

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2293 Session of  
1976

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JOHNSON, RIEGER, McINTYRE, SHELTON, SHUPNIK AND BARBER,  
APRIL 1, 1976

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 1, 1976

AN ACT

1 Relating to health care, prescribing the powers and duties of  
2 the Department of Health, establishing and providing the  
3 powers and duties of the Statewide Health Coordinating  
4 Council; providing for licensure, certification of need of  
5 health care providers; creating a Health Advocate; providing  
6 for uniform accounting and reporting; and prescribing  
7 penalties.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 ARTICLE I

11 PRELIMINARY PROVISIONS

12 Section 101. Short Title.--This act shall be known and may  
13 be cited as the "Comprehensive Health Care Act."

14 Section 102. Purposes.--The General Assembly finds as a fact  
15 that the continuously increasing cost of health care services  
16 threatens the health and welfare of citizens of the Commonwealth  
17 by impairing the ability of citizens to obtain high quality,  
18 economical and readily available health care. The General  
19 Assembly also finds that the health and welfare of Pennsylvania

1 citizens will be enhanced by the orderly and economical  
2 distribution of health care resources. To achieve such  
3 distribution of resources requires governmental intervention to  
4 insure the development and organization of a coordinated and  
5 comprehensive system of health care. The goal of such a system  
6 is to enhance the public health and welfare by insuring that  
7 needed health care is available to everyone at a fair and  
8 reasonable cost; that the health care delivery system is  
9 responsive and adequate to the needs of all citizens; that  
10 health care services and facilities are most efficiently and  
11 effectively used; that consumers have meaningful input regarding  
12 the delivery of care; that health care cost inflation is  
13 limited; that unnecessary duplication, fragmentation, and  
14 dehumanization of health care services and facilities are  
15 minimized; that health care services and facilities meet high  
16 quality standards; that relevant information on the cost and  
17 quality of health care is disclosed to the public to the maximum  
18 extent possible; and, that all citizens receive humane,  
19 courteous and dignified treatment. In developing such a  
20 coordinated and comprehensive health care system, it is the  
21 policy of the Commonwealth to foster responsible private  
22 operation and ownership of health care facilities, to encourage  
23 innovation and continuous development of improved methods of  
24 health care and to aid efficient and effective planning using  
25 local agencies.

26 Section 103. Definitions.--As used in this act:

27 "Act" means the Comprehensive Health Care Act.

28 "Consumer" means a natural person who uses or potentially  
29 will use the services of a provider of health care, provided,  
30 however, that the consumer is not any of the following: a

1 provider of health care; an administrator or employee of a  
2 provider of health care, an administrator, employee of a third  
3 party payor as defined in this act; a member of the governing  
4 board of a provider or a third party payor, unless serving on  
5 such board as a designated consumer representative; a person  
6 with a substantial financial interest in a provider, a third  
7 party payor or a major vendor of goods and services to providers  
8 or third party payors or a member of the healing arts.

9 "Council" means the Statewide Health Coordinating Council  
10 established pursuant to Title XV of the Federal Public Health  
11 Service Act.

12 "Department" means the Department of Health.

13 "Health care facility" means a general, tuberculosis, mental,  
14 chronic disease or other type of hospital, except a Federal  
15 facility; an ambulatory surgical center; a physical  
16 rehabilitation facility; a skilled or intermediate care nursing  
17 facility; a radiology laboratory; a renal dialysis center; a  
18 diagnostic center or; a home health care agency; regardless of  
19 whether such health care facility is nonprofit, for profit or  
20 governmental; but not an office used exclusively for the private  
21 practice of the healing arts or a program which renders  
22 treatment or care for drug or alcohol abuse or dependence unless  
23 located within a health care facility or a facility providing  
24 treatment solely on the basis of prayer or spiritual means. A  
25 State mental hospital or mental retardation facility is not a  
26 health care facility except to the extent that it provides  
27 intensive inpatient psychiatric care, skilled nursing care or  
28 intermediate nursing care.

29 "Health care provider" means a person who operates a health  
30 care facility.

1 "Local agency" means any area-wide comprehensive health  
2 planning agency qualified under Federal Pub.L. 89-749 or a  
3 health service agency qualified under Title XV of the Federal  
4 Public Health Service Act.

5 "Person" means a natural person, corporation, partnership,  
6 association, the Commonwealth and any local governmental unit,  
7 authority and agency thereof.

8 "Secretary" means the Secretary of the Department of Health  
9 of the Commonwealth of Pennsylvania.

10 "Third party payor" means:

11 (1) any stock or mutual insurance company, association  
12 or exchange issuing or servicing any hospitalization,  
13 accident and health, or major medical insurance policy;

14 (2) any hospital plan corporation, as defined in 40  
15 Pa.C.S. § 6101 (relating to definitions);

16 (3) any professional health service corporation, as  
17 defined in 40 Pa.C.S. § 6101;

18 (4) the Commonwealth, with respect to payments made to  
19 health care providers pursuant to Title XIX of the Federal  
20 Social Security Act; or

21 (5) any person, partnership, corporation, joint venture  
22 or other association which administers the provision of  
23 health care services on a prepaid basis; or which administers  
24 reimbursements for the provision of health care services  
25 delivered by any health care provider or health care facility  
26 subject to the provisions of this act.

## 27 ARTICLE II

### 28 POWERS AND DUTIES OF THE DEPARTMENT

29 Section 201. Powers and Duties of the Department.--The  
30 department shall have the power and its duties shall be:

1           (1) To serve as the State Health Planning and  
2           Development Agency in accordance with Title XV of the Federal  
3           Public Health Service Act and to serve as the designated  
4           planning agency in accordance with the provisions of section  
5           1122 of the Federal Social Security Act.

