
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2122 Session of
1978

INTRODUCED BY MANDERINO, KELLY, BERLIN, McLANE, O'KEEFE AND
JONES, MARCH 14, 1978

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, MARCH 14, 1978

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 and Health Facilities Appeals Board; providing for
5 certification of need of health care providers; prescribing
6 penalties; and making appropriations.

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

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

12 This act shall be known and may be cited as the "Health
13 Planning and Cost Containment Act."

14 Section 102. Purposes.

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

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

25 Section 103. Definitions.

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

29 "Ambulatory surgical facility." A facility, not a part of a
30 hospital, which provides surgical treatment to patients not

1 requiring hospitalization. Such term does not include the
2 offices of private physicians or dentists, whether for
3 individual or group practice.

4 "Board." The Health Facilities Appeals Board established by
5 this act.

6 "Consumer." A natural person who potentially will use the
7 services of a provider of health care: Provided, however, That
8 the consumer is not any of the following: a provider of health
9 care; an administrator or employee of a provider of health care;
10 an administrator or employee of a third party payor as defined
11 in this act; a member of the governing body of a provider or a
12 third party payor, unless serving on such board as a bona fide
13 consumer representative; a person receiving one-tenth or more,
14 or whose spouse receives one-tenth or more of his gross annual
15 income from a provider, a third party payor or a major vendor of
16 goods or services to providers or third party payors; or a
17 member of the healing arts.

18 "Council." The Statewide Health Coordinating Council
19 established pursuant to Title XV of the Federal Public Health
20 Service Act.

21 "Department." The Pennsylvania Department of Health.

22 "Health care facility." A general, tuberculosis, mental,
23 chronic disease or other type of hospital; a long term care
24 facility, a kidney disease treatment center, radiology
25 laboratory; an ambulatory surgical facility; or a home health
26 agency (for purposes of licensure only); regardless of whether
27 such health care facility is operated for profit, not for profit
28 or by an agency of State or local government: Provided, That the
29 term "health care facility" shall not include an office used
30 exclusively for the private practice of medicine, osteopathy,

1 optometry, chiropractic, podiatry or dentistry, nor a program
2 which renders treatment or care for drug or alcohol abuse or
3 dependence unless located within a health care facility, nor a
4 facility providing treatment solely on the basis of prayer or
5 spiritual means. A State mental retardation facility is not a
6 health care facility except to the extent that it provides
7 nursing care in a long term care setting. It shall not include a
8 facility which is conducted by a religious organization for the
9 purpose of providing health care services exclusively to
10 clergymen or other persons in a religious profession who are
11 members of a religious denomination.

12 "Health care provider." A person who operates a health care
13 facility.

14 "Health maintenance organization." A public or private
15 organization, organized under the laws of any state, which:

16 (1) provides or otherwise makes available to enrolled
17 participants health care services, including at least the
18 following basic health care services: usual physician
19 services, hospitalization, laboratory, x-ray, emergency and
20 preventive services, and out-of-area coverage;

21 (2) is compensated (except for copayments) for the
22 provision of the basic health care services listed in
23 paragraph (1) to enrolled participants on a predetermined
24 periodic rate basis; and

25 (3) provides physicians' services primarily:

26 (i) directly through physicians who are either
27 employees or partners of such organization; or

28 (ii) through arrangements with individual physicians
29 or one or more groups of physicians (organized on a group
30 practice or individual practice basis).

1 "Health systems agency." Any regional health planning agency
2 designated pursuant to Federal Public Law 93-641 or a successor
3 agency designated under Federal or State law.

4 "HEW." The United States Department of Health, Education and
5 Welfare.

6 "Home health agency." An organization or part thereof
7 staffed and equipped to provide nursing and at least one
8 therapeutic service to disabled, aged, injured or sick persons
9 in their place of residence. The agency may also provide other
10 health-related services to protect and maintain persons in their
11 own home.

12 "Hospital." An institution which is primarily engaged in
13 providing to inpatients, by or under the supervision of
14 physicians, diagnostic and therapeutic services for the care of
15 injured, disabled, sick or mentally ill persons, or
16 rehabilitation services for the rehabilitation of injured,
17 disabled or sick persons. The term includes facilities for the
18 diagnosis and treatment of disorders within the scope of
19 specific medical specialties.

