

No. 1980-136

AN ACT

HB 1683

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," amending and adding certain definitions; further providing for powers and duties of the department, for the encouragement of competition and innovation, for cooperation with the department; further providing for certificates of need, for the promulgation of regulations and other procedural matters, for major medical equipment and for the licensure and regulation of health care facilities, and providing penalties.

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

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

Section 103. Definitions.

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

"Act." The comprehensive Health Care Facilities Act.

"Affected person." A person whose proposal is being reviewed for purposes of certificate of need, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, and those members of the public who are to be served by the proposed new institutional health services *and those agencies, if any, which establish rates for health care facilities and health maintenance organizations located in the health systems area in which the proposed new institutional health service is to be offered or developed.*

"Annual implementation plan." The latest health systems agency's annual statement of objectives to achieve the goals of the health systems plan, including the priorities established among the objectives.

"Certificate of need." A certificate issued by the department under the provisions of this act, including those issued as an amendment to an existing certificate of need.

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

“Consumer.” [A natural person who uses or potentially will use the services of a provider of health care, excluding however the following: a health care provider, or third party payor, or a practitioner of the healing arts. It shall also exclude persons one-tenth or more of whose gross income is from provision of health services, research or instruction in health care or from entities producing or supplying drugs or other articles for use in health care or health care research or instruction, any person who holds a fiduciary position in any of the foregoing or in a health care institution, or the parent, spouse, child, brother, or sister residing in the same household with any of the above excluded person.] *A natural person who is not a “provider of health care” as defined in Title XV of the Federal Public Health Service Act. For the purpose of section 301, any person who holds a fiduciary position in any health care facility or health maintenance organization shall not be considered a consumer.*

“Department.” The Department of Health.

“Develop.” When used in connection with health services or facilities, means to undertake those activities which on their completion will result in the offer of a new health service or the incurring of a financial obligation in relation to the offering of such a service[, excluding costs for preliminary plans, studies, and surveys].

“Health care facility.” A general or special hospital including tuberculosis and psychiatric hospitals, *rehabilitation facilities*, skilled nursing facilities, kidney disease treatment centers including free-standing hemodialysis units, intermediate care facilities and ambulatory surgical facilities, both profit and nonprofit and including those operated by an agency of State or local government, but shall not include an office used exclusively for their private or group practice by physicians or dentists, nor a program which renders treatment or care for drug or alcohol abuse or dependence, unless located within, by or through a health care facility, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of any church or religious denomination, nor a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of the religious denominations conducting the facility.

This definition shall exclude all health care facilities as hereinabove defined that do not accept, directly or indirectly, any Federal or State

Governmental funds for capitalization, depreciation, interest, research or reimbursement, unless the Secretary of Health, Education and Welfare, pursuant to Federal Public Law 93-641, section 1523(a)(4) (B), concludes that this exclusionary provision is unsatisfactory to the Departments of Health, Education and Welfare.

["Health care provider." A person who operates a health care facility or health care institution or health maintenance organization.]

"Health maintenance organization." [An organization providing health care services for a voluntarily enrolled population operating in a defined geographical area and charging a fixed pre-paid membership fee.] An organization defined as a health maintenance organization by section 1531(8) of the Federal Public Health Service Act or an organization regulated by the act of December 29, 1972 (P.L.1701, No.364), known as the "Voluntary Nonprofit Health Service Act of 1972."

"Health service area." The area served by a health systems agency as designated in accordance with Title XV of the Federal Public Health Service Act.

"Health services." Clinically related (i.e., diagnostic, treatment or rehabilitative) services, including alcohol, drug abuse and mental health services.

"Health systems agency" or "HSA." An entity which has been conditionally or fully designated pursuant to Title XV of the Federal Public Health Service Act.

"Hearing board." The State Health Facility Hearing Board created in the Department of Justice under the provisions of this act.

"Home health care." The provision of nursing and other therapeutic services to disabled, injured or sick persons in their place of residence and other health related services provided to protect and maintain persons in their own home.

["Institutional health services." Health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.]

"Major medical equipment." Medical equipment which is used for the provision of medical and other health services and which costs in excess of \$150,000, except major medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under the Medicare program to meet the applicable requirements of section 1861(s) of the Federal Social Security Act. In determining whether medical equipment has a value in excess of \$150,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included.

"Offer." Make provision for providing in a regular manner and on an organized basis specified health services.