6           (2) To issue, renew and amend certificates of need  
7           whenever it finds that the applicants qualify therefor under  
8           the provisions of this act.

9           (3) To designate the local agency for purposes of  
10          certification of need and to contract with such agencies for  
11          reimbursement by the department for conducting such  
12          certification.

13          (4) To issue licenses to health care providers qualified  
14          under the provisions of this act and to renew, suspend, and  
15          revoke licenses.

16          (5) To adopt after consultation with the council  
17          regulations reasonably related to licensure and certification  
18          of need and to grant waivers therefrom when found to be in  
19          the public interest and consistent with the purposes of this  
20          act. No waiver shall be granted without an administrative  
21          hearing held after at least 30 days notice published in the  
22          Pennsylvania Bulletin.

23          (6) To publish annually a report on the regulation of  
24          health care facilities in Pennsylvania.

25          (7) To conduct either directly or by contracting with  
26          other qualified and experienced persons, inspections,  
27          investigations, audits, inquiries and hearings on matters  
28          relating to health care facilities or services and such  
29          related matters as may be necessary to carry out the purposes  
30          and provisions of this act.

1           (8) To research and prepare annually a preliminary State  
2 health plan for Pennsylvania and publish a State health plan  
3 for Pennsylvania after its adoption by the council.

4           (9) With respect to health care facilities to  
5 investigate, and report to the Auditor General, upon every  
6 application to the Auditor General made by any institution,  
7 corporation, or unincorporated association, desiring to give  
8 a mortgage under the provisions of the act of April 29, 1915  
9 (P.L.201, No.112), entitled "An act making mortgages, given  
10 by benevolent, charitable, philanthropic, educational, and  
11 eleemosynary institutions, corporations, or unincorporated  
12 associations, for permanent improvements and refunding  
13 purposes, prior liens to the liens of the Commonwealth for  
14 the appropriation of moneys; providing a method for the  
15 giving of such mortgages, and fixing the duties of the  
16 Auditor General and Board of Public Charities in connection  
17 therewith."

18          (10) To furnish such staff support and expertise to the  
19 council as may be needed by it to perform its  
20 responsibilities.

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

26          (12) To furnish consultation and advice to health care  
27 providers relating to financial planning and the securing of  
28 capital funds for the purchase, acquisition or construction  
29 of health care facilities.

30          (13) To set reasonable fees to be paid by providers in

1 connection with applications, renewals, filings and petitions  
2 authorized by the act.

3 (14) To adopt after consultation with the council rules  
4 and regulations reasonably related to uniform systems of  
5 accounting and reporting and rules and regulations reasonably  
6 related to disclosure of the contracts or other financial  
7 arrangements between hospital providers and hospital based  
8 medical specialists in accordance with section 607.

9 (15) To adopt other regulations after consultation with  
10 the council reasonably necessary to carry out the purposes  
11 and provisions of this act.

12 (16) With the approval of the Governor to act as the  
13 sole agency of the State when applying for, receiving and  
14 using Federal funds for the financing in whole or in part  
15 programs in fields in which the department has  
16 responsibility.

17 (17) To implement a system of monitoring and evaluation  
18 by the department of the efficiency and effectiveness of its  
19 own operations and to report the results annually to the  
20 Governor, and the General Assembly.

21 (18) To enforce the rules and regulations adopted by the  
22 department.

23 (19) To hold formal hearings in accordance with the act  
24 of June 4, 1945 (P.L.1388, No.442), known as the  
25 "Administrative Agency Law," and informal hearings,  
26 conferences and other oral proceedings and receive written  
27 comments, sworn affidavits and other writings on matters for  
28 decision by the department.

29 (20) To exercise all other powers which are reasonably  
30 related to the effective implementation of this act.

1 Section 202. Promulgation of Rules and Regulations.--(a) The  
2 rules and regulations under this act shall be promulgated by the  
3 department under the provisions of the act of July 31, 1968  
4 (P.L.769, No.240), known as the "Commonwealth Documents Law."

5 (b) A brief statement and discussion of the major issues  
6 shall accompany publication of proposed regulations and  
7 subsequent changes in the Pennsylvania Bulletin, but such  
8 statement shall not have the effect of law.

9 Section 203. Opportunity to be Heard.--(a) Opportunity to be  
10 heard may be granted by means of formal or informal hearings,  
11 conferences or other oral proceedings or by written comments,  
12 sworn affidavits or other writings on matters for decision by  
13 the department as may be deemed necessary by the department to  
14 make fair and informed decisions.

15 (b) Departmental hearings or other oral proceedings may be  
16 conducted by such persons as the secretary may designate,  
17 provided that no determination or order of the department shall  
18 become effective until approved and confirmed by the secretary  
19 or such representatives as he may designate in writing and  
20 publish such designation in the Pennsylvania Bulletin.

21 (c) Persons conducting proceedings under this act shall have  
22 the power to subpoena witnesses, to administer oaths and examine  
23 witnesses and receive evidence in any locality which the  
24 department, having regard to the public convenience and proper  
25 discharge of its functions and duties, may designate.

26 (d) Formal hearings shall be conducted in accordance with  
27 the act of June 4, 1945 (P.L.1388, No.442), known as the  
28 "Administrative Agency Law."

29 Section 204. Enforcement of Orders.--Orders of the  
30 department from which the time for appeal has expired may be



1 enforced by the department in the court of common pleas of the  
2 county in which the health care facility is located or in the  
3 Commonwealth Court.