20 "Institutional health services." Health services provided in
21 or through health care facilities or health maintenance
22 organizations and includes the entities in or through which such
23 services are provided.

24 "Kidney disease treatment center." A facility, including a
25 freestanding hemodialysis unit, providing treatment to persons
26 with end-stage renal disease.

27 "Long term care facility." An institution or a distinct part
28 thereof which is primarily engaged in providing to inpatients
29 skilled or intermediate nursing care and related services,
30 health-related care and services, or rehabilitation services for

1 persons who are disabled, retarded, aged, injured or sick and
2 require such services but do not require the degree of care and
3 treatment which a hospital provides.

4 "Person." An individual, a trust or estate, a partnership, a
5 corporation (including associations, joint stock companies and
6 insurance companies), the Commonwealth, or a political
7 subdivision or instrumentality (including a municipal
8 corporation) thereof.

9 "Radiology laboratory." A facility primarily engaged in the
10 diagnosis or treatment of disease or other physical conditions
11 by means of electromagnetic, nuclear, laser or high energy
12 radiation equipment.

13 "Secretary." The Secretary of the Department of Health of
14 the Commonwealth of Pennsylvania.

15 "Third party payor."

16 (1) any stock or mutual insurance company, association
17 or exchange issuing or servicing any hospitalization,
18 accident and health, or major medical insurance policy;

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

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

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

26 (5) any person, partnership, corporation, joint venture
27 or other association which administers the provision of
28 health care services on a prepaid basis; or which administers
29 reimbursements for the provision of health care services
30 delivered by any health care provider or health care facility

1 subject to the provisions of this act.

2 "To develop." When used in connection with health services
3 or facilities, means to undertake those activities which on
4 their completion will result in the offer of a new institutional
5 health service or the incurring of a financial obligation in
6 relation to the offering of such a service.

7 "To offer." When used in connection with health services or
8 facilities, means that the health care facility or health
9 maintenance organization holds itself out as capable of
10 providing, or as having the means for the provision of,
11 specified health services.

12 CHAPTER 2

13 POWERS AND DUTIES OF THE DEPARTMENT

14 Section 201. Powers and duties of the department.

15 The department shall have the power and its duties shall be:

16 (1) To serve as the State Health Planning and
17 Development Agency in accordance with Title XV of the Federal
18 Public Health Service Act and to serve as the designated
19 planning agency in accordance with the provisions of section
20 1122 of the Federal Social Security Act.

21 (2) To issue and amend certificates of need whenever it
22 finds that the applicants qualify therefor under the
23 provisions of this act.

24 (3) To designate health systems agencies for purposes of
25 certification of need and to contract with such agencies for
26 conducting project reviews and other appropriate activities.

27 (4) To publish annually a report on the regulation of
28 health care facilities in Pennsylvania.

29 (5) To conduct either directly or by contracting with
30 other qualified and experienced persons, inspections,

1 investigations, audits, inquiries and hearings on matters
2 relating to health care facilities or services and such
3 related matters as may be necessary to carry out the purposes
4 and provisions of this act.

5 (6) To provide coordination with the National Center for
6 Health Statistics of the activities of the department for the
7 collection, retrieval, analysis, reporting and publication of
8 statistical and other information related to health and
9 health care and to require providers of health care doing
10 business in the Commonwealth to make statistical and other
11 reports of such information to the department for health
12 planning, research and statistical purposes.

13 (7) To research and prepare annually a preliminary State
14 health plan for Pennsylvania and publish a State health plan
15 for Pennsylvania after its adoption by the council.

16 (8) With respect to health care facilities to
17 investigate and report to the Auditor General, upon every
18 application to the Auditor General made by any institution,
19 corporation, or unincorporated association, desiring to give
20 a mortgage under the provisions of the act of April 29, 1915
21 (P.L.201, No.112), entitled "An act making mortgages, given
22 by benevolent, charitable, philanthropic, educational, and
23 eleemosynary institutions, corporations, or unincorporated
24 associations, for permanent improvements and refunding
25 purposes, prior liens to the liens of the Commonwealth for
26 the appropriation of moneys; providing a method for the
27 giving of such mortgages, and fixing the duties of the
28 Auditor General and Board of Public Charities in connection
29 therewith."