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

“Person.” A natural person, corporation (including associations, joint stock companies and insurance companies), partnership, trust, estate, association, the Commonwealth, and any local governmental unit, authority and agency thereof. *The term shall include all entities owning or operating a health care facility or health maintenance organization.*

“Persons directly affected.” A person whose proposal for certificate of need is being reviewed, members of the public who are to be served by the proposed new institutional health services, health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review, and health care facilities and health maintenance organizations which prior to receipt by the agency of the proposal being reviewed have formally indicated an intention to provide such similar service in the future *and those agencies, if any, which establish rates for health care facilities and health maintenance organizations located in the health systems area in which the proposed new institutional health service is to be offered or developed.*

“Policy board.” The Health Care Policy Board created in the Department of Health under the provisions of this act.

“Predevelopment costs.” Expenditures for preparation of architectural designs, working drawings, plans and specifications[; **however expenditures for preliminary plans, studies and surveys are excluded from the operation of this act**].

“Public hearing.” A meeting open to the public where any person has an opportunity to present testimony held without imposition of a fee.

“Rehabilitation facility.” *An inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.*

“Secretary.” The Secretary of the Department of Health of the Commonwealth of Pennsylvania.

[“State health plan.” The statement of goals for the State health care system based on the various HSA plans as annually approved by the SHCC.

“State medical facilities plan.” The statement of needs and priorities consistent with the State health plan prepared annually to serve as a guide for allocation of Federal and State funds in support of capital expenditures of health care facilities and for consideration in issuing certificates of need.]

“Statewide Health Coordinating Council” or **“SHCC”**, or **“council.”** The council established in compliance with Title XV of the Federal Public Health Service Act.

“Third party payor.” A person who makes payments on behalf of patients under compulsion of law or contract who does not supply

care or services as a health care provider or who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits, but shall not include the Federal, State, or any local government unit, authority, or agency thereof or a health maintenance organization.

Section 201. Powers and duties of the department.

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

(1) To act as a single State agency through its staff and the policy board in serving as the designated sole State health planning and development agency in accordance with Titles XV and XVI of the Federal Public Health Service Act.

(2) To exercise exclusive jurisdiction over health care providers, and jurisdiction over health maintenance organizations in accordance with the provisions of this act.

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

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

(5) To evaluate at least annually its functions and performance and their economic effectiveness.

(6) **[To compile, maintain and publish a Statewide inventory of health care facilities and their types of services.] *To prepare, in accordance with applicable Federal law, an inventory of the health care facilities located in the Commonwealth and evaluate on an ongoing basis the physical condition of such facilities. The inventory and evaluation shall be periodically reported to every HSA.***

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

(8) To research, prepare and after **[adoption] approval** by the SHCC **and the Governor** publish **[annually] triennially** a State health plan for the Commonwealth **based on the various health systems plans.**

(9) To provide coordination with the National Center for Health Statistics of the activities of the department for the collection, retrieval, analysis, reporting and publication of statistical and other

information relating to health and health care and to require health care providers doing business in the Commonwealth to make statistical and other reports of information required by Federal law to be submitted to the National Center for Health Care Statistics; and to collect such other information as may be appropriate to determine the appropriate level of facilities and services for the effective implementation of certification of need under this act.

(10) To furnish such staff support and expertise to the department's policy board as may be needed by them to perform their responsibilities provided that any refusal of a substantial request from such board be subject to final determination by the Governor.

(11) To receive, docket and review all applications for certificates of need or amendments thereof and approve or disapprove the same.

(12) **[To prepare a State medical facilities plan for approval by the SHCC.]** *To determine the Statewide health needs of the Commonwealth after providing reasonable opportunity for the submission of written recommendations respecting such needs by State agencies responsible for planning with regard to mental health, mental retardation and other developmental disabilities, and drug and alcohol abuse, as well as other agencies of State Government designated by the Governor for the purpose of making such recommendations and after consulting with SHCC.*

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

(14) To adopt and promulgate, after consultation with the policy board, regulations necessary to carry out the purposes and provisions of this act relating to certificate of need.

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

(16) To consult with the SHCC in the administration of this act.

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

Section 2. The act is amended by adding a section to read:

Section 202. Encouragement of competition and innovation.