4 Section 205. Investigations and Inquiries.--Any  
5 investigation or inquiry authorized by this act shall be limited  
6 to the purposes set forth in the departmental order, rule or  
7 regulation authorizing the same.

8 Section 206. Appeals.--The appeal from any action of the  
9 department shall be to the Commonwealth Court.

10 Section 207. Delegation of Administrative Responsibility.--  
11 The secretary with the approval of the Executive Board may  
12 delegate administrative responsibility for all or certain  
13 provisions of the act to one or more deputy secretaries in the  
14 department. The powers and duties conferred by the act on the  
15 secretary or department may, unless otherwise indicated, be  
16 exercised with equal force and effect by such deputy or  
17 deputies.

18 Section 208. Approval of Certain Contracts.--The provisions  
19 of contracts between a hospital plan corporation or a  
20 professional health service corporation and a health care  
21 facility shall be subject to the approval of the department:  
22 Provided, however, That the Insurance Commissioner shall retain  
23 the sole power and authority to approve or disapprove premium  
24 rates and rate structures of hospital plan corporations and  
25 professional health service corporations.

### 26 ARTICLE III

#### 27 STATEWIDE HEALTH COORDINATING COUNCIL AND

#### 28 THE HEALTH ADVOCATE

29 Section 301. Statewide Health Coordinating Council.--(a) The  
30 Statewide Health Coordinating Council shall be constituted and

1 have all those powers and perform those duties set forth in  
2 Title XV of the Federal Public Health Service Act.

3 (b) The council may advise the department with regard to the  
4 department's rules and regulations relating to licensure,  
5 certificate of need, uniform systems of accounting and reporting  
6 and disclosure of contracts or other financial arrangements  
7 between hospital providers and hospital based medical  
8 specialists as well as other regulations reasonably necessary to  
9 carry out the purposes and provisions of this act.

10 (c) The council may periodically review the provisions of  
11 Federal and State law and regulations as well as State practices  
12 relating to certification of need and advise the secretary  
13 concerning its administration in the Commonwealth.

14 Section 302. Council; Compensation; Expenses.--Each member  
15 of the council shall be paid traveling and other necessary  
16 expenses, and compensation at a rate to be determined by the  
17 Executive Board. The council may appoint such committees or  
18 advisory groups as it deems necessary to advise and assist it in  
19 its activities.

20 Section 303. Health Advocate.--(a) There is hereby created  
21 the Health Advocate to represent the interests of users and  
22 potential users of health care services in the Commonwealth.

23 (b) The Health Advocate shall be appointed by the Governor  
24 for a term of four years to run concurrently with the  
25 gubernatorial term. The compensation shall be set by the  
26 Executive Board. The Health Advocate shall possess the  
27 background, independence and judgment required to represent  
28 responsibly the interests of consumers of health care services.

29 (c) The Health Advocate shall have authority to employ  
30 professional and clerical staff and define their duties as may

1 be necessary to carry out the powers and responsibilities  
2 imposed by this act. The salaries of the professional and  
3 clerical staff shall be set by the Executive Board. For  
4 administrative purposes the office of the Health Advocate shall  
5 be under the jurisdiction of the Governor's Office.

6 Section 304. Powers and Duties of Health Advocate.--The  
7 Health Advocate shall have the power upon petition of consumers  
8 or on his own motion:

9 (1) to initiate formal or participate in formal or  
10 informal proceedings regarding any matter of the department;

11 (2) to participate in or, upon the exhaustion of  
12 administrative remedies, initiate litigation on behalf of  
13 consumers regarding health care or health related matters;

14 (3) to hold public hearings from time to time in various  
15 parts of the Commonwealth to solicit consumer views;

16 (4) to examine any relevant information and records in  
17 the possession of any Commonwealth department, board,  
18 commission or instrumentality: Provided, That no confidential  
19 information is disclosed or utilized in violation of law; and

20 (5) to publicize issues relating to matters of health  
21 care.

22 Section 305. Annual Report.--The Health Advocate shall issue  
23 an annual report to the public on the activities of the Health  
24 Advocate's office, including the types of complaints received,  
25 the results achieved pursuant to such complaints, and continuing  
26 problems.

## 27 ARTICLE IV

## 28 LICENSURE

29 Section 401. Licensure.--(a) No person shall establish,  
30 maintain or operate a health care facility without first having

1 obtained a license therefor issued by the department. No license  
2 shall be issued to any health care facility subject to the  
3 provisions of Article V of this act unless it has a valid  
4 certificate of need authorizing the use of the facility and the  
5 rendering of the services for which the license is to be issued.  
6 No health care facility can be a provider of medical assistance  
7 services funded by the Commonwealth pursuant to Article IV of  
8 the act of June 13, 1967 (P.L.31, No.21) known as the "Public  
9 Welfare Code," unless it is licensed by the department and  
10 certified by the department to the Department of Public Welfare  
11 as a certified medical assistance provider.

12 (b) In developing rules and regulations for licensure the  
13 department shall take into consideration the standards of the  
14 Joint Commission on Accreditation of Hospitals, the Committee on  
15 Hospital Accreditation of the American Osteopathic Association  
16 and such other accrediting bodies as the department may find  
17 appropriate.

18 Section 402. Application for License.--Any person desiring  
19 to secure a license for conducting, maintaining and operating a  
20 health care facility shall submit an application therefor to the  
21 department upon forms prepared and furnished by it, containing  
22 such information as the department considers necessary to  
23 determine that the health care provider and the health care  
24 facility meet the requirements of licensure under the provisions  
25 of this act and the rules and regulations relating to licensure.  
26 Application for renewal of a license shall be made upon forms  
27 prepared and furnished by the department and shall contain such  
28 information as may be necessary to determine whether the license  
29 should be renewed.