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

1 council as may be needed by it to perform its functions.

2 (10) To minimize the administrative burden on health
3 care providers by eliminating unnecessary duplication of
4 financial and operational reports and to the extent possible
5 coordinating reviews and inspections performed by Federal,
6 State, local and private agencies.

7 (11) To set reasonable fees to be paid by persons
8 subject to the act in connection with applications, renewals,
9 filings and petitions authorized by the act.

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

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

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

22 (15) To enforce the rules and regulations adopted by the
23 department.

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

30 (17) To exercise all other powers which are reasonably

1 related to the effective implementation of this act.

2 Section 202. Opportunity to be heard.

3 Opportunity to be heard may be granted by means of hearings
4 conducted in accordance with the act of June 4, 1945 (P.L.1388,
5 No.442), known as the "Administrative Agency Law," or by such
6 other procedure as the department may by regulation establish,
7 and which satisfy the due process requirements of the
8 constitutions of the United States and the Commonwealth of
9 Pennsylvania.

10 Section 203. Enforcement of orders; penalties.

11 (a) Orders of the department from which the time for appeal
12 has expired may be enforced by the department in the court of
13 common pleas of the county in which the health care facility is
14 located or in the Commonwealth Court.

15 (b) Any person operating a health care facility within the
16 Commonwealth in violation of the provisions of the act or by the
17 regulations or orders of the department issued thereunder shall
18 upon conviction thereof be sentenced to pay a fine of not more
19 than \$500, and costs of prosecution. Each day of operating a
20 health care facility in violation thereof shall constitute a
21 separate offense.

22 Section 204. Approval of certain contracts.

23 No contract between a hospital plan corporation or a
24 professional health service corporation and a health care
25 facility shall be valid or binding unless it has been approved
26 by the department: Provided, however, That the Insurance
27 Commissioner shall retain the sole power and authority to
28 approve or disapprove premium rates and rate structures of
29 hospital plan corporations and professional health service
30 corporations.

1 CHAPTER 3

2 STATEWIDE HEALTH COORDINATING COUNCIL

3 AND HEALTH FACILITIES APPEALS BOARD

4 Section 301. Statewide Health Coordinating Council.

5 (a) The Statewide Health Coordinating Council shall be
6 constituted and have all those powers and perform those duties
7 set forth in Title XV of the Federal Public Health Service Act.

8 (b) The council may advise the department with regard to the
9 department's rules and regulations relating to licensure,
10 certificate of need, uniform systems of accounting and
11 reporting, disclosure of contracts or other financial
12 arrangements between hospital providers and hospital based
13 medical specialists and with regard to other regulations
14 reasonably necessary to carry out the purposes and provisions of
15 this act, the Health Care Facilities Licensure Act, the Health
16 Facilities Financial Reporting Act, and the Hospital Rate
17 Approval Act.

18 (c) The council may periodically review the provisions of
19 Federal and State law and regulations as well as State practices
20 relating to certification of need and advise the secretary
21 concerning the administration of certification of need in the
22 Commonwealth.

23 Section 302. Council; compensation; expenses.

24 Each member of the council shall be paid traveling and other
25 necessary expenses, and compensation at a rate to be determined
26 by the Executive Board. The council may appoint such committees
27 or advisory groups as it deems necessary to advise and assist it
28 in its activities.

29 Section 303. Health Facilities Appeals Board; establishment;
30 composition.

1 (a) There is hereby created the Health Facilities Appeals
2 Board within the Department of Justice.

3 (b) The board shall consist of three persons, who shall
4 devote such time to the work as the board's duties may require,
5 appointed by the Governor, by and with the advice and consent of
6 a majority of all the members of the Senate.