The health systems agencies and the department shall in their planning and review activities foster competition and encourage innovations in the financing and delivery systems for health services that will promote economic behavior by consumers and providers of health services and that lead to appropriate investment, supply and use of health services. To this end, the health systems plan and the annual implementation plan adopted by the health systems agencies and State health plan shall include an assessment of the current and potential

scope of competition and market forces to establish appropriate investment and utilization patterns in the Commonwealth and shall specify the public and private actions needed to strengthen these forces. Revisions of the plan shall assess individual services or types of providers as to whether the conditions for competition have improved in the period since the last plan.

Section 3. Sections 502, 505, 601, 603, 701, 702, 703, 704(a), 707, 708 and 711 of the act are amended to read:

Section 502. Powers and duties of the hearing board.

(a) The hearing board shall have the powers and its duties shall be:

(1) To hear appeals from departmental decisions on applications for certificates of need or amendments thereto.

(2) To hear upon petition objections to published regulations, criteria, or standards of the health systems agency or department as to the policies therein set forth and where appropriate to request the promulgating agency to reconsider such policies.

(3) To hear appeals from decisions of the department which **[are inconsistent with the recommendation of a health systems agency under Title XVI of the Federal Public Health Service Act, or on decisions made with respect to the review of the State Medical Facilities Plan, or in the performance of other functions of the State Health Coordinating Council, or with respect to reviews for appropriateness.] require a person to obtain a certificate of need for major medical equipment or the acquisition of an existing health care facility.**

(4) To fix the place of hearings in the area from which the application arises in matters relating to certificate of need.

(b) Hearings may be held before one or more members of the board, but action of the board shall be made by majority vote of the board.

Section 505. Hearings before the hearing board.

(a) All hearings before the hearing board shall be subject to right of notice, hearing and adjudication in accordance with 2 Pa.C.S. Chaps. 5 and 7, known as the Administrative Agency Law and a written record shall be kept of said proceedings and a copy thereof provided to the parties at cost.

(b) Persons conducting hearings under this act shall have the power to subpoena witnesses and documents required for the hearing, to administer oaths and examine witnesses and receive evidence in any locality which the hearing body may designate, having regard to the public convenience and proper discharge of its functions and duties.

(c) Notice of hearings before the hearing board shall be given to the parties at least 21 days in advance of the hearing. In appeals to the board from the decision of the department on an application for certificate of need or amendment thereof, notice of the same shall be published **[(other than by legal notice or classified advertisement)]** in a newspaper in general circulation in the health service area and to the

areas affected and in the Pennsylvania Bulletin at least 14 days before the hearing.

Section 601. Promulgation of rules and regulations.

(a) All rules and regulations under this act [relating to certificate of need] shall be prepared by the department and submitted for review by the policy board and the department shall consult with the policy board before proposed regulations are published.

(b) All rules and regulations adopted under this act shall provide fair access and due process in all proceedings held to carry out the provisions of this act and shall not require an applicant to supply data or information as to other health care facilities or health maintenance organizations.

[(c) All proposed rules and regulations shall be submitted to the Secretary of the Senate and Chief Clerk of the House of Representatives who shall cause the regulations to be printed and distributed among all members of both chambers in the same manner as a reorganization plan. If both bodies fail to act within 30 days of receipt of such regulations, or within five legislative days after receipt, whichever shall last occur, regulations adopted by the department shall be promulgated pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."]

(d) If either chamber disapproves any regulation, such information shall be certified by the Speaker of the House of Representatives or President pro tempore of the Senate to the department, and such regulation shall not be promulgated as a final regulation.]

(c) Regulations which relate to certificate of need or which relate to the composition or operation of governing bodies of health care facilities shall take effect only when they have been reviewed by the General Assembly in accordance with the procedure established by subsection (d) and section 7(a) and (d) of the act of April 7, 1955 (P.L.23, No.8), known as the "Reorganization Act of 1955."

(d) Regulations described in subsection (c) may be disapproved by a majority vote of the duly elected members of both Houses during the 30-day submission period. No vote to approve or disapprove a regulation may be taken within the first ten days of transmittal of the regulation to the General Assembly unless the appropriate committee in the House taking the vote has reviewed the regulation and adopted a recommendation of approval or disapproval. Upon the expiration of the 30-day period after the delivery of the regulations to the two Houses of the General Assembly and the failure to act as provided in this section, the regulations shall become effective.