30 Section 403. Issuance of License.--(a) A health care

1 provider, making application, shall be issued a license when the  
2 following standards have been met:

3 (1) that there is compliance with Article V, relating to  
4 certificate of need, if applicable; and

5 (2) that there is a compliance with the rules and  
6 regulations pertaining to licensure adopted by the department  
7 to carry out the purposes and provisions of the act.

8 (b) When a health care provider operates more than one  
9 health care facility, each health care facility providing  
10 services to a different segment of the population and operating  
11 in autonomous or semi-autonomous fashion with respect to other  
12 facilities operated by the same provider shall require a  
13 separate license.

14 Section 404. Provisional License.--When there are numerous  
15 deficiencies or a serious specific deficiency in compliance with  
16 applicable statutes, ordinances or regulations, and when the  
17 department finds the applicant is taking appropriate steps to  
18 correct the deficiencies in accordance with a timetable agreed  
19 upon by the department, the department may issue a provisional  
20 license for a specified period of not more than six months which  
21 may be renewed three times at the discretion of the department.  
22 Upon overall compliance, a regular license shall be issued  
23 immediately.

24 Section 405. Issuance of a Modified License.--When the  
25 certificate of need for a facility is amended as to services  
26 which can be offered, the department shall issue a modified  
27 license for those services contained in the amended certificate  
28 of need upon demonstration of compliance with licensure  
29 requirements.

30 Section 406. Term and Content of License.--(a) All licenses

1 issued by the department under this act shall:

2 (1) expire unless renewed one year from the day on which  
3 issued, except for a provisional or modified license;

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

5 (3) not be transferable except upon prior written  
6 approval of the department;

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

10 (5) specify the maximum number of beds, if any, to be  
11 used for the care of patients in the facility at any one  
12 time.

13 (b) The license shall at all times be posted in a  
14 conspicuous place on the provider's premises. Except in case of  
15 extreme emergency, no licensee shall permit the use of beds for  
16 inpatient use in the licensed facility in excess of the maximum  
17 number set forth in the license without first obtaining written  
18 permission from the department. The department may grant  
19 temporary use of beds without a certificate of need.

20 (c) The department by regulation shall require reasonable  
21 public notice of a hospital or nursing home provider's  
22 application for license renewal and the Health Advocate or any  
23 person interested as a consumer, provider or third party payor  
24 may file objections within 30 days with the department setting  
25 forth specifically the reasons therefor.

26 (d) Whenever possible, the department shall make its  
27 visitations and other review necessary for licensure  
28 contemporaneously with similar visitations and other reviews  
29 necessary for provider certification in the medical assistance  
30 program and the department shall take all steps possible to

1 avoid duplication of effort by the department and providers in  
2 the certificate of need, medical assistance provider  
3 certification and licensure procedures.

4 Section 407. Right to Enter and Inspect.--For the purpose of  
5 determining the suitability of the applicants, the premises and  
6 the operations or the continuing conformity of the licensees to  
7 this act and to applicable State and Federal regulations, any  
8 authorized agent of the department shall, upon proper  
9 identification made to the individual in charge of the health  
10 care facility, have the right to enter, visit and inspect any  
11 provider licensed or requiring a license under this act and  
12 shall have full and free access to the records of the facility  
13 reasonably related to its purpose, to the patients and employees  
14 therein, and shall have full opportunity to interview the  
15 patients and employees, giving due regard to protection of the  
16 health and sanitary conditions, confidentiality of medical  
17 information and the patients' rights to protection against  
18 violation of their privacy involved in any such interview. No  
19 inspection made hereunder shall unduly interfere with the  
20 operation of the facility. The inspection result and any  
21 violations cited by the department shall be made public by the  
22 department within a reasonable time after they have been  
23 furnished the applicant or licensee.

24 Section 408. Refusal to Issue License; Suspension;  
25 Revocation; Notice.--(a) Whenever the department, upon  
26 reasonable complaint of any person and/or in the course of any  
27 inspection or investigation of a licensed health care facility  
28 shall learn of any violation of this act or of rules or  
29 regulations relating to licensure adopted pursuant to this act,  
30 or to Federal laws or regulations, it shall give written notice

1   thereof to the health care provider. Such notice shall require  
2   the health care provider to take specific action to bring the  
3   health care facility into compliance with this act and the rules  
4   and regulations relating to licensure within a reasonable  
5   specified time.

6       (b)   The department may refuse to renew a license or may  
7   revoke a license as to all or portions of a health care facility  
8   for any of the following reasons:

9           (1)   substantial, numerous or continuing violations of  
10   provisions of this act or of the regulations for licensure  
11   issued pursuant to this act or to Federal laws or  
12   regulations;

13          (2)   fraud or deceit in obtaining or attempting to obtain  
14   a license;

15          (3)   lending, borrowing or using the license of another,  
16   or in any way knowingly aiding or abetting the improper  
17   granting of a license;

18          (4)   substantial or continued incompetence, negligence or  
19   misconduct in operating the health care facility or in  
20   providing services to patients;

21          (5)   mistreating or abusing individuals cared for by the  
22   health care facility; or

23          (6)   the operation of a health care facility or rendering  
24   of services or making of a capital expenditure for which a  
25   certificate of need is required under this act by a health  
26   care provider who has not obtained the requisite certificate,  
27   even though the change in services or expenditure would not  
28   have required a modification of the license of the health  
29   care facility.