7 (c) The members of the board shall serve for a term of six
8 years or until their respective successors are appointed and
9 qualified; however, of the persons initially appointed, the
10 chairperson shall serve for a term of six years and the other
11 two members for terms of four years and two years, respectively.

12 (d) At least two members of the board shall be consumers,
13 one of whom shall be an attorney admitted to practice before the
14 Pennsylvania Supreme Court and who shall serve as chairperson.

15 (e) The members of the board shall be compensated at a rate
16 to be determined by the Attorney General with the approval of
17 the Executive Board.

18 Section 304. Health Facilities Appeals Board; powers and
19 duties; procedures.

20 (a) The Health Facilities Appeals Board shall have the power
21 and its duties shall be to hold hearings and issue adjudications
22 under the provisions of the act of June 4, 1945 (P.L.1388,
23 No.442), known as the "Administrative Agency Law," on any final
24 certificate of need decision of the department under Chapter 4.

25 (b) The appellant shall have the burden of proving that the
26 decision was arbitrary or capricious, was not supported by
27 substantial evidence or was in violation of law.

28 (c) Hearings of the board shall be conducted in accordance
29 with the provisions of section 402 and with regulations adopted
30 by the Attorney General and such regulations shall include

1 procedures for the taking of appeals, and such other regulations
2 as may be determined advisable by the Attorney General.

3 (d) The board may employ, with the concurrence of the
4 Attorney General, such personnel as are necessary in the
5 exercise of its functions.

6 CHAPTER 4

7 CERTIFICATE OF NEED

8 Section 401. Certificate of need required; new institutional
9 health services subject to review.

10 (a) No person shall offer, develop, construct or otherwise
11 establish or undertake to establish within the State a new
12 institutional health service subject to review under this
13 chapter without first obtaining a certificate of need from the
14 department. For purposes of this chapter, "new institutional
15 health services" shall include:

16 (1) The construction, development or other establishment
17 of a new health care facility or health maintenance
18 organization.

19 (2) Any expenditure by or on behalf of a health care
20 facility or health maintenance organization in excess of
21 \$150,000 which, under generally accepted accounting
22 principles consistently applied, is a capital expenditure;
23 except that this chapter shall not apply to expenditures for
24 acquisitions of existing health care facilities and health
25 maintenance organizations. An acquisition by or on behalf of
26 a health care facility or health maintenance organization
27 under lease or comparable arrangement, or through donation,
28 which would have required review if the acquisition had been
29 by purchase, shall be deemed a capital expenditure subject to
30 review.

1 (3) A change in bed capacity of a health care facility
2 or health maintenance organization which increases the total
3 number of beds (or redistributes beds among various
4 categories, or relocates such beds from one physical facility
5 or site to another) by more than ten beds or more than 10% of
6 total bed capacity as defined by the department whichever is
7 less, over a two-year period.

8 (4) Health services, except home health services, which
9 are offered in or through a health care facility or health
10 maintenance organization and which were not offered on a
11 regular basis in or through such health care facility or
12 health maintenance organization within the 12-month period
13 prior to the time such services would be offered.

14 (b) (1) Any expenditure by or on behalf of a health care
15 facility or health maintenance organization in excess of
16 \$100,000 made in preparation for the offering or development
17 of a new institutional health service and any arrangement or
18 commitment made for financing the offering or development of
19 the new institutional health service shall be subject to
20 review under this chapter.

21 (2) Nothing in this paragraph shall preclude the
22 department from granting a certificate of need which permits
23 expenditures only for predevelopment activities, but does not
24 authorize the offering or development of the new
25 institutional health service with respect to which such
26 predevelopment activities are proposed. Expenditures in
27 preparation for the offering of a new institutional health
28 service shall include expenditures for architectural designs,
29 plans, working drawings, specifications, site acquisition and
30 preliminary plans, studies and surveys.

1 (c) Prior to its review of new institutional health
2 services, the department shall disseminate to all health care
3 facilities and health maintenance organizations within the
4 State, and shall publish in one or more newspapers of general
5 circulation in the State, a description of the scope of coverage
6 of its program for review of new institutional health services.
7 Such description shall include the coverage established by
8 subsections (a) and (b).

