

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 762 Session of 2021

INTRODUCED BY DeLUCA AND DELLOSO, MARCH 3, 2021

REFERRED TO COMMITTEE ON HEALTH, MARCH 3, 2021

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," in preliminary provisions,  
10 reenacting and amending provisions relating to definitions;  
11 in powers and duties of the department, reenacting and  
12 amending provisions relating to powers and duties of the  
13 department; in Statewide Health Coordinating Council and  
14 health systems agencies, reenacting and amending provisions  
15 relating to State health services plan; in administration of  
16 the act, reenacting provisions relating to regulations and  
17 reenacting and amending provisions relating to enforcement of  
18 orders relating to certificate of need; in certificate of  
19 need, reenacting and amending provisions relating to  
20 certificate of need required and clinically related health  
21 services subject to review, to certificates of need and  
22 notice of intent and application and issuance and to notice  
23 and hearings before health systems agencies, reenacting  
24 provisions relating to notice of public meetings and to good  
25 cause, reenacting and amending provisions relating to  
26 information during review, to criteria for review of  
27 applications for certificates of need or amendments and to  
28 monitoring certificate of need, expiration of a certificate  
29 of need and reenacting provisions relating to emergencies and  
30 reenacting and amending provisions relating to notice of  
31 termination of services, to review of activities and to  
32 actions against violations of law and rules and regulations  
33 and bonds; in licensing of health care facilities, reenacting  
34 and amending provisions relating to issuance of license; in  
35 general provisions and repeals and effective date, reenacting

1 and amending provisions relating to existing facilities and  
2 institutions and to fees for review of certificate of need  
3 applications and repealing provisions relating to sunset.

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

6 Section 1. Sections 103, 201 and 401.3 of the act of July  
7 19, 1979 (P.L.130, No.48), known as the Health Care Facilities  
8 Act, are reenacted and amended to read:

9 Section 103. Definitions.

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

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

14 "Board." The Health Policy Board established under section  
15 401.1.

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

20 "Certification of need (CON) review board" or "CON review  
21 board." A review board appointed by the Secretary of Health  
22 consisting of technical experts in the fields of medicine,  
23 health facility administration, health economics, health care  
24 cost inflation and similar fields, including experts from within  
25 Commonwealth agencies, and consumers of health care.

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

29 ["Community-based health services planning committee." A  
30 committee established in accordance with procedures approved by  
31 the Department of Health which includes representatives of local

1 or regional groups of consumers, business, labor, health care  
2 providers, payors or other affected interests.]

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

14 "Consumer." A natural person who is not involved in the  
15 provision of health services or health insurance. For the  
16 purpose of this act, any person who holds a fiduciary position  
17 in any health care facility, health maintenance organization or  
18 third party payor shall not be considered a consumer.

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

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

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

26 "Health care facility." [For purposes of Chapter 7, any] A  
27 health care facility providing clinically related health  
28 services, including, but not limited to, a general or special  
29 hospital, including psychiatric hospitals, rehabilitation  
30 hospitals, ambulatory surgical facilities, diagnostic imaging

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

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

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

26 "Health planning area." A geographic area within the  
27 Commonwealth designated by the Department of Health for purposes  
28 of health planning.

29 "Hearing board." The State Health Facility Hearing Board  
30 created in the Office of General Counsel under the provisions of

1 this act.

2 "Interested person" or "person expressing an interest." [For  
3 the purposes of Chapter 7, a] A member of the public who is to  
4 be served by the proposed new health service in the area to be  
5 served by the applicant, a health care facility or health  
6 maintenance organization or any health care provider providing  
7 similar services in the area to be served by the applicant or  
8 who has received a certificate of need to provide services in  
9 the area to be served by the applicant or who has formally filed  
10 with the [department] Department of Health a letter of intent to  
11 provide similar services in the area in which the proposed  
12 service is to be offered or developed and any third party payor  
13 of health services provided in that area who provides written  
14 notice to the [department] Department of Health that the person  
15 is interested in a specific certificate of need application  
16 before the [department] Department of Health.

17 "Local review committee." A committee established in  
18 accordance with procedures approved by the Department of Health  
19 that includes representatives of local or regional groups of  
20 consumers, business, labor, health care providers, payors or  
21 other affected interests.

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

24 "Patient." A natural person receiving health care in or from  
25 a health care provider.

