction thereof,  
15 shall be sentenced to pay a fine of not less than [\$100] \$1,000  
16 or more than [\$1,000] \$10,000 and costs of prosecution. Each day  
17 of operating a clinically related health service or health care  
18 facility after issuance of a cease and desist order shall  
19 constitute a separate offense.

20 (e) [Any] After December 31, 2004, any person who violates  
21 this act by failing to obtain a certificate of need, by  
22 deviating from the provisions of the certificate, by beginning  
23 construction, by providing services, or by acquiring equipment  
24 after the expiration of a certificate of need shall be subject  
25 to a penalty of not less than [\$100] \$1,000 per day and not more  
26 than [\$1,000] \$10,000 per day. Each day of each such violation  
27 shall be considered a separate offense.

28 (f) The department may seek injunctive relief to prevent  
29 continuing violations of this act. In seeking such relief, the  
30 department need not prove irreparable harm.

1 (g) [No] After December 31, 2004, no license to operate a  
2 health care facility or reviewable clinically related health  
3 service by any person in this Commonwealth shall be granted and  
4 any license issued after December 31, 2004, shall be void and of  
5 no effect as to any facility, organization, service or part  
6 thereof for which a certificate of need is required by this act  
7 and not granted. Nor shall a certificate of need be required for  
8 any new institutional health service provided by a health care  
9 facility that serves a medically underserved area and is located  
10 in a nonmetropolitan area and in a county of the sixth, seventh  
11 or eighth class.

12 Section 701. Certificate of need required; clinically related  
13 health services subject to review.

14 (a) [Any] After December 31, 2004, any person, including,  
15 but not limited to, a health care facility, health maintenance  
16 organization or health care provider who offers, develops,  
17 constructs, renovates, expands or otherwise establishes or  
18 undertakes to establish within the State a clinically related  
19 health service that is included in the department's list of  
20 reviewable services developed under subsections (d) and (e) or a  
21 health care facility as defined in section 103 must obtain a  
22 certificate of need from the department if one or more of the  
23 following factors applies:

24 (1) The proposal requires a capital expenditure in  
25 excess of [ \$2,000,000 ] \$3,000,000 under generally accepted  
26 accounting principles, consistently applied.

27 (2) The proposal involves the establishment of a health  
28 care facility or a reviewable clinically related health  
29 service.

30 [(3) The proposal increases the number of licensed beds

1 by more than ten beds or 10%, whichever is less, every two  
2 years.

3 (i) If the additional beds are acute care beds and  
4 are not beds in a distinct-part psychiatric,  
5 rehabilitation or long-term care unit, all licensed beds  
6 of the acute-care facility shall be counted in  
7 determining whether the increased number of beds exceeds  
8 10%.

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

14 (iii) If the additional beds are in a freestanding  
15 psychiatric, rehabilitation or long-term care facility,  
16 all licensed beds of the freestanding facility shall be  
17 counted in determining whether the increased number of  
18 beds exceeds 10%.]

19 (4) The proposal substantially expands an existing  
20 clinically related health service as determined by the  
21 department in the State health services plan.

22 (b) For the purposes of this act, an expenditure for the  
23 purpose of acquiring an existing health care facility or  
24 replacement of equipment where there is no change in service  
25 shall not be considered to be a capital expenditure subject to  
26 review. Expenditures for nonclinical activities or services,  
27 such as parking garages, computer systems or refinancing of  
28 debt, and research projects involving premarket approval of new  
29 equipment shall not be subject to review.

30 (c) The capital expenditure threshold identified in

1 subsection (a)(1) may be modified periodically by the department  
2 to reflect any increase in the construction cost or other  
3 factors influencing health care-related capital expenditures.  
4 The department shall publish a modification of the expenditure  
5 threshold through the regulatory review process.

6 (d) A list of reviewable clinically related health services  
7 shall be published by the department within 30 days of [the  
8 effective date of this act] December 31, 2004, and may be  
9 modified by regulation on an annual basis. [Exclusive of new  
10 high-cost technology, the initial list published by the  
11 department as required under this subsection shall be no more  
12 extensive than those services reviewable on the effective date  
13 of this act.] Criteria for inclusion of reviewable services  
14 shall include, but not be limited to:

15 (1) the quality of the service to be offered is likely  
16 to be compromised through insufficient volumes or  
17 utilization;

18 (2) the service is dependent upon the availability of  
19 scarce natural resources such as human organs; or

20 [(3) the operating costs associated with the service are  
21 reimbursed by major third party payors on a cost  
22 reimbursement basis; or]

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

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

27 (f) A facility providing treatment solely on the basis of  
28 prayer or spiritual means in accordance with the tenets of any  
29 church or religious denomination or a facility conducted by a  
30 religious organization for the purpose of providing health care

1 services exclusively to clergy or other persons in a religious  
2 profession who are members of the religious denomination  
3 conducting the facility shall not be considered to constitute a  
4 health service subject to review under this act.