9 (d) Unless waived by the department for good cause shown,
10 the failure of an applicant to obtain approval of predevelopment
11 expenditures, arrangements or commitments covered by subsection
12 (b) shall bar approval of an application for the new
13 institutional health service.

14 (e) A health care provider or local agency may request a
15 ruling from the department regarding the necessity of obtaining
16 a certificate of need for a proposed change. The department
17 shall make such ruling in 30 days and publish said ruling as a
18 notice in the Pennsylvania Bulletin.

19 (f) At least 30 days prior to substantial reduction of a
20 service or a permanent decrease in the bed complement, the
21 provider shall notify the health systems agency and the
22 department of its intended action. If the health systems agency
23 does not notify the provider and the department of its
24 objections, if any, within 30 days, the provider may make the
25 specified change and an amended certificate of need will be
26 issued automatically. If the health systems agency does notify
27 the provider and the department of its objections within 30
28 days, the procedures of section 402 shall apply.

29 Section 402. Certificates of need; application; issuance.

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

1 need shall apply by sending a letter of intent to the
2 department, which will then direct such person to cooperate with
3 the health systems agency in the agency's analysis and review of
4 the proposed project. In the case of construction projects, the
5 person proposing such project shall submit to the department in
6 the letter of intent such details as may be necessary to inform
7 the department of the scope and nature of the project. A person
8 submitting an application shall supply such information as is
9 required by the regulations of the department and the health
10 systems agency. The applicant shall submit copies of the
11 application simultaneously to the department and the health
12 systems agency.

13 (b) Written notification shall be given to affected persons
14 at the beginning of a review, including the proposed schedule
15 for the review and the period within which a public hearing
16 during the course of the review may be requested by persons
17 directly affected by the review. When so requested, a public
18 hearing shall be held.

19 (c) No review shall, to the extent practicable, take longer
20 than 90 days from the date that notification is sent to all
21 affected persons to the date of the written findings made in
22 accordance with subsection (f): Provided, That the period
23 allotted by the department to the health systems agency for
24 completion of its review and submission of its recommendations
25 may not be less than 60 days, except with the written consent of
26 the health systems agency. The department shall adopt criteria
27 for determining when it would not be practicable to complete a
28 review within 90 days.

29 (d) Persons subject to a review shall submit to the
30 department in such form and manner, and containing such

1 information as the department shall prescribe and publish, such
2 information as the department may require concerning the subject
3 of such review. Such information requirements vary according to
4 the purpose for which a particular review is being conducted or
5 the type of health service being reviewed.

6 (e) The department shall consider recommendations made by
7 health systems agencies in reviewing any proposed new
8 institutional health service under this chapter.

9 (f) In acting upon an application, the department may:

10 (1) grant a certificate of need as requested by the
11 applicant;

12 (2) grant in part, and refuse in part, the certificate
13 of need requested;

14 (3) refuse to grant a certificate of need; or

15 (4) return the application to the health systems agency
16 for such action as the department may direct.

17 (g) The department shall make written findings which state
18 the basis for any final decision made by the department. Such
19 findings shall be sent to the person proposing the new
20 institutional health service and to the health systems agency
21 for the health service area in which the new service is proposed
22 to be offered or developed and shall be available to others upon
23 request.

24 (h) If the department does not make a decision regarding a
25 proposed new institutional health service within the period of
26 time specified for departmental review, the proposal shall be
27 deemed to have been found not to be needed.

28 (i) Any decision of the department under this chapter (and
29 the findings, documentary evidence and other records upon which
30 it was made) shall, upon request of the person proposing the new

1 institutional health service, be reviewed by the Health
2 Facilities Appeals Board established by this act. The request of
3 the person proposing the new institutional health service must
4 be received within 30 days of the department's decision, and the
5 hearing shall commence within 30 days of receipt of the request.
6 The decision of the board shall be made in writing within 45
7 days after the conclusion of such review. The written findings
8 shall be sent to the person proposing the new institutional
9 health service, the appropriate health systems agency and the
10 department, and shall be made available by the department to
11 others upon request. The decision of the board shall supersede
12 the final decision of the department; however, the board may
13 remand the matter to the department for further action or
14 consideration.