(e) The department shall also publish a notice of the availability of proposed regulations relating to certificate of need and any revisions thereof in accordance with the designation agreement with the Secretary of Health, Education and Welfare, if any, [(other than as a legal notice or classified advertisement)] in at least two newspapers in general circulation in the Commonwealth, together with a place they

may be examined and copied by interested persons. **[It shall also send the proposed regulations to each health systems agency.]**

(f) Proposed regulations establishing certificate of need review procedures and criteria or changes therein shall be distributed by the department to the SHCC, each health systems agency operating in the Commonwealth and Statewide health agencies and organizations *and those agencies, if any, which establish rates for health care facilities and health maintenance organizations.*

(g) The department shall distribute copies of adopted final regulations on certificate of need review procedures and criteria, and any revisions thereof, *to persons set forth in subsection (f) and* to the Departments of Health, Education and Welfare and shall provide such copies to other interested persons upon request.

(h) Prior to review by the department of new institutional health services under this act, the department shall disseminate to all health care facilities and health maintenance organizations within the Commonwealth, and shall publish in one or more newspapers in general circulation within the Commonwealth a description of coverage of the certificate of need program for review, as determined under regulations, and any revisions thereof shall be similarly disseminated and published.

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

(a) (1) No certificate of need shall be granted to **[a health care facility] any person** for a new institutional health service unless such new institutional health service is found by the department to be needed.

(2) Only those new institutional health services which are granted certificates of need shall be offered or developed within the Commonwealth by **[a health care facility] any person.**

(3) No expenditures in excess of \$150,000 in preparation for the offering or development of a new institutional health service **[for a health care facility]** shall be made by any person unless a certificate of need for such services or expenditures has been granted.

(4) No binding arrangement or commitment for financing the offering or development of a new institutional health service shall be made **[for any health care facility] by any person** unless a certificate of need for such new institutional health service, or the preparation for the offering or development of the same has been granted.

(b) Orders for which the time of appeal has expired shall be enforced by the department in summary proceedings or, when necessary, with the aid of the court of common pleas of the county in which the **[health care facility] new institutional health service** is located.

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

(d) Any [health care facility] *person* operating [a facility or] a new institutional health service within this Commonwealth for which no certificate of need has been obtained, after service of a cease and desist order of the department, or after expiration of the time for appeal of any final order on appeal, upon conviction thereof, shall be sentenced to pay a fine of not less than \$100 or more than \$1,000 and costs of prosecution. Each day of operating a [health care facility] *new institutional health service* after issuance of a cease and desist order shall constitute a separate offense.

(e) Any person violating this act by a willful failure to obtain a certificate of need, or willfully deviating from the provisions of the certificate, or beginning construction, or providing services, or acquiring equipment after the expiration of a certificate of need shall be subject to a penalty of not less than \$100 per day and not more than \$1,000 per day. Each day after notice to them of the existence of such violation shall be considered a separate offense.

(f) The department shall seek injunctive relief to prevent continuing violations of this act.

(g) No license to operate a health care facility, health maintenance organization, or new institutional health service by [a health care facility] *any person* in this Commonwealth shall be granted and any license issued shall be void and of no effect as to any facility, organization, service or part thereof for which a certificate of need is required by this act and not granted.

(h) *No person shall acquire major medical equipment which will not be owned or operated in a health care facility or acquire an existing health care facility except in accordance with this act.*

Section 701. Certificate of need required; new institutional health services subject to review.

(a) No person shall offer, develop, construct or otherwise establish or undertake to establish within the State a new institutional health service [in a health care facility] without first obtaining a certificate of need from the department. For purposes of this chapter, "new institutional health services" shall include:

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

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of \$150,000 which, under generally accepted accounting principles consistently applied, is a capital expenditure. [; except that this chapter shall not apply to expenditures] *Expenditures* for acquisitions of existing health care facilities and health maintenance organizations [which currently have a certificate of need] *shall not be included unless the notice required by subsection (i) of section 702 is not filed or the department finds within 30 days of receipt of such notice that the services or bed capacity of the health care facility will be changed in being acquired.* An acquisition by or on behalf of a health care facility or

health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, shall be deemed a capital expenditure subject to review[, except that no review shall be required for acquisition of real property by gift, devise or option].