30       (c)   If the department, after examination of the application



1 for a license or the renewal of a license or upon complaint and  
2 after such investigation as it may deem advisable, determines  
3 that there are apparent reasons for refusal of the license or a  
4 renewal as to all or a portion of the health care facility, it  
5 shall give written notice to the applicant specifying the  
6 reasons for its determination. Within 30 days of such notice,  
7 the applicant may demand a hearing which the department shall  
8 promptly provide to determine whether the license or renewal  
9 should be issued. The department may suspend or revoke a  
10 license, after due notice to the licensee of the specified  
11 charges, and a right to a hearing thereon and the department  
12 shall do so immediately in cases of imminent danger to health or  
13 safety of patients. Nothing herein contained shall impair any  
14 other enforcement powers of the department.

15 (d) Affected consumers, providers or third party payors and  
16 the Health Advocate may participate as an intervenor in  
17 administrative hearings held pursuant to this section. Where  
18 appropriate, intervening parties may be considered as  
19 representatives of a class or classes of intervenors.

20 Section 409. Appeal to Commonwealth Court.--(a) If the  
21 department shall refuse a license or renewal thereof or suspend  
22 or revoke a license, as to all or part of a facility the  
23 applicant or licensee shall be entitled to appeal to the  
24 Commonwealth Court from the adjudication of the department.  
25 Except in cases of imminent danger to health or safety of  
26 patients, no order of the department which is appealed which  
27 terminates the right of any person to operate a health care  
28 facility already licensed shall be effective unless the  
29 department obtains from the Commonwealth Court a decision  
30 approving the enforcement of such order or the provider fails to

1 perfect an appeal to Commonwealth Court within 30 days. Any  
2 license previously issued shall be deemed to continue in effect  
3 pending appeal notwithstanding the expiration of its term unless  
4 otherwise determined by Commonwealth Court.

5 (b) Orders of the department revoking or suspending a  
6 license shall likewise revoke or suspend certification of the  
7 facility as a medical assistance provider and no medical  
8 assistance payment shall be made during the pendency of an  
9 appeal for the period of revocation or suspension without an  
10 order of supersedeas.

11 Section 410. Actions Against Unlicensed Health Care  
12 Providers.--Whenever a license is required by this act for the  
13 establishment, operating or conduct of a health care facility,  
14 the department may maintain an action in the name of the  
15 Commonwealth for an injunction or other process restraining or  
16 prohibiting any person from establishing, conducting or  
17 operating any unlicensed health care facility.

18 Section 411. Actions Against Violations of Law, Rules and  
19 Regulations.--(a) Whenever any person, regardless of whether  
20 such person is a licensee, has violated any of the provisions of  
21 this act or the regulations issued pursuant thereto, the  
22 department may maintain an action in the name of the  
23 Commonwealth for an injunction or other process restraining or  
24 prohibiting such person from engaging in such activity.

25 (b) Any person, regardless of whether such person is a  
26 licensee, who has committed a violation of any of the provisions  
27 of this act or of rules and regulations issued pursuant thereto  
28 shall upon conviction thereof in a summary proceeding be  
29 sentenced to pay a fine of not more than \$300, and costs of  
30 prosecution and/or to undergo imprisonment for not more than ten

1 days: Provided, however, That the department may accept a civil  
2 forfeiture in settlement of an action. Each day the violation  
3 continues shall constitute a separate offense.

4 Section 412. Injunction or Restraining Order When Appeal is  
5 Pending.--Whenever the department shall have refused to grant or  
6 renew a license, or shall have suspended or revoked a license  
7 required by this act to operate or conduct a health care  
8 facility, or shall have ordered the person to refrain from  
9 conduct violating the rules and regulations of the department  
10 and the person deeming himself aggrieved by such refusal or  
11 suspension or revocation or order shall have appealed from the  
12 action of the department, the Commonwealth Court may, during  
13 pendency of such appeal, issue a restraining order or injunction  
14 upon a showing that the continued operation of the health care  
15 facility adversely affects the well-being, safety or interest of  
16 the patients of the health care facility, or the court may  
17 authorize continued operation of the facility or make such other  
18 order pending final disposition of the case as justice and  
19 equity require.

20 Section 413. Injunction or Restraining Order When No Appeal  
21 is Pending.--Should a person, who is refused a license or the  
22 renewal of a license to operate or conduct a health care  
23 facility, or whose license to operate or conduct a health care  
24 facility is suspended or revoked, fail to appeal or should such  
25 appeal be decided finally favorably to the department, then the  
26 court shall issue a permanent injunction upon proof that the  
27 person is operating or conducting a health care facility without  
28 a license as required by this act.

29 Section 414. Remedies Supplementary.--The provisions of this  
30 article are supplementary to any other legal rights created in

1 this act or any other act available for the enforcement of  
2 provisions of this act and rules and regulations promulgated  
3 thereunder.

4 ARTICLE V

5 CERTIFICATE OF NEED

6 Section 501. Health Care Facilities Subject to Article V.--  
7 This article shall apply only to the following classes of health  
8 care facilities:

9 (1) a general tuberculosis, mental, chronic disease or  
10 other type of hospital;

11 (2) a skilled or intermediate care nursing facility  
12 unless conducted by a religious organization for the purpose  
13 of providing care exclusively to clergymen or other persons  
14 in a religious profession who are members of a religious  
15 denomination;

16 (3) a home health care agency;

17 (4) a renal dialysis center; or

18 (5) radiology laboratory.