15 (j) When a health systems agency recommends approval or
16 disapproval of an application for a certificate of need and the
17 department disapproves or approves, respectively, said
18 application, the decision of the department (and the record upon
19 which it was made) shall, upon request of the health systems
20 agency that reviewed the application, be reviewed by the Health
21 Facilities Appeals Board in accordance with the procedure
22 established by subsection (h).

23 (k) All certificates of need issued under this chapter shall
24 expire one year after the date of issuance unless the applicant
25 has made substantial progress and is diligently pursuing the
26 project authorized by the certificate to completion as
27 determined by the department. The department shall, by
28 regulation, establish maximum time limits, including a limit,
29 when appropriate, for commencement of work on the project.

30 Section 403. Adoption of procedures; purpose; applicability;

1 exceptions.

2 (a) The department shall adopt, and review and revise as
3 necessary, review procedures in accordance with the provisions
4 of this chapter and the requirements of the Secretary of Health,
5 Education and Welfare (HEW). The procedures shall be adopted
6 pursuant to the act of July 31, 1968 (P.L.769, No.240), known as
7 the "Commonwealth Documents Law," and copies of the proposed
8 regulations shall be distributed for review and comment to the
9 council, to each health systems agency for a health service area
10 located in whole or in part within the Commonwealth and to
11 Statewide health agencies and organizations.

12 (b) Procedures adopted for reviews under this chapter may
13 vary according to the purpose for which a particular review is
14 being conducted or the type of health service being reviewed.

15 (c) The procedures may provide that the requirements of
16 section 402(b) and (d) and section 405(a) shall be deemed
17 satisfied if the appropriate health systems agency has provided
18 for the corresponding procedure.

19 (d) After following the procedures required by this section
20 for publication and distribution of proposed regulations, the
21 department may, with respect to any type or group of reviews,
22 request from the Secretary of Health, Education and Welfare an
23 exception to a procedure required by health, education and
24 welfare regulations. Such request shall be in writing, shall
25 contain a detailed explanation of the reasons for the request
26 and of the substitute review procedures that the department
27 intends to follow if the exception is approved, and shall be
28 accompanied by copies of all written comments submitted under
29 section 403(a) to the department.

30 Section 404. Criteria for departmental review; required

1 findings.

2 (a) The department shall adopt, and utilize as appropriate,
3 specific criteria for conducting the reviews covered by this
4 chapter, which criteria shall include at least the following
5 general considerations:

6 (1) The relationship of the health services being
7 reviewed to the State health plan adopted by the council and
8 to the applicable health systems plan and annual
9 implementation plan adopted pursuant to Federal law.

10 (2) The relationship of services reviewed to the long-
11 range development plan (if any) of the person providing or
12 proposing such services.

13 (3) The need that the population served or to be served
14 by such services has for such services.

15 (4) The availability of less costly or more effective
16 alternative methods of providing such services.

17 (5) The immediate and long-term financial feasibility of
18 the proposal, as well as the probable impact of the proposal
19 on the costs of and charges for providing health services by
20 the person proposing the new institutional health service.

21 (6) The relationship of the services proposed to be
22 provided to the existing health care system of the area in
23 which such services are proposed to be provided.

24 (7) The availability of resources (including health
25 manpower, management personnel, and funds for capital and
26 operating needs) for the provision of the services proposed
27 to be provided and the availability of alternative uses of
28 such resources for the provision of other health services.

29 (8) The relationship, including the organizational
30 relationship, of the health services proposed to be provided

1 to ancillary or support services.

2 (9) Special needs and circumstances of those entities
3 which provide a substantial portion of their services or
4 resources, or both, to individuals not residing in the health
5 service areas in which the entities are located or in
6 adjacent health service areas. Such entities may include
7 medical and other health professional schools, multi-
8 disciplinary clinics and specialty centers.