(3) **[A change in bed capacity of a health care facility or health maintenance organization which increases the total]** *The obligation of any capital expenditure by or on behalf of a health care facility which results in the addition of a health service not provided in or through the facility in the previous 12 months or which increases the number of beds (or redistributes beds among various categories other than levels of care in a nursing home, or relocates such beds from one physical facility or site to another) by more than ten beds or more than 10% of total bed capacity, as defined by the regulations, whichever is less, over a two-year period.*

(4) **[Health services]** *The addition of a health service which [are] is offered in or through a health care facility [or health maintenance organization] having an operating expense in excess of the minimum annual operating expense established in accordance with Title XV of the Federal Public Health Service Act, and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the 12-month period prior to the time such services would be offered.*

(5) *Major medical equipment not owned by or located in a health care facility which will:*

(i) *be used to provide service for inpatients of a health care facility; or*

(ii) *for which a notice was not provided in accordance with subsection (i) of section 702.*

(b) (1) Any expenditure by or on behalf of health care facilities or a health maintenance organization in excess of \$150,000 made in preparation for the offering or development of a new institutional health service and any binding arrangement or commitment by either of them for financing the offering or development of the new institutional health service shall be subject to review under this chapter. **[Should a higher dollar limitation for review requirements of new institutional health services be permitted by Federal law such higher amount shall apply throughout this act each time a dollar limit appears.]**

(2) Nothing in this paragraph shall preclude the department from granting a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed.

(c) *Notwithstanding the provisions of subsection (a) or (b) a new institutional health service acquired, owned or operated by a health maintenance organization and home health care shall be subject to the provisions of this act only to the extent required by Federal law.*

(d) As higher minimum expenditures requiring review are set by the Federal Government, those limits shall immediately apply in lieu of the minimum expenditure limits set by this act.

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

(a) Projects for facilities, services or equipment requiring a certificate of need shall, at the earliest possible time in their planning, be submitted to the health systems agency and the department in a letter of intent in such detail advising of the scope and nature of the project as required by regulations.

(b) A person desiring to obtain or amend a certificate of need shall apply to the local health systems agency, if any, and to the department simultaneously supplying to them such information as is required by rules and regulations. The health systems agency and the department shall have 20 business days after receipt of the application within which to determine whether the application is complete and in which to request specific further information. If further information is requested, the agency requiring the same shall determine whether the application is complete within 15 business days of receipt of the same. No information shall be required that is not specified in the rules and regulations promulgated by the department.

(c) [Notice] *Timely notice* of the beginning of review of the application by the health systems agency shall be sent with the notice of a completed application, upon the expiration of the time to determine that an application is complete, or 60 days or more after the filing of the application upon written demand by the applicant that review begin, whichever shall first occur, and the review shall be completed within 60 days of the "date of notification" unless the applicant agrees in writing to a specified extension of time for the review by the health systems agency. A health systems agency shall have, at least, 60 days to complete its review unless the health systems agency waives such time in writing. The "date of notification" of the beginning of review shall be the date such notice is sent, or the date such notice is published in a newspaper of general circulation, whichever is later.

(d) The department shall consider the timely filed recommendations or objections of the health systems agency in reviewing the application and shall approve or disapprove the application, unless there is an agreed extension in writing, within 30 days from receipt of the health systems agency report or report on a hearing for reconsideration before the health systems agency, whichever is later, or upon the expiration of the time for filing the same. If no action is taken within the time permitted the department to make its findings, **[the application will be found not needed; provided, that if]** *the applicant may, following expiration of that time period, bring an action in the Commonwealth Court to require the department to approve or disapprove the application and the court shall promptly issue such an order upon proof that the period has been exceeded. If permitted by amend-*

ment of the Federal law or regulation any application upon which action is not taken within the prescribed time shall be deemed needed and the department shall have no right of appeal with respect thereto. No new institutional health service shall be granted a certificate of need unless found or deemed to be found needed by the department or on appeal therefrom.

(e) (1) Certificates of need shall be granted or refused. They shall not be conditioned upon the applicant changing other aspects of its facilities or services or requiring the applicant to meet other specified requirements, and no such condition shall be imposed by the department or the health systems agency in granting or refusing approval or recommendation.

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

(f) (1) The department shall make written findings which state the basis for any final decision made by the department. Such findings shall be served upon the applicant, the health systems agency or agencies, and all parties to the proceedings, and shall be made available to others upon request.

(2) *All decisions of the department shall be based solely on the record. No ex parte contact regarding the application between any employee of the department who exercises responsibilities respecting the application and the applicant, any person acting on behalf of the applicant or any person opposed to the issuance of the certificate of need shall occur after the commencement of a hearing on the application and before a decision is made by the department.*

(g) When the department makes a decision regarding the proposed new institutional health service which is inconsistent with the recommendation made with respect thereto by a health systems agency, or with the applicable health systems plan or annual implementation plan, the department shall submit to such health systems agency and all parties to the proceeding a written, detailed statement of the reasons for the inconsistency.