26 "Person." A natural person, corporation (including  
27 associations, joint stock companies and insurance companies),  
28 partnership, trust, estate, association, the Commonwealth, and  
29 any local governmental unit, authority and agency thereof.

30 "Policy board." The Health Policy Board created in the

1 Department of Health under the provisions of this act.

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

6 "Secretary." The Secretary of [the Department of] Health of  
7 the Commonwealth of Pennsylvania.

8 ["State health services plan." A document developed by the  
9 Department of Health, after consultation with the policy board  
10 and approved by the Governor, that is consistent with section  
11 401.3, that meets the current and projected needs of the  
12 Commonwealth's citizens. The State health services plan shall  
13 contain, in part, the standards and criteria against which  
14 certificate of need applications are reviewed and upon which  
15 decisions are based.]

16 "Third party payor." A person who makes payments on behalf  
17 of patients under compulsion of law or contract who does not  
18 supply care or services as a health care provider or who is  
19 engaged in issuing any policy or contract of individual or group  
20 health insurance or hospital or medical service benefits. The  
21 term shall not include the Federal, State, or any local  
22 government unit, authority, or agency thereof or a health  
23 maintenance organization.

24 Section 201. Powers and duties of the department.

25 The Department of Health shall have the power and its duties  
26 shall be:

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

29 (2) To issue determinations of reviewability or  
30 nonreviewability of certificate of need proposals.

1           (2.1) To develop qualitative and quantitative standards  
2 and criteria for the review and approval of certificate of  
3 need applications.

4           (3) To issue certificates of need and amended  
5 certificates of need in accordance with the provisions of  
6 this act.

7           (4) To withdraw expired certificates of need.

8           (5) To require, pursuant to regulation, submission of  
9 periodic reports by providers of health services and other  
10 persons subject to review respecting the development of  
11 proposals subject to review.

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

21           (6.1) To develop a certificate of need exceptions  
22 process that permits exceptions to be granted to the  
23 standards and criteria in order to reflect local experience  
24 or ensure access or to respond to circumstances that pose a  
25 threat to public health and safety. The exceptions process  
26 shall begin only after the department issues a denial of a  
27 certificate of need application. Exceptions must be publicly  
28 disclosed. This paragraph shall create no right or  
29 entitlement to an exception.

30           (7) To collect and disseminate such other information as

1 may be appropriate to determine the appropriate level of  
2 facilities and services for the effective implementation of  
3 certification of need under this act. Where such information  
4 is collected by any other agency of State government,  
5 duplication shall be avoided by coordination of data  
6 collection activities[.], if the coordination does not  
7 otherwise unduly burden the State agencies.

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

11 (9) To receive, log and review all applications for  
12 certificates of need or amendments thereof and approve or  
13 disapprove the same.

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

19 (11) To adopt and promulgate regulations necessary to  
20 carry out the purposes and provisions of this act relating to  
21 certificate of need.

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

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

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

30 (15) To coordinate any data collection activities

1 necessary for administration of this act so as not to  
2 duplicate unnecessarily the data collection activities of  
3 other Federal and State agencies.

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

6 (17) To establish and transmit to the Legislative  
7 Reference Bureau for publication in the Pennsylvania Bulletin  
8 a detailed schedule of the review process for each  
9 certificate of need application submitted to the department.

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

11 The State health [services] improvement plan shall consist of  
12 at a minimum:

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

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

21 [(3) Qualitative and quantitative standards and criteria  
22 for the review of certificate of need applications by the  
23 department under this act.]

24 [(4) An exceptions process which permits exceptions to be  
25 granted to the standards and criteria in order to reflect  
26 local experience or ensure access or to respond to  
27 circumstances which pose a threat to public health and  
28 safety.]

29 Section 2. Section 602 of the act is reenacted to read:

30 Section 602. Regulations.

1 The department is hereby authorized and empowered pursuant to  
2 the provisions of this act to adopt rules and regulations  
3 establishing procedures required by this act for administration  
4 of certificate of need.

5 Section 3. Sections 603, 701, 702 and 703 of the act are  
6 reenacted and amended to read:

7 Section 603. Enforcement of orders relating to certificate of  
8 need.

9 (a) (1) No certificate of need shall be granted to any  
10 person for a health care facility or reviewable clinically  
11 related health service unless such facility or clinically  
12 related health service is found by the department and CON  
13 review board to be needed.

14 (2) No person shall offer or develop a health care  
15 facility or reviewable clinically related health service  
16 without obtaining a certificate of need as required by this  
17 act.