9 (10) The special needs and circumstances of health
10 maintenance organizations for which assistance may be
11 provided under Federal law. Such needs and circumstances
12 include the needs of and costs to members and projected
13 members of the health maintenance organization in obtaining
14 health services and the potential for a reduction in the use
15 of inpatient care in the community through an extension of
16 preventive health services and the provision of more
17 systematic and comprehensive health services. The
18 consideration of a new institutional health service proposed
19 by a health maintenance organization shall also address the
20 availability and cost of obtaining the proposed new
21 institutional health service from the existing providers in
22 the area that are not health maintenance organizations. The
23 criteria established by the department pursuant to this
24 paragraph shall be consistent with standards and procedures
25 established by the Secretary of Health, Education and Welfare
26 under Federal law.

27 (11) The special needs and circumstances of biomedical
28 and behavioral research projects which are designed to meet a
29 national need and for which local conditions offer special
30 advantages.

(12) In the case of a construction project:

(i) the costs and methods of the proposed construction, including the costs and methods of energy provisions; and

(ii) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with subsection (a) may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) In the case of any proposed new institutional health service for the provision of health services to inpatients, the department shall not grant a certificate of need unless:

(1) the department makes written findings as to:

(i) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(ii) the capital and operating costs (and their potential impact on patient charges), efficiency and appropriateness of the proposed new institutional health service; and

(2) the department makes each of the following findings in writing:

(i) that superior alternatives to such inpatient services in terms of cost, efficiency and appropriateness do not exist and that the development of such alternatives is not practicable;

(ii) that in the case of new construction, alternatives to new construction (e.g., modernization or

sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(iii) that patients will experience serious problems in terms of costs, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(iv) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

Section 405. Additional duties of the department and persons subject to this chapter.

(a) Providers of health services and other persons subject to review under this chapter shall submit periodic reports respecting the development of proposals subject to review under this chapter shall submit periodic reports respecting the development of proposals subject to review under this chapter.

(b) The department shall prepare and publish, at least annually, reports of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(c) Any person shall have access to all applications reviewed by the department and to all other written materials pertinent to any departmental review.

(d) The department shall review every five years all

1 institutional health services being offered in the Commonwealth
2 and, after consideration of recommendations submitted by health
3 systems agencies respecting the appropriateness of such
4 services, make public its findings. The department shall
5 complete its findings with respect to the appropriateness of any
6 existing institutional health service within one year after the
7 date a health systems agency has made its recommendation with
8 respect to the appropriateness of the service.

9 Section 406. Existing providers.

10 All providers who are subject to the certificate of need
11 provisions of this act shall be issued forthwith a certificate
12 of need by the department for all buildings, real property and
13 equipment owned, leased or being operated or under contract for
14 construction, purchase or lease and for all services being
15 rendered by the licensed or approved providers on the effective
16 date of this act.

17 CHAPTER 5

18 GENERAL PROVISIONS

19 Section 501. Administration of this act.

20 (a) No health care provider shall be required by any
21 provisions of this act or rules and regulations promulgated
22 thereunder to provide facilities or render services contrary to
23 the stated religious beliefs of the provider, nor shall any
24 applicant be denied a license or a certificate of need or the
25 right to apply for or receive public funds on the grounds he
26 will not provide the facilities or render the services for such
27 reasons.

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

1 (c) In carrying out the provisions of this act and other
2 statutes of this Commonwealth relating to health care
3 facilities, the department and other departments and agencies of
4 State and local governments shall make every reasonable effort
5 to prevent duplication of inspections and examinations.

6 Section 502. Appropriations.

7 (a) The sum of \$750,000, or as much thereof as may be
8 necessary, is hereby appropriated to the Department of Health
9 for the administration and enforcement of this act.

10 (b) The sum of \$250,000 is hereby appropriated to the
11 Department of Justice for administration of the Health
12 Facilities Appeals Board.

13 Section 503. Repeals.

14 (a) Title 67 (Public Welfare) of the Pennsylvania
15 Consolidated Statutes, added November 15, 1972 (P.L.1063,
16 No.271), is repealed.

17 (b) All acts and parts of acts are repealed insofar as they
18 are inconsistent herewith.

19 Section 504. Effective date.

20 This act shall take effect in 180 days.