(h) Modification of the application at any stage of the proceeding shall not extend the time limits provided by this act unless the health systems agency expressly finds that the modification represents a substantial change in the character of the application.

(i) (1) *Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility or before any person acquires an existing health care facility, such person shall notify the department of such person's intent to acquire such equipment or existing health care facility.*

(2) The notice shall be in writing in a form specified by the department and shall be made at least 30 days before contractual arrangements are entered into to acquire the major medical equipment or the existing health care facility.

(3) In the case of the intended acquisition of major medical equipment, the notice shall contain information regarding the use that will be made of the equipment. In the case of the intended acquisition of an existing health care facility, the notice shall contain information with regard to the services to be offered in the facility and its bed capacity.

(4) Within 30 days after the receipt of the notice, the department shall inform the person providing the notice whether or not the proposed acquisition is a new institutional health service. If the department determines that the acquisition will be a new institutional health service, the acquisition shall be subject to the remaining provisions of this act.

(5) A decision of the department that an acquisition requires a certificate of need may be appealed to the Health Facility Hearing Board.

(j) (1) The department shall provide for categories of projects which shall receive simultaneous and comparative review and periods in which applications for such projects must be received (and prohibiting submission of applications outside such periods). The time between the beginning of any such period and the beginning of the next succeeding period for submission of applications for any category shall not exceed four months. No project shall be subject to such submission limitations if a notice of intent to submit an application for the project is submitted prior to the publication in the Pennsylvania Bulletin of a notice of proposed rule making by the department to establish a category subject to submission limitations.

(2) The following projects shall be exempt from any of the above batching provisions set forth in paragraph (1):

(i) Replacement of equipment not involving a substantial change in functional capacity or capability.

(ii) Renovations necessary to meet code requirements which do not expand the capacity of the facility or involve the addition of new services.

(iii) Repairs or reconstruction in the cases of emergency.

(iv) Installation of equipment or renovations which will save energy but which do not expand the capacity of the facility or involve the addition of a new service.

Section 703. Notice and hearings before health systems agencies.

(a) Notice of [filing] *completed* applications for certificates of need or amendment thereto and of the beginning of review shall be published by the health systems agency in the appropriate news media and by the department in the Pennsylvania Bulletin in accordance with

45 Pa.C.S. Chap. 7 B (relating to publication of documents), and the health systems agency shall notify all affected persons with notice of the schedule for review, the date by which a public hearing must be demanded, and of the manner notice will be given of a hearing, if one is to be held. [Such notice will be sent by mail to the applicant, contiguous health systems agencies, and health care facilities and health maintenance organizations located within the health service area; including another health systems agency if the service will affect its area, or a consumer, provider or third party payor] *Notice to affected persons (other than members of the public who are to be served by the proposed new institutional health service) shall be by mail (which may be part of a newsletter). Members of the public may be notified through newspapers of general circulation. Directly affected persons* may file objections within 15 days of such publication with the local health systems agency setting forth specifically the reasons such objections were filed. Persons filing the objections shall be parties to the proceeding, unless and until such objections are withdrawn.

(b) [Directly affected] *Affected* persons may request a public hearing or the health systems agency may require a public hearing during the course of such review. Fourteen days written notice of the hearing shall be given to [directly] affected persons[. In addition, notice shall be published by the health systems agency (other than by legal notice or classified advertisement) in a newspaper of general circulation in the area at least ten days before the hearing, and by the department in the Pennsylvania Bulletin before the hearing. The applicant and any persons shall be afforded the opportunity to submit testimony at the hearing. A summary of the oral testimony at the hearing shall be made and copies made available at cost to the parties. Any party shall have the right to require additional testimony given at the hearing to be included in the summary, but the decision of the health systems agency as to the testimony at the hearing shall be final] *in the same manner as a notice of a completed application is provided in subsection (a). In the hearing, any person shall have the right to be represented by counsel and to present oral or written arguments and relevant evidence. Any person directly affected may conduct reasonable questioning of persons who make relevant factual allegations. A record of the hearing shall be maintained.*

Section 704. Hearings before the department.