18 (3) No binding arrangement or commitment for financing  
19 the offering or development of a health care facility or  
20 reviewable clinically related health service shall be made by  
21 any person unless a certificate of need for such clinically  
22 related health service or facility has been granted in  
23 accordance with this act.

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

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

1 (d) Any person operating a reviewable clinically related  
2 health service or health care facility within this Commonwealth  
3 for which no certificate of need has been obtained, after  
4 service of a cease and desist order of the department, [or after  
5 expiration of the time for appeal of any final order on appeal,  
6 upon conviction thereof,] shall be [sentenced to pay] subject to  
7 a fine of not less than [ \$100 ] \$1,000 or more than [ \$1,000 ]  
8 \$10,000 and costs of [prosecution] enforcement. Each day of  
9 operating a clinically related health service or health care  
10 facility after issuance of a cease and desist order shall  
11 constitute a separate offense.

12 (e) Any person who violates this act by failing to obtain a  
13 certificate of need, by deviating from the provisions of the  
14 certificate, by beginning construction, by providing services,  
15 or by acquiring equipment after the expiration of a certificate  
16 of need shall be subject to a penalty of not less than [ \$100 ]  
17 \$1,000 per day and not more than [ \$1,000 ] \$10,000 per day. Each  
18 day of each such violation shall be considered a separate  
19 offense.

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

23 (g) No license to operate a health care facility or  
24 reviewable clinically related health service by any person in  
25 this Commonwealth shall be granted and any license issued shall  
26 be void and of no effect as to any facility, organization,  
27 service or part thereof for which a certificate of need is  
28 required by this act and not granted.

29 Section 701. Certificate of need required; clinically related  
30 health services subject to review.

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

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

15 (i) for a new high-cost technology or high-cost  
16 replacement technology in any health care facility,  
17 \$500,000;

18 (ii) for equipment or other facility improvements in  
19 an ambulatory surgical facility, or in an office where  
20 reviewable clinically related health care services are  
21 offered, whether a free-standing facility or office  
22 within a hospital, \$1,000,000; or

23 (iii) for any other hospital-based improvement,  
24 \$2,000,000.

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

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

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

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

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

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

20 (b) For the purposes of this act, an expenditure for the  
21 purpose of acquiring an existing health care facility [or  
22 replacement of equipment where there is no change in service  
23 shall not], including the replacement of equipment which is part  
24 of the acquisition even if there is no change in service, shall  
25 be considered to be a capital expenditure subject to review.  
26 Expenditures for nonclinical activities or services, such as  
27 parking garages, computer systems or refinancing of debt, and  
28 research projects involving premarket approval of new equipment  
29 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 and the CON review board  
8 within 30 days of the effective date of this act 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 and the CON review board as required under this  
12 subsection shall be no more extensive than those services  
13 reviewable on the effective date of this act. Criteria for  
14 inclusion of reviewable services shall include, but not be  
15 limited to:

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

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

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

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

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

29 (f) A facility providing treatment solely on the basis of  
30 prayer or spiritual means in accordance with the tenets of any

1 church or religious denomination or a facility conducted by a  
2 religious organization for the purpose of providing health care  
3 services exclusively to clergy or other persons in a religious  
4 profession who are members of the religious denomination  
5 conducting the facility shall not be considered to constitute a  
6 health service subject to review under this act.

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

15 Section 702. Certificates of need; notice of intent;  
16 application; issuance.

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

1 act.

2 (b) A person desiring to obtain or amend a certificate of  
3 need shall apply in writing to the department, supplying such  
4 information as is required by the department and the CON review  
5 board, including a cost impact analysis which shall include  
6 information on the construction cost of the facility, the  
7 estimated impact of the facility on health care prices and any  
8 other related information as specified by the department in  
9 regulations, and certifying that all data, information and  
10 statements are factual to the best of their knowledge,  
11 information and belief. The department and the CON review board  
12 shall have 60 days after receipt of the application within which  
13 to assess the application and in which to request specific  
14 further information. If further information is requested, the  
15 department and the CON review board shall complete its  
16 preliminary assessment of the application within 45 days of  
17 receipt of the same. No information shall be required that is  
18 not specified in the rules and regulations promulgated by the  
19 department.

20 (c) Timely notice of the beginning of review of the  
21 application by the department shall be published after  
22 preliminary assessment of the application is completed by the  
23 department and the CON review board. The "date of notification"  
24 of the beginning of review shall be the date such notice is  
25 sent, or the date such notice is published in the Pennsylvania  
26 Bulletin or in a newspaper of general circulation, whichever is  
27 latest.

