

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 305 Session of
2007

INTRODUCED BY MUNDY, BELFANTI, BISHOP, BUXTON, CALTAGIRONE,
CARROLL, DeLUCA, DePASQUALE, FRANKEL, FREEMAN, GEORGE,
GOODMAN, GRUCELA, HESS, JAMES, JOSEPHS, KIRKLAND, KORTZ,
MAHONEY, MANDERINO, MANN, MELIO, MUSTIO, OLIVER, PALLONE,
ROEBUCK, SANTONI, SCAVELLO, TANGRETTI, J. TAYLOR, THOMAS,
WALKO AND YOUNGBLOOD, FEBRUARY 7, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
FEBRUARY 7, 2007

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," further providing for
10 definitions, for powers and duties of Department of Health,
11 for State health services plan, for regulations, for
12 certificates of need and for sunset; and prohibiting certain
13 referrals and claims of payment.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

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

20 Section 103. Definitions.

21 The following words and phrases when used in this act shall

1 have, unless the context clearly indicates otherwise, the
2 meanings given to them in this section:

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

4 "Board." The Health Policy Board established under section
5 401.1.

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

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

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

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

25 "Conflict of interest." [For the purpose of section 501,
26 the] The interest of any person, whether financial, by
27 association with, or as a contributor of money or time to, any
28 nonprofit corporation or other corporation, partnership,
29 association, or other organization, and whenever a person is a
30 director, officer or employee of such organization, but shall

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

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

11 "Council." The Pennsylvania Health Care Cost Containment
12 Council.

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

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

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

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

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

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

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

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

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

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

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

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

17 "Patient." A natural person receiving health care in or from
18 a health care provider.

19 "Person." A natural person, corporation (including
20 associations, joint stock companies and insurance companies),
21 partnership, trust, estate, association, the Commonwealth, and
22 any local governmental unit, authority and agency thereof.

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

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

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

30 ["State health services plan." A document developed by the

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

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

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

19 Section 201. Powers and duties of the department.

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

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

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

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

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

1 this act.

2 (4) To withdraw expired certificates of need.

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

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

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

25 (7) To collect and disseminate such other information as
26 may be appropriate to determine the appropriate level of
27 facilities and services for the effective implementation of
28 certification of need under this act. Where such information
29 is collected by any other agency of State government,
30 duplication shall be avoided by coordination of data

1 collection activities[.], if such coordination does not
2 otherwise unduly burden those State agencies.

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

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

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

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

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

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

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

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

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

1 (17) To establish and publish in the Pennsylvania
2 Bulletin a detailed schedule of the review process for each
3 certificate of need application submitted to the department.

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

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

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

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

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

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

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

24 Section 602. Regulations.

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

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

1 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) for a new high-cost technology or high-cost
11 replacement technology in any health care facility,
12 \$500,000;

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

18 (iii) for any other hospital-based improvement,
19 \$2,000,000.

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

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

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

1 10%.

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

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

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

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

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

29 (d) A list of reviewable clinically related health services
30 shall be published by the department and the CON review board

1 within 30 days of the effective date of this act and may be
2 modified by regulation on an annual basis. Exclusive of new
3 high-cost technology, the initial list published by the
4 department and the CON review board as required under this
5 subsection shall be no more extensive than those services
6 reviewable on the effective date of this act. Criteria for
7 inclusion of reviewable services shall include, but not be
8 limited to:

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

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

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

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

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

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

30 (g) As used in this section, "new high-cost technology"

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

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

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

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

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

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

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

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

30 (2) A certificate of need shall state the maximum amount

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

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

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

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

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

1 localities are affected by specific applications in reviewing
2 the applications.

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

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

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

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

29 (a) Notice of completed applications for certificates of
30 need or amendment thereto and of the beginning of review shall

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

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

29 Section 6. Sections 704 and 705 of the act, amended December
30 18, 1992 (P.L.1602, No.179), are reenacted to read:

1 Section 704. Notice of public meetings.

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

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

27 (c) The applicant may, for good cause shown, request in
28 writing a public hearing for the purpose of reconsideration of a
29 decision of the department within ten days of service of the
30 decision of the department. The department shall treat the

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

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

20 Section 705. Good cause.

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

22 (1) there is significant, relevant information not
23 previously considered;

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

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

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

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

1 amended to read:

2 Section 706. Information during review.

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

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

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

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

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

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

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

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

29 (ii) The service or facility is financially and
30 economically feasible, considering anticipated volume of

1 care and the availability of reasonable financing based
2 on information from the applicant and other sources
3 during the review process.

