
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1204 Session of
2019

INTRODUCED BY DeLUCA, FRANKEL, HILL-EVANS, CALTAGIRONE, FREEMAN,
KINSEY AND KORTZ, APRIL 15, 2019

REFERRED TO COMMITTEE ON HEALTH, APRIL 15, 2019

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," in preliminary provisions,
10 reenacting and amending provisions relating to definitions;
11 in powers and duties of the department, reenacting and
12 amending provisions relating to powers and duties of the
13 department; in Statewide Health Coordinating Council and
14 health systems agencies, reenacting and amending provisions
15 relating to State health services plan; in administration of
16 the act, reenacting provisions relating to regulations and
17 reenacting and amending provisions relating to enforcement of
18 orders relating to certificate of need; in certificate of
19 need, reenacting and amending provisions relating to
20 certificate of need required and clinically related health
21 services subject to review, to certificates of need and
22 notice of intent and application and issuance and to notice
23 and hearings before health systems agencies, reenacting
24 provisions relating to notice of public meetings and to good
25 cause, reenacting and amending provisions relating to
26 information during review, to criteria for review of
27 applications for certificates of need or amendments and to
28 monitoring certificate of need, expiration of a certificate
29 of need and reenacting provisions relating to emergencies and
30 reenacting and amending provisions relating to notice of
31 termination of services, to review of activities and to
32 actions against violations of law and rules and regulations
33 and bonds; in licensing of health care facilities, reenacting
34 and amending provisions relating to issuance of license; in

1 general provisions and repeals and effective date, reenacting
2 and amending provisions relating to existing facilities and
3 institutions and to fees for review of certificate of need
4 applications and repealing provisions relating to sunset.

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

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

10 Section 103. Definitions.

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

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

15 "Board." The Health Policy Board established under section
16 401.1.

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

21 "Certification of need (CON) review board." The CON review
22 board, which consists of technical experts in the fields of
23 medicine, health facility administration, health economics,
24 health care cost inflation and the like, including experts from
25 within the Commonwealth agencies, together with consumers of
26 health care, all of whom are appointed by the Secretary of
27 Health.

28 "Clinically related health service." Certain diagnostic,
29 treatment or rehabilitative services as determined in section
30 701.

31 ["Community-based health services planning committee." A
32 committee established in accordance with procedures approved by

1 the Department of Health which includes representatives of local
2 or regional groups of consumers, business, labor, health care
3 providers, payors or other affected interests.]

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

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

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

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

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

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

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

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

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

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

30 "Hearing board." The State Health Facility Hearing Board

1 created in the Office of General Counsel under the provisions of
2 this act.

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

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

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

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

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

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

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

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

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

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

25 Section 201. Powers and duties of the department.

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

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

30 (2) To issue determinations of reviewability or

1 nonreviewability of certificate of need proposals.

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

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

8 (4) To withdraw expired certificates of need.

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

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

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

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

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

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

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

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

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

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

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

1 (15) To coordinate any data collection activities
2 necessary for administration of this act so as not to
3 duplicate unnecessarily the data collection activities of
4 other Federal and State agencies.

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

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

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

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

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

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

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

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

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

30 Section 602. Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) The capital expenditure threshold identified in

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

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

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

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

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

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

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

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

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

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

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

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

1 act.

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

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

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

30 (e) (1) Certificates of need shall be granted or refused by

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

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

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

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

28 (g) Modification of the application at any stage of the
29 proceeding shall not extend the time limits provided by this act
30 unless the department and the CON review board expressly [finds]

1 find that the modification represents a substantial change in
2 the character of the application.

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

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

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

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

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

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

1 factual allegations. A record of the hearing shall be
2 maintained.

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

5 Section 704. Notice of public meetings.

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

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

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

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

24 Section 705. Good cause.

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

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

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

30 (3) there has been material failure to comply with the

1 procedural requirements of this act; or

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

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

5 Section 706. Information during review.

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

11 Section 707. Criteria for review of applications for
12 certificates of need or amendments.

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

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

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

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

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

29 (i) There is not a more appropriate, less costly or
30 more effective alternative method of providing the

1 proposed services.

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

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

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

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

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

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

29 (3) The proposed service or facility will have an
30 inappropriate, adverse impact on the overall level of health

1 care expenditures in the area.

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

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

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

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

24 (2) comply with State licensure standards; or

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

28 Section 708.1. Monitoring certificate of need; expiration of a
29 certificate of need.

30 A certificate of need or an amendment to it shall expire two

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

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

13 Section 709. Emergencies.

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

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

21 Section 710. Notice of termination of services.

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

27 Section 711. Review of activities.

28 (a) The department and the CON review board shall prepare
29 and publish not less frequently than annually reports of reviews
30 conducted under this act, including a statement on the status of

1 each such review and of reviews completed by it and statements
2 of the decisions made in the course of such reviews since the
3 last report. The department and the CON review board shall also
4 make available to the general public for examination at
5 reasonable times of the business day all applications reviewed
6 by it. Such reports and applications shall be considered public
7 records.

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

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

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

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

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

22 (5) The fees collected for reviews and the cost of the
23 program.

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

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

1 prohibiting such person from engaging in such activity.

2 Section 808. Issuance of license.

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

6 (1) that the health care provider is a responsible
7 person;

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

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

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

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

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

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 901. Existing facilities and institutions.

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

21 (2) Nor shall a certificate of need be required for any
22 new institutional health services for which an approval has
23 been granted under section 1122 of the Social Security Act or
24 for which an application is found pursuant to such section to
25 be in conformity with the standards, criteria or plans to
26 which such section refers, or as to which the Federal
27 Secretary of Health and Human Services makes a finding that
28 reimbursement shall be granted.[: Provided, however, That
29 such approval is in force on August 1, 1980 or such
30 application shall have been filed prior to August 1, 1980 or

1 the acceptance of applications for reviews under this act,
2 whichever shall last occur.]

3 (b) Existing facilities and institutions shall be required
4 to obtain a certificate of need for projects outlined in section
5 701.

6 Section 902.1. Fees for review of certificate of need
7 applications.

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

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

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

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

27 (e) Each local review committee may apply for up to \$10,000
28 in funding from the department for administrative functions
29 associated with reviewing certificate of need proposals. This
30 funding is to be allocated from the Patient Safety Authority

1 appropriation.

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

3 [Section 904.1. Sunset.]

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

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