28 (d) The department and the CON review board shall approve or  
29 disapprove the application within 90 days from the date of  
30 notification of the beginning of the review unless the period

1 for review is extended by the applicant in writing.

2 (e) (1) Certificates of need shall be granted or refused by  
3 the department. They shall not be conditioned upon the  
4 applicant changing other aspects of its facilities or  
5 services or requiring the applicant to meet other specified  
6 requirements, and no such condition shall be imposed by the  
7 department in granting or refusing approval of certificates  
8 of need.

9 (2) A certificate of need shall state the maximum amount  
10 of expenditures which may be obligated under it and  
11 applicants proceeding with an approved project may not exceed  
12 this level of expenditure except as allowed under the  
13 conditions and procedures established by the department  
14 through regulation.

15 (f) (1) The department and the CON review board shall make  
16 written findings which state the basis for any final decision  
17 made by the department. Such findings shall be served upon  
18 the applicant and provided to all persons expressing an  
19 interest in the proceedings and shall be made available to  
20 others upon written request.

21 (2) All decisions of the department and the CON review  
22 board shall be based solely on the record. No ex parte  
23 contact regarding the application between any employee of the  
24 department or the CON review board who exercises  
25 responsibilities respecting the application and the  
26 applicant, any person acting on behalf of the applicant or  
27 any person opposed to the issuance of the certificate of need  
28 shall occur after the commencement of a hearing on the  
29 application and before a decision is made by the department.

30 (g) Modification of the application at any stage of the

1 proceeding shall not extend the time limits provided by this act  
2 unless the department and the CON review board expressly [finds]  
3 find that the modification represents a substantial change in  
4 the character of the application.

5 (h) The responsibility of performing certificate of need  
6 review may not be delegated by the department and the CON review  
7 board. The department and the CON review board shall consider  
8 recommendations of [one or more community-based health services  
9 planning committees] the local review committees whose  
10 localities are affected by specific applications in reviewing  
11 the applications.

12 (i) The department and the CON review board may provide that  
13 categories of projects shall receive simultaneous and  
14 comparative review.

15 (j) Once the department and the CON review board have  
16 finished the initial review of an application and determined  
17 that the application shall be reviewed by a local review  
18 committee, the department and the CON review board shall notify  
19 the council in writing that a community review is pending and  
20 request analyses to assist the review process. The council shall  
21 offer its analyses to the department and the CON review board  
22 prior to the completion of the review process. The department  
23 and the CON review board shall share the analyses with the local  
24 review committee. If the council determines that it does not  
25 have the requisite data and information to provide analyses to  
26 the department and the CON review board, the council shall  
27 notify the department in writing. The department and the CON  
28 review board shall notify the local review committee about the  
29 council's determination. In carrying out its responsibilities,  
30 the council shall have the powers and duties of the council

1 enumerated by the act of July 8, 1986 (P.L.408, No.89), known as  
2 the "Health Care Cost Containment Act."  
3 Section 703. Notice and hearings before [health systems  
4 agencies] the department and CON review board.

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

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

1 arguments and relevant evidence. Any person directly affected  
2 may conduct reasonable questioning of persons who make relevant  
3 factual allegations. A record of the hearing shall be  
4 maintained.

5 Section 4. Sections 704 and 705 of the act are reenacted to  
6 read:

7 Section 704. Notice of public meetings.

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

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

1 the application to any interested person making a request for  
2 such application, at the expense of the interested person.

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

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

26 Section 705. Good cause.

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

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

30 (2) there is significant change in factors or

1 circumstances relied on in making the decision;

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

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

5 Section 5. Sections 706, 707 and 708.1 of the act are  
6 reenacted and amended to read:

7 Section 706. Information during review.

8 During the course of review the department and the CON review  
9 board shall upon request of any person set forth the status, any  
10 findings made in the proceeding and other appropriate  
11 information requested. The department and the CON review board  
12 may require such request in writing.

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

15 (a) An application for certificate of need shall be  
16 considered for approval when the department [**determines**] and the  
17 CON review board determine that the application substantially  
18 meets the requirements listed below:

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

21 (2) The proposed service or facility will provide care  
22 consistent with quality standards established by the [**State**  
23 **health services plan**] department.