19 Section 502. Certificate of Need Requisite for Licensure.--  
20 No license or renewal thereof to provide health care services  
21 shall be issued to a health care facility subject to the  
22 provisions of this article, unless the applicant has a valid  
23 certificate of need issued by the department authorizing the use  
24 of the facility and the rendering of the services for which the  
25 license is to be issued.

26 Section 503. Certificate of Need; When Required.--(a) No  
27 person shall operate, lease or enter into a land lease or  
28 construct or enter into a contract to construct a health care  
29 facility subject to the provisions of this article without first  
30 obtaining a certificate of need from the department, authorizing

1 such operation, lease or construction.

2 (b) No person operating an existing health care facility  
3 under a certificate of need shall make expenditures toward any  
4 project which will involve a total capital project cost  
5 including the fair market value of any leased property in excess  
6 of \$100,000 in which he will:

7 (1) lease, erect, construct, alter, modernize or improve  
8 any building; or

9 (2) acquire any real property to be used now or in the  
10 future for health care purposes except by gift, devise or  
11 option; or

12 (3) lease or acquire equipment.

13 No person shall make a substantial change in services, as  
14 defined by the department, or permanently increase or decrease  
15 the bed complement beyond limits set by the department unless  
16 such person has first been authorized to do so by the department  
17 through the issuance of a new or amended certificate of need. A  
18 health care provider or local agency may request a ruling from  
19 the department regarding the necessity of obtaining a  
20 certificate of need for a proposed change. The department shall  
21 make such ruling in 30 days and publish said ruling as a notice  
22 in the Pennsylvania Bulletin.

23 (c) At least 30 days prior to substantial reduction of a  
24 service or a permanent decrease in the bed complement, the  
25 provider shall notify the local agency and the department of its  
26 intended action. If the local agency does not notify the  
27 provider of its objection within 30 days, the provider may make  
28 the specified change and an amended certificate of need will be  
29 issued automatically. If the local agency does notify the  
30 provider of its objections within 30 days, the procedures of

1 section 504 shall apply.

2 Section 504. Certificates of Need; Application; Issuance.--

3 (a) A person desiring to obtain, renew or amend a certificate of  
4 need shall apply by sending a letter of intent to the  
5 department, which will then direct such person and the local  
6 agency in the manner to proceed. Said person shall supply such  
7 information as is required by rules and regulations of the  
8 department. A copy of the application shall be given  
9 simultaneously to the department and the local agency. The local  
10 agency's recommendations or objections shall be forwarded to the  
11 department and considered by the council if filed with the  
12 department within 60 days of the date the applicant submitted  
13 the completed application to the local agency. Council  
14 recommendations or objections, if any, shall be filed with the  
15 department within 60 days of the receipt of a copy of the  
16 application by the department or within 15 days of the timely  
17 filing of the local agency's recommendations or objections  
18 whichever shall last occur. The department shall consider  
19 recommendations or objections of the council or local agency  
20 unless they are not timely filed with the department. If not  
21 timely filed, the department shall act upon the application  
22 without the recommendations or objections. Failure of the local  
23 agency to timely file recommendations or objections shall not  
24 have the effect of a positive determination and the department  
25 may extend the review period by 30 days in order to provide  
26 adequate time for study and review of the proposal by the  
27 department in the absence of such recommendations or objections.  
28 Whenever objections are timely filed, the department shall  
29 promptly set a date for a hearing on the application. The  
30 department may on its own motion or at the request of any person

1 hold a hearing on any application. If the department intends to  
2 deny an application, the applicant has the right to a formal  
3 hearing in accordance with the act of June 4, 1945 (P.L.1388,  
4 No.442), known as the "Administrative Agency Law". The findings,  
5 conclusions and recommendations of the hearing officer shall be  
6 certified to the secretary.

7 (b) The department shall act upon the application within 30  
8 days of the recommendation of the local agency or of the  
9 council, whichever shall last occur, but in no event later than  
10 90 days from receipt of a completed application by granting,  
11 amending, remanding or refusing the requested certificate of  
12 need or by conducting a hearing on the application. Notice of  
13 filing applications for certificates of need or amendments or  
14 renewals thereof under subsection (a) shall be published in the  
15 Pennsylvania Bulletin and shall be provided to the appropriate  
16 news media serving the area in which the proposed project will  
17 be located. The Health Advocate or any person interested as a  
18 consumer, provider or third party payor may file objections  
19 within 30 days of publication with the department setting forth  
20 specifically the reasons therefor.

21 (c) The department shall develop by regulation, with the  
22 advice of the council, general principles that must be employed  
23 by the local agencies and the department in the determination of  
24 certificate of need applications. The principles must provide  
25 for, but need not be limited to, the following considerations:

26 (1) The need for health care services in the area and  
27 the requirements of the population to be served by the  
28 applicant.

29 (2) The availability and adequacy of health care  
30 services in the area's existing facilities.

1           (3) The availability and adequacy of other services in  
2 the area which may serve as alternatives or substitutes for  
3 the whole or any part of the services to be provided by the  
4 proposed facility.

5           (4) The possible economies and improvement in services  
6 that may be derived from operation of joint, cooperative, or  
7 shared health care resources.

8           (5) The development of comprehensive services for the  
9 community to be served, whether directly or indirectly, such  
10 as by affiliation.

11           (6) Management and financial capabilities of the  
12 applicant and the likelihood of fulfilling licensure  
13 requirements based on available information, which shall  
14 include the history of compliance with licensure standards in  
15 other health care facilities operated by the applicant.

16           (7) Innovation in the delivery of health care services.

