

Veto No.1982-1

SB 838

February 20, 1982

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

I am returning without my signature, Senate Bill 838, Printer's Number 1589.

The key provision of Senate Bill 838 calls for an automatic repeal, conditional upon changes in Federal law, of the State law which requires that a "certificate of need" be obtained before proceeding with any significant new health facility or service. Under current Federal law, states must have certificate of need programs or they are not eligible for Federal funds for public health, community mental health, and drug and alcohol treatment services — funds approximating \$250 million annually for Pennsylvania. Senate Bill 838 would automatically repeal the State law if this Federal requirement is changed. Debate at the Federal level has just begun on whether this requirement should be eliminated and whether Federal funding to support health planning and certificate of need programs should continue.

Certificate of need programs are an attempt to deal with spiraling health costs, a goal to which, as Governor, I am committed. Total annual expenses for Pennsylvania hospitals increased almost 140% from 1974 to 1980 alone, an aspect of inflation impacting upon all health care consumers. I recently empanelled a Health Care Cost Containment Task Force, including participation by labor, business and health care professionals to examine and recommend ways in which we can address this problem. I have also proposed an eight percent cap on the growth of Medical Assistance reimbursement expenditures for in-patient hospital services as part of the 1982-83 State budget.

Although I recognize the need to deal with spiraling health care costs, I also recognize there are legitimate questions and real reservations about the certificate of need process as a method of doing so. While this process is designed to avoid costly duplication of health facilities and services it does nothing about the complex incentives to create duplicative services including factors such as the third party payment system, cost-based reimbursement, and tax exempt financing. Moreover, it does not directly address the whole area of non-capital health costs.

Studies done by other states, the United States General Accounting Office and the Congressional Budget Office are inconclusive as to whether the certificate of need approach is working. While some unjustified costs appear to have been prevented, the process itself is costly, bureaucratic and burdensome. It represents government regulation of decision making which can too frequently produce a counter-productive

result, increasing costs by delaying projects which should have proceeded immediately.

However, I believe that Senate Bill 838, while responsive to legitimate concerns, is premature. It only surfaced on January 20, 1982, and passed the General Assembly very quickly without time for consideration of alternatives to replace the present certificate of need program should it be repealed and of the implications of unpredictable Federal behavior.

I believe it is judicious to have the benefit of the emerging Federal debate, the recommendations of the State Health Care Cost Containment Task Force, and the many efforts I am told are underway around the State before definitive action is taken. Members of the Task Force, as well as persons involved in efforts in areas such as Erie, Pittsburgh, the Lehigh Valley, and Philadelphia, have asked for a delay in this legislation until their work is complete.

Moreover, just as I am often critical of the Federal Government insisting a state automatically do something Congress thinks is a good idea, I do not believe it is wise for state law to condition automatic state action upon what Congress may or may not do and, in any case, what it has not done yet. We, as a State, ought to maintain our flexibility to do what we think is right as a result of changing circumstances and a new information and, where we can avoid it, not have a course of action dictated to us by what Congress does.

In this instance, it is particularly risky to have an automatic repealer since our eligibility for hundreds of millions of dollars in Federal funds is at stake. For example, Congress may modify the Federal requirement for a certificate of need program, imposing some new but less burdensome mandated process in its stead. If our current State law were still in effect, it is likely we could still meet, and perhaps exceed, the new Federal requirements. However, were Senate Bill 838 to be law, then automatic repeal of current State law would take place, eliminating the statutory basis for meeting the new Federal requirements and jeopardizing our continued eligibility for Federal funds. We can always reduce or eliminate requirements of State law no longer mandated by Federal law, without risking the loss of health care funds. However, if we must rebuild our system from the ground up, there is a risk of a legislative impasse and a Federal funding crisis. It seems only prudent to maintain our flexibility to adjust State law as we see fit once it is clear what our best course is, a course which may, indeed, ultimately include eliminating the certificate of need process.

In returning this bill without my signature, I wish to express my commitment to work with the General Assembly in addressing the basic issues which led to its passage.

DICK THORNBURGH