5 [(g) As used in this section, "new high-cost technology"  
6 means new technological equipment with an aggregate purchase  
7 cost of greater than \$500,000. The department shall consult with  
8 national medical and surgical speciality organizations  
9 recognized by the American Board of Medical Specialities (ABMS)  
10 and other nationally recognized scientific resources in the  
11 determination of what constitutes new technological equipment.]

12 Section 702. Certificates of need; notice of intent;  
13 application; issuance.

14 (a) [Projects] After December 31, 2004, projects requiring a  
15 certificate of need shall, at the earliest possible time in  
16 their planning, be submitted to the department in a letter of  
17 intent in such detail advising of the scope and nature of the  
18 project as required by regulations. Within 30 days after receipt  
19 of the letter of intent, the department shall inform the  
20 applicant providing the letter of intent whether the proposed  
21 project is subject to a certificate of need review or if  
22 additional information is required to make that determination.  
23 If the department determines that the project is subject to a  
24 certificate of need review, the project shall be subject to the  
25 remaining provisions of this act.

26 (b) A person desiring to obtain or amend a certificate of  
27 need shall apply in writing to the department, supplying such  
28 information as is required by the department and certifying that  
29 all data, information and statements are factual to the best of  
30 their knowledge, information and belief. The department shall

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

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

15 (d) The department shall approve or disapprove the  
16 application within [90] 120 days from the date of notification  
17 of the beginning of the review [unless the period for review is  
18 extended by the applicant in writing]. Unless a disapproval is  
19 issued by the department within the period provided in this  
20 section, an application made under section 702 shall be deemed  
21 approved.

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

28 (2) A certificate of need shall state the maximum amount  
29 of expenditures which may be obligated under it and  
30 applicants proceeding with an approved project may not exceed

1       this level of expenditure except as allowed under the  
2       conditions and procedures established by the department  
3       through regulation.

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

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

18       (g) Modification of the application at any stage of the  
19       proceeding shall not extend the time limits provided by this act  
20       unless the department expressly finds that the modification  
21       represents a substantial change in the character of the  
22       application.

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

28       (i) The department may provide that categories of projects  
29       shall receive simultaneous and comparative review.

30       Section 7. Section 703 of the act, amended July 12, 1980



1 (P.L.655, No.136), is amended to read:

2 [Section 703. Notice and hearings before health systems  
3 agencies.

4 (a) Notice of completed applications for certificates of  
5 need or amendment thereto and of the beginning of review shall  
6 be published by the health systems agency in the appropriate  
7 news media and by the department in the Pennsylvania Bulletin in  
8 accordance with 45 Pa.C.S. Chap. 7B (relating to publication of  
9 documents), and the health systems agency shall notify all  
10 affected persons with notice of the schedule for review, the  
11 date by which a public hearing must be demanded, and of the  
12 manner notice will be given of a hearing, if one is to be held.  
13 Notice to affected persons (other than members of the public who  
14 are to be served by the proposed new institutional health  
15 service) shall be by mail (which may be part of a newsletter).  
16 Members of the public may be notified through newspapers of  
17 general circulation. Directly affected persons may file  
18 objections within 15 days of such publication with the local  
19 health systems agency setting forth specifically the reasons  
20 such objections were filed. Persons filing the objections shall  
21 be parties to the proceeding, unless and until such objections  
22 are withdrawn.

23 (b) Affected persons may request a public hearing or the  
24 health systems agency may require a public hearing during the  
25 course of such review. Fourteen days written notice of the  
26 hearing shall be given to affected persons in the same manner as  
27 a notice of a completed application is provided in subsection  
28 (a). In the hearing, any person shall have the right to be  
29 represented by counsel and to present oral or written arguments  
30 and relevant evidence. Any person directly affected may conduct

1 reasonable questioning of persons who make relevant factual  
2 allegations. A record of the hearing shall be maintained.]

3 Section 8. Sections 704, 705, 706, 707, 708.1 and 709 of the  
4 act, amended or added December 18, 1992 (P.L.1602, No.179), are  
5 reenacted to read:

6 Section 704. Notice of public meetings.

7 (a) Notification of the beginning of review of a certificate  
8 of need application shall be published by the department in the  
9 appropriate news media and in the Pennsylvania Bulletin in  
10 accordance with 45 Pa.C.S. Ch. 7 Subch. B (relating to  
11 publication of documents). The notice shall identify the  
12 schedule for review, the date by which a public meeting must be  
13 requested and the manner in which notice will be given of a  
14 meeting, if one is held.

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

1 such application, at the expense of the interested person.

2 (c) The applicant may, for good cause shown, request in  
3 writing a public hearing for the purpose of reconsideration of a  
4 decision of the department within ten days of service of the  
5 decision of the department. The department shall treat the  
6 request in accordance with the provisions of 1 Pa. Code § 35.241  
7 (relating to application for rehearing or reconsideration). The  
8 department shall set forth the cause for the hearing and the  
9 issues to be considered at such hearing. If such hearing is  
10 granted, it shall be held no sooner than six days and no later  
11 than 30 days after the notice to grant such a hearing and shall  
12 be limited to the issues submitted for reconsideration. A  
13 transcript shall be made of the hearing and a copy of the  
14 transcript shall be provided at cost to the applicant. The  
15 department shall affirm or reverse its decision and submit the  
16 same to the person requesting the hearing within 30 days of the  
17 conclusion of such hearing. Any change in the decision shall be  
18 supported by the reasons for the change.