24 (3) The proposed service or facility will meet the  
25 standards identified [**in the State health services plan**] by  
26 the department for access to care by medically underserved  
27 groups, including individuals eligible for medical assistance  
28 and persons without health insurance.

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

1           (i) There is not a more appropriate, less costly or  
2 more effective alternative method of providing the  
3 proposed services.

4           (ii) The service or facility is financially and  
5 economically feasible, considering anticipated volume of  
6 care and the availability of reasonable financing based  
7 on information from the applicant and other sources  
8 during the review process.

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

12           (iv) The proposed service or facility does not  
13 adversely impact the maintenance and development of rural  
14 and inner-city health services generally and, in  
15 particular, the services provided by health care  
16 providers that are based in rural and inner-city  
17 locations and have an established history of providing  
18 services to medically underserved populations.

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

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

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

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

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

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

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

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

26 (2) comply with State licensure standards; or

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

30 Section 708.1. Monitoring certificate of need; expiration of a

1 certificate of need.

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

14 Section 6. Section 709 of the act is reenacted to read:

15 Section 709. Emergencies.

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

21 Section 7. Sections 710, 711, 712, 808, 901 and 902.1 of the  
22 act are reenacted and amended to read:

23 Section 710. Notice of termination of services.

24 For informational purposes only, at least 30 days prior to  
25 termination or substantial reduction of a service or a permanent  
26 decrease in the bed complement, the provider shall notify the  
27 [health systems agency and the] department of its intended  
28 action.

29 Section 711. Review of activities.

30 (a) The department and the CON review board shall prepare

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

10 (b) The department's and the CON review board's report which  
11 shall be submitted to the members of the Health and Welfare  
12 Committees of the Senate and House of Representatives shall  
13 contain the following information:

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

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

19 (3) A detailed description of projects involving  
20 nontraditional or innovative service delivery methods or  
21 organizational arrangements and the decisions made on each of  
22 these projects.

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

24 (5) The fees collected for reviews and the cost of the  
25 program.

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

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

1 department may maintain any action in the name of the  
2 Commonwealth for an injunction or other process restraining or  
3 prohibiting such person from engaging in such activity.

4 Section 808. Issuance of license.

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

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

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

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

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

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

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

25 (b) Separate and limited licenses.--Separate licenses shall  
26 not be required for different services within a single health  
27 care facility except that home health care, home care, hospice  
28 or long-term nursing care will require separate licenses. A  
29 limited license, excluding from its terms a particular service  
30 or portion of a health care facility, may be issued under the

1 provisions of this act.

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

6 (d) Monitoring.--

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

12 (2) If the department finds that the facility or service  
13 is not meeting the standards in subsection (a), the  
14 department shall take disciplinary action pursuant to this  
15 act and regulations.

16 Section 901. Existing facilities and institutions.

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

23 (2) Nor shall a certificate of need be required for any  
24 new institutional health services for which an approval has  
25 been granted under section 1122 of the Social Security Act or  
26 for which an application is found pursuant to such section to  
27 be in conformity with the standards, criteria or plans to  
28 which such section refers, or as to which the Federal  
29 Secretary of Health and Human Services makes a finding that  
30 reimbursement shall be granted.[: Provided, however, That

1 such approval is in force on August 1, 1980 or such  
2 application shall have been filed prior to August 1, 1980 or  
3 the acceptance of applications for reviews under this act,  
4 whichever shall last occur.]

5 (b) A facility or institution in existence on the effective  
6 date of this section must obtain a certificate of need for  
7 projects outlined in section 701.

8 Section 902.1. Fees for review of certificate of need  
9 applications.

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

15 (b) For each application the department shall charge a fee,  
16 payable on submission of an application. The fee shall not be  
17 less than \$500 plus up to [~~\$3~~] \$10 per \$1,000 of proposed  
18 capital expenditure and shall not be more than [~~\$20,000~~]  
19 \$50,000.

20 (c) The department shall publish a fee schedule in the  
21 Pennsylvania Bulletin which shall explain the procedure for  
22 filing fees.

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

29 (e) Each local review committee may apply for up to \$10,000  
30 in funding from the department for administrative functions

1 associated with reviewing certificate of need proposals. Funding  
2 under this subsection shall be allocated from the Patient Safety  
3 Authority appropriation.

4 Section 8. Section 904.1 of the act is repealed:

5 [Section 904.1. Sunset.]

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

14 Section 9. This act shall take effect in 90 days.