(a) *The function of holding a public hearing is hereby delegated to the appropriate HSA unless the department and the HSA agree otherwise in writing in a particular case.* If a public hearing has been held by the health systems agency, no hearing [need] shall be held by the department in reaching its final decision. If there has been no provision for such hearings before the health systems agency, the department shall [comply with the provisions of section 703(a) in the manner provided for hearings as to the health systems agency; and objections

may be filed within ten days of publication of the notice.] *provide notice of a public hearing and conduct that hearing in accordance with the provisions of section 703(b).*

* * *

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

(a) An application for a certificate of need shall be recommended, approved, and issued when *the application substantially meets the requirements listed below; provided that each decision, except in circumstances which pose a threat to public health, shall be consistent with the State health plan:*

(1) The relationship of the application with the applicable health systems plan and annual implementation plan has been considered.

(2) The services are compatible to the long-range development plan (if any) of the applicant.

(3) There is a need by the population served or to be served by the services.

(4) There is no appropriate, less costly, or more effective alternative methods of providing the services available.

(5) The service or facility is economically feasible, considering anticipated volume of care, the capability of the service area to meet reasonable charges for the service or facility and the availability of financing.

(6) The proposed service or facility is financially feasible both on an intermediate and long term basis and the impact on cost of and charges for providing services by the applicant is appropriate.

(7) The proposed service or facility is compatible with the existing health care system in the area.

(8) The service or facility is justified by community need and within the financial capabilities of the institution both on an intermediate and long term basis and will not have an inappropriate, adverse impact on the overall cost of providing health services in the area.

(9) There are available resources (including health manpower, management personnel, and funds for capital and operating needs) to the applicant for the provision of the services proposed to be provided, and there is no greater need for alternative uses for such resources for the provision of other health services. *The effect on the clinical needs of health professional training programs in the medical service area, the extent to which health professional schools in the medical service area will have access to the services for training purposes and the extent to which the proposed service will be accessible to all residents of the area to be served by such services have been considered.*

(10) The proposed service or facility will have available to it appropriate ancillary and support services and an appropriate organizational relationship to such services.

(11) The proposed services are consistent with the special needs and circumstances of those entities which provide services or resources both within and without the health service area in which the proposed services are to be located, including medical and other health professional schools, multidisciplinary clinics, and specialty centers.

(12) The special needs and circumstances of health maintenance organizations shall be considered to the extent required by Federal law and regulation now or hereafter enacted or adopted.

(13) The proposed services are not incompatible with any biomedical or behavioral research projects designed for national need for which local conditions offer special advantages.

(14) Consideration of the need and availability in the community for services and facilities for allopathic and osteopathic physicians and their patients; and the religious orientation of the facility and the religious needs of the community to be served. This provision is not intended to create duplicative systems of care.

(15) The factors which affect the effect of competition on the supply of health services being reviewed with particular reference to the existence and the capacity of market conditions in advancing the purposes of quality assurance, cost containment and responsiveness to consumer preferences and the existence and capacity of utilization review programs and other public and private cost control measures to give effect to consumer preferences and to establish appropriate incentives for capital allocations have been considered.

(16) Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance, cost effectiveness and responsiveness to consumer preferences have been given preference.

(17) The efficiency and appropriateness of the use of existing services and facilities similar to those proposed has been considered.

(18) In the case of existing services for facilities, the quality of care provided by services or facilities in the past has been considered.

(19) The contribution of the proposed new institutional health service in meeting the health related needs of members of medically underserved groups has been considered in written findings.

(20) The special circumstances of applications with respect to the need for conserving energy have been considered.

(b) If the application is for a proposed service or facility which includes a construction project, a certificate of need shall be recommended, approved and issued when the provisions of subsection (a) are **[found] satisfied**, and:

(1) the costs and methods of proposed construction including the costs and methods of energy provision are appropriate; and

(2) the impact on the costs of providing health services by the applicant resulting from the construction is *found to be* appropriate

and the impact on the costs and charges to the public of providing health services by other persons is found to be not inappropriate.

(c) Whenever new institutional health services for inpatients are proposed, a finding shall be made in writing by the reviewing authority:

(1) as to the efficiency and appropriateness of the existing use of the inpatient facilities similar to those proposed;

(2) as to the capital and operating costs, efficiency and appropriateness of the proposed new service and its potential impact on patient charges;

(3) that less costly alternatives which are more efficient and more appropriate to such inpatient service are not available and the development of such alternatives has been studied and found not practicable;

(4) that existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner;

(5) that in the case of new construction, alternatives to new construction such as modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

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

(7) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of the agency, if any, that is responsible for the provision and financing of long-term care services.