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

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

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

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

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

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

29 (4) The proposed service or facility adversely impacts
30 the maintenance and development of rural and inner-city

1 health services generally and, in particular, those services
2 provided by health care providers which are based in rural
3 and inner-city locations and which have an established
4 history of providing services to medically underserved
5 populations.]

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

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

- 19 (1) eliminate or prevent imminent safety hazards as a
20 result of violations of safety codes or regulations;
- 21 (2) comply with State licensure standards; or
- 22 (3) comply with accreditation standards, compliance with
23 which is required to receive reimbursement or payments under
24 Title XVIII or XIX of the Federal Social Security Act.

25 Section 708.1. Monitoring certificate of need; expiration of a
26 certificate of need.

27 A certificate of need or an amendment to it shall expire two
28 years from the date issued unless substantially implemented, as
29 defined by regulation. The department and the CON review board
30 may grant extensions for a specified time upon request of the

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

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

11 Section 709. Emergencies.

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

17 Section 9. Section 710 of the act is reenacted to read:

18 Section 710. Notice of termination of services.

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

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

25 Section 711. Review of activities.

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

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

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

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

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

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

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

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

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

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

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

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

3 Section 12. Section 808 of the act, amended December 18,
4 1992 (P.L.1602, No.179) and July 7, 2006 (P.L.334, No.69), is
5 reenacted and amended to read:

6 Section 808. Issuance of license.

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

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

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

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

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

21 (5) that a certificate of need has been issued if one is
22 necessary.

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

30 (c) Addition of services.--When the certificate of need for

1 a facility is amended as to services which can be offered, the
2 department shall issue an appropriate license for those services
3 upon demonstration of compliance with licensure requirements.

4 (d) Monitoring.--

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

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

14 Section 13. The act is amended by adding a section to read:

15 Section 808.1. Prohibition of referrals and claims of payment.

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

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

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

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

30 (c) Refund.--If an entity collects any amount that was

1 billed in violation of this section, the entity shall refund
2 that amount on a timely basis to the payor or individual.

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

5 Section 901. Existing facilities and institutions.

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

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

23 (b) However, existing facilities and institutions shall be
24 required to obtain a certificate of need for projects outlined
25 in section 701.

26 Section 15. Section 902.1 of the act, added December 18,
27 1992 (P.L.1602, No.179), is reenacted and amended to read:

28 Section 902.1. Fees for review of certificate of need
29 applications.

30 (a) The department shall charge a fee of [\$150] \$500 for

1 each letter of intent filed. The letter of intent fee shall be
2 deducted from the total application fee required under
3 subsection (b) if an application is submitted on the project
4 proposed in the letter of intent.

5 (b) For each application the department shall charge a fee,
6 payable on submission of an application. The fee shall not be
7 less than \$500 plus up to [~~\$3~~] \$10 per \$1,000 of proposed
8 capital expenditure and shall not be more than [~~\$20,000~~]
9 \$50,000.

10 (c) The department shall publish a fee schedule in the
11 Pennsylvania Bulletin which shall explain the procedure for
12 filing fees.

13 (d) All fees payable under this section are due upon the
14 date of filing a letter of intent or application. If a person
15 fails to file the appropriate fee, all time frames required of
16 the department under this act, with respect to review of a
17 letter of intent or application, are suspended until the
18 applicable fee is paid in full.

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

24 Section 16. Section 904.1 of the act, added December 18,
25 1992 (P.L.1602, No.179), is repealed:
26 [Section 904.1. Sunset.

27 The authority, obligations and duties arising under Chapter 7
28 and all other provisions of this act pertaining to certificates
29 of need shall terminate four years after the effective date of
30 this section. Twelve months prior to this expiration, the

1 Legislative Budget and Finance Committee shall commence a review
2 of the impact of the certificate of need program on quality,
3 access and cost of health care services, including the costs of
4 appeals, reviewable under this act.]

5 Section 17. This act shall take effect immediately.