17           (8) The interests of a defined cultural, religious, or  
18 ethnic minority in receiving care, particularly long term  
19 care, in an atmosphere reflective of that cultural,  
20 religious, or ethnic heritage.

21           (9) The legitimate interests of an underserved section  
22 of a larger community or region that may have sufficient  
23 health care resources when viewed as a whole.

24           (10) The need for a facility of services of a nature  
25 that will serve patients from an area larger than the  
26 immediate community in which it is located.

27           (11) The economy of scale of the individual provider and  
28 the benefits in regard to costs and quality that the proposed  
29 changes would have upon an applicant who is an existing  
30 provider.



(12) The differences in the nature of care or modality of treatment in proposed applications from existing resources which may hold the same license category.

(d) The regulations issued by the department shall further provide for approval of a certificate of need when the department finds that the proposed alterations, modernizations, improvements or acquisition of equipment are required under a Federal or State law, rule, regulation or order.

(e) In evaluating a certificate of need application, the department may rely upon a formula-based estimation of need, as contained in the then current State Health Plan, adopted by the council as presumptive evidence of the community need for the proposal under subsection (c). The applicant, the Health Advocate or other interested parties may offer evidence to demonstrate that the need is higher or lower than the estimate in the State Health Plan. In making its final determination on whether a proposal promotes the public interest, the department shall weigh, balance and consider the complexities of each case in light of the State Health Plan and its descriptive and quantitative criteria and in light of all the principles for determining need set forth by the department.

(f) Approval of a certificate of need shall terminate 12 months after the date of such approval unless the applicant has commenced implementation of the project and is diligently pursuing the same to completion as determined by the department. The department may extend an approval for up to an additional 12 months for good cause shown.

Section 505. Renewal of Certificate of Need.--(a) Periodic renewal of a certificate of need shall only be required of those health care facilities described in section 501(1).

1 (b) For those health care facilities requiring periodic  
2 renewal, a certificate of need shall remain effective for a  
3 period of at least three but no more than six years, as  
4 determined by the department, providing the facilities and  
5 services authorized remain in use.

6 (c) Any application for renewal for a certificate of need  
7 for all or part of a health care facility shall be granted  
8 unless the department finds, upon recommendation by the local  
9 agency, that such facility or part thereof no longer meets the  
10 standards for issuance of a certificate of need and that the  
11 public interest would be better served by nonrenewal. The  
12 department shall also take into consideration when a transfer of  
13 a service or services to another facility will better serve the  
14 interests of the community and will provide more efficient  
15 utilization of health care services.

16 In cases where nonrenewal is contemplated, the local agency  
17 and the department shall seek in cooperation with the provider  
18 to determine and implement a satisfactory alternative use for  
19 the facility.

20 (d) The local agency shall have the burden of proving to the  
21 department that a certificate of need should not be renewed.  
22 Procedures for review of an application for renewal, when  
23 challenged, shall be in accordance with section 504. The health  
24 care facility whose application for renewal of a certificate of  
25 need is being challenged has the right to a hearing before the  
26 local agency and before the department.

27 (e) No application for renewal of a certificate of need for  
28 all or part of a health care facility shall be denied when such  
29 denial would make it impossible for the health care facility to  
30 amortize or retire outstanding capital debt, taking into account

1 rate adjustments acceptable to the department and any proceeds  
2 from liquidation: Provided, That such debt was incurred prior to  
3 the enactment of this act, or if such debt was incurred or  
4 refinanced after enactment of this act, the incurrence or  
5 refinancing thereof was approved by the department in accordance  
6 with the procedures established in section 504.

7 ARTICLE VI

8 UNIFORM ACCOUNTING AND REPORTING

9 Section 601. Health Care Facilities Subject to Article VI.--  
10 This article shall apply only to the following classes of health  
11 care facilities:

12 (1) a general, tuberculosis, mental, chronic disease or  
13 other type of hospital; and

14 (2) a skilled or intermediate care nursing facility,  
15 unless conducted by a religious organization for the purpose  
16 of providing care exclusively to clergymen or other persons  
17 in a religious profession who are members of a religious  
18 denomination.

19 Section 602. Uniform Financial Reporting.--(a) The  
20 department shall by rule, after consultation with the council  
21 and public hearings, prescribe a uniform system of financial  
22 reporting for health care providers, specifying the information  
23 to be reported and the manner of its reporting. It shall  
24 include:

25 (1) a balance sheet detailing all assets, liabilities  
26 and the net worth of the institution;

27 (2) a statement of income and expenses for the fiscal  
28 year; and

29 (3) such other reports as the department may prescribe.

30 (b) Every health care provider shall file with the

1 department the required financial reports on forms provided by  
2 the department and at specified intervals but at least annually.

3 (c) The department shall require the filing of all reports  
4 by specified dates, and may in addition to other remedies adopt  
5 regulations which assess reasonable late filing fees for failure  
6 to file as required.

7 Section 603. Uniform System of Accounting.--(a) The  
8 department shall by rule, after consultation and public  
9 hearings, prescribe a uniform system of accounting for health  
10 care providers. It shall specify accounting procedures to be  
11 applied in connection with budgets, schedules of income and  
12 expenses, assets and liabilities, allocation of costs, units of  
13 service and such subjects as the department finds appropriate.

14 (b) Every provider shall maintain a set of accounts in  
15 accordance with the accounting system prescribed by the  
16 department beginning at a time determined by the department but  
17 no later than two years from enactment of the act. A provider  
18 may maintain another set of accounts for its own internal  
19 management purposes. Accounting forms will be developed and  
20 distributed by the department.