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

25 Section 705. Good cause.

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

27 (1) there is significant, relevant information not  
28 previously considered;

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

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

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

4 Section 706. Information during review.

5 During the course of review the department shall upon request  
6 of any person set forth the status, any findings made in the  
7 proceeding and other appropriate information requested. The  
8 department may require such request in writing.

9 Section 707. Criteria for review of applications for  
10 certificates of need or amendments.

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

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

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

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

24 (b) The department shall issue a certificate of need if the  
25 project substantially meets the criteria of subsection (a)(1)[,]  
26 and (2) [and (3)] and the project is consistent with the State  
27 health services plan unless the department can demonstrate:

28 (1) There is a more appropriate, less costly or more  
29 effective alternative method of providing the proposed  
30 services.

1           (2) The service or facility is not financially and  
2           economically feasible, considering anticipated volume of care  
3           and the availability of reasonable financing based on  
4           information received from the applicant and other sources  
5           during the review process.

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

9           (4) The proposed service or facility adversely impacts  
10          the maintenance and development of rural and inner-city  
11          health services generally and, in particular, those services  
12          provided by health care providers which are based in rural  
13          and inner-city locations and which have an established  
14          history of providing services to medically underserved  
15          populations.

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

25          (d) Subject to the provisions of subsection (c), subsections  
26          (a) and (b) shall not apply to capital expenditures required to:

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

29               (2) comply with State licensure standards; or

30               (3) comply with accreditation standards, compliance with

1       which is required to receive reimbursement or payments under  
2       Title XVIII or XIX of the Federal Social Security Act.

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

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

17   Section 709.   Emergencies.

18       Notwithstanding any other provision of this act, in the event  
19   of an emergency the department may suspend the foregoing  
20   application process and permit such steps to be taken as may be  
21   required to meet the emergency including the replacement of  
22   equipment or facilities.

23       Section 9.   Section 711 of the act, amended December 18, 1992  
24   (P.L.1602, No.179), is reenacted to read:

25   Section 711.   Review of activities.

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

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

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

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

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

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

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

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

21 Section 10. Section 712 of the act, added July 12, 1980  
22 (P.L.655, No.136), is reenacted and amended to read:

23 Section 712. Actions against violations of law and rules and  
24 regulations[; bonds].

25 [(a)] Whenever any person, regardless of whether such person  
26 is a licensee, has willfully violated any of the provisions of  
27 this act or the rules and regulations adopted thereunder, the  
28 department may maintain any action in the name of the  
29 Commonwealth for an injunction or other process restraining or  
30 prohibiting such person from engaging in such activity.

Section 11. Section 808 of the act, amended December 18, 1992 (P.L.1602, No.179) and October 16, 1998 (P.L.777, No.95), 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; and

(5) that after December 31, 2004, a certificate of need has been issued if one is necessary.

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

(c) Addition of services.--When the certificate of need for a facility is amended as to services which can be offered, the department shall issue an appropriate license for those services



1 upon demonstration of compliance with licensure requirements.

2 Section 12. Section 901 amended July 12, 1980 (P.L.655,  
3 No.136), is reenacted and amended to read:

4 Section 901. Existing facilities and institutions.

5 No certificate of need shall be required for any buildings,  
6 real property and equipment owned, leased or being operated, or  
7 under contract for construction, purchase, or lease and for all  
8 services being rendered by licensed or approved providers on  
9 [April 1, 1980] December 31, 2004. [Nor shall a certificate of  
10 need be required for any new institutional health services for  
11 which an approval has been granted under section 1122 of the  
12 Social Security Act or for which an application is found  
13 pursuant to such section to be in conformity with the standards,  
14 criteria or plans to which such section refers, or as to which  
15 the Federal Secretary of Health and Human Services makes a  
16 finding that reimbursement shall be granted: Provided, however,  
17 That such approval is in force on August 1, 1980 or such  
18 application shall have been filed prior to August 1, 1980 or the  
19 acceptance of applications for reviews under this act, whichever  
20 shall last occur.]

21 Section 13. Sections 902.1 and 904.1 of the act, added  
22 December 18, 1992 (P.L.1602, No.179), are reenacted and amended  
23 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] \$500 for  
27 each 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~~] \$10 per \$1,000 of proposed  
4 capital 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 and all other provisions of this act pertaining to certificates  
17 of need shall terminate [four years after the effective date of  
18 this section] December 31, 2014. [Twelve months prior to this  
19 expiration] On December 31, 2013, the Legislative Budget and  
20 Finance Committee shall commence a review of the impact of the  
21 certificate of need program on quality, access and cost of  
22 health care services, including the costs of appeals, reviewable  
23 under this act.

24 Section 14. This act shall take effect immediately.