21 (c) The department shall take into consideration the  
22 principles of accounting established by the American Institute  
23 of Certified Public Accountants, the chart of accounts  
24 established by the American Hospital Association, and any other  
25 appropriate standards utilized by health care providers.

26 Section 604. Modifications in the Accounting and Reporting  
27 System.--The department may allow and provide for modifications  
28 in the accounting and reporting system in order to reflect  
29 differences between the various categories, sizes or types of  
30 health care providers.

1       Section 605.   Classifications of Providers; Comparison of  
2   Reports.--(a) The department shall develop classifications for  
3   health care providers, based upon such criteria as size,  
4   geography, economic factors in the area, type of facility,  
5   teaching programs related to patient care and scope of services  
6   provided.

7       (b) The department shall review and analyze the reports made  
8   to it pursuant to this article and shall develop a cost  
9   comparison for each class of facility subject to this article  
10   containing statistical norms with respect to such elements of  
11   financial operations as may be designated by the department. The  
12   comparison shall include the comparison of each provider with  
13   every other provider within the same classification. The  
14   appropriate comparison shall be available to the general public  
15   at the office of the department and of each third party payor  
16   and at each health care facility.

17       (c) Based upon the financial reports made to it and the  
18   comparison, the department may identify those providers whose  
19   financial operations deviate significantly from the statistical  
20   norms or from other providers within the same classification.

21       Section 606.   Nursing Facility Cost Report.--Every skilled or  
22   intermediate care nursing facility shall also have available on  
23   its premises for public inspection a copy of the facility's  
24   financial report required by this article.

25       Section 607.   Public Disclosure by Hospital Provider.--(a)  
26   Every hospital provider shall disclose to the public annually  
27   the contracts or other financial arrangements between such  
28   provider and every hospital based medical specialist connected  
29   with it who charges a fee separate and distinct from the  
30   provider's rate. The disclosure shall include gross and net

1 proceeds actually derived from the contract or arrangement by  
2 the specialist.

3 (b) "Hospital based medical specialist" means any person  
4 rendering a service where there is no freedom of choice, as  
5 defined by regulation, for the patient to utilize a person  
6 offering that service who is not based in or affiliated with  
7 (except by customary staff privilege granted to numerous  
8 qualified persons in separate practices) the hospital provider.

## 9 ARTICLE VII

### 10 GENERAL PROVISIONS

11 Section 701. Licenses and Certificates for Existing  
12 Facilities.--All health care providers licensed or approved on  
13 the effective date of this act to conduct, maintain or operate a  
14 health care facility or who are operating such facility which  
15 has been licensed or approved, shall be issued a license  
16 immediately upon application and all such providers who are  
17 subject to the certificate of need provisions of the act shall  
18 be issued forthwith a certificate of need by the department for  
19 all buildings, real property and equipment owned, leased or  
20 being operated or under contract for construction, purchase or  
21 lease and for all services being rendered by the licensed or  
22 approved providers on the effective date of this act. To  
23 facilitate administration of this act, the department may  
24 initially grant some licenses for periods less than the  
25 prescribed term and may permit the running of licenses or  
26 approvals currently granted to providers, as may be required to  
27 stagger the dates of renewal.

28 Section 702. Administration of the Act.--(a) No health care  
29 provider shall be required by any provisions of this act or  
30 rules and regulations promulgated thereunder to provide

1 facilities or render services contrary to the stated religious  
2 or moral beliefs of the provider, nor shall any applicant be  
3 denied a license or a certificate of need or the right to apply  
4 for or receive public funds on the grounds he will not provide  
5 the facilities or render the services for such reasons.

6 (b) Except as otherwise provided by law, no provider shall  
7 discriminate in the operation of a health care facility on the  
8 basis of race, creed, sex or national origin.

9 (c) Consumers shall have freedom of choice in the selection  
10 of health care facilities and nothing in this act or any rules  
11 and regulations promulgated pursuant thereto shall be  
12 interpreted to require any consumer to use any particular health  
13 care facility or to be denied the use of any particular health  
14 care facility; but such freedom shall not carry with it the  
15 right to be attended therein by the consumer's personal  
16 physician if the physician is not authorized to practice  
17 therein.

18 (d) In carrying out the provisions of this act and other  
19 statutes of this Commonwealth relating to health care  
20 facilities, the department and other departments and agencies of  
21 State and local governments shall make every reasonable effort  
22 to prevent duplication of inspections and examinations.

23 (e) The department shall not administer this act in a way  
24 that will stifle innovation or experimentation in health care  
25 and health care facilities or that will discourage contributions  
26 of private funds and services to health care facilities.

27 Section 703. Repeals.--(a) Articles IX and X, act of June  
28 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code,"  
29 are repealed in so far as they relate to health care facilities;  
30 however, on the effective date of the act any rules or

1 regulations issued under these provisions will remain in effect  
2 until superseded by order of the department.

3 (b) Title 67 of the Pennsylvania Consolidated Statutes,  
4 added November 15, 1972 (P.L.1063, No.271), is repealed.

5 (c) To the extent that any provisions of the act is in  
6 conflict with the provisions of the act of December 29, 1972  
7 (P.L.1701, No.364), known as the "Voluntary Nonprofit Health  
8 Service Act of 1972," the provisions of the latter act shall be  
9 controlling.

10 (d) All acts and parts of acts are repealed in so far as  
11 they are inconsistent herewith.

12 Section 704. Effective Date.--With the exception of Articles  
13 IV and V, this act shall take effect immediately. Articles IV  
14 and V shall take effect in 90 days.