A certificate of need shall be issued for inpatient services when *the provisions of subsections (a) and (b) are satisfied and the findings of this subsection can be made.*

(d) Notwithstanding the provisions of subsections (a), (b) and (c), applications for projects described in subsection (e) shall be approved unless the department finds that the facility or service with respect to such expenditure as proposed is not needed or that the project is not consistent with the State health plan. An application made under this subsection shall be approved only to the extent required to overcome the conditions described in subsection (e).

(e) Subject to the provisions of subsection (d), subsections (a), (b) and (c) shall not apply to capital expenditures required to:

(1) Eliminate or prevent imminent safety hazards as safety codes or regulations.

(2) Comply with State licensure standards.

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

Section 708. [Expiration] *Withdrawal* of certificate of need.

[A certificate of need shall remain in effect, providing the facilities and services authorized are in use. In the absence of substantial implementation of a proposal for which a certificate of need was issued, the certificate shall expire one year after issuance, unless the department extends the time of expiration for a definite period, not to exceed six months. In case of projects which are approved to be carried out in phases, the certificate of need shall remain in effect after the first phase is substantially implemented unless the project is abandoned. Annual reports of progress shall be made to the department by the applicant from the time a certificate of need is granted until the facility or service is in use.] *An application for a certificate of need shall specify the time the applicant will require to make the service or equipment available or to obligate the expenditure and a timetable for making the service or equipment available or obligating the expenditure. The department shall periodically review the progress of the holder of the certificate of need in meeting the timetable specified in the approved application. If on the basis of this review the department determines that the holder of the certificate of need is not meeting the timetable and is not making a good faith effort to meet it, the department may, after considering any recommendation made by the appropriate HSA, withdraw the certificate of need. In withdrawing a certificate pursuant to this section, the department shall follow the procedures set forth in sections 702, 703 and 704.*

Section 711. Review of activities.

(a) The department and each health systems agency shall prepare and publish not less frequently than annually reports of reviews conducted under this act, including a statement on the status of each such review and of reviews completed by them, including statements of the finding and decisions made in the course of such reviews since the last report. The department and each health systems agency shall also make available to the general public for examination at reasonable times of the business day all applications reviewed by them and all written materials on file at the agency pertinent to such review.

(b) *The department in its report which shall be submitted to the members of the Health and Welfare Committees of the Senate and House of Representatives shall contain the following information classified by health system areas:*

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

(2) *An estimate of the operating cost impact of the approved projects.*

(3) *The average time for review, by project type.*

(4) *The assessment of the extent of competition in specific service sectors that guided decisions.*

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

Section 4. The act is amended by adding a section to read:

Section 712. Actions against violations of law and rules and regulations; bonds.

(a) Whenever any person, regardless of whether such person is a licensee, has willfully violated any of the provisions of this act or the rules and regulations adopted thereunder, the department may maintain any action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

(b) No bond shall be required of the department in any legal action.

Section 5. The heading of Chapter 8 of the act is amended to read:

**CHAPTER 8
[PROCEEDING AGAINST HEALTH CARE
INSTITUTIONS; VIOLATORS]
LICENSING OF HEALTH CARE FACILITIES**

Section 6. Sections 801 and 802 of the act are repealed.

Section 7. The act is amended by adding sections to read:

Section 801.1. Purpose.

It is the purpose of this chapter to protect and promote the public health and welfare through the establishment and enforcement of regulations setting minimum standards in the construction, maintenance and operation of health care facilities. Such standards are intended by the Legislature to assure safe, adequate and efficient facilities and services, and to promote the health, safety and adequate care of the patients or residents of such facilities. It is also the purpose of this chapter to assure quality health care through appropriate and nonduplicative review and inspection with due regard to the protection of the health and rights of privacy of patients and without unreasonably interfering with the operation of the health care facility or home health agency.

Section 802.1. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given them in this section:

“Ambulatory surgical facility.” A facility not located upon the premises of a hospital which provides outpatient surgical treatment. Ambulatory surgical facility does not include individual or group practice offices of private physicians or dentists, unless such offices have a distinct part used solely for outpatient surgical treatment on a regular and organized basis. For the purposes of this provision, outpatient surgical treatment means surgical treatment to patients who do

not require hospitalization, but who require constant medical supervision following the surgical procedure performed.

“Birth center.” A facility not part of a hospital which provides maternity care to childbearing families not requiring hospitalization. A birth center provides a home-like atmosphere for maternity care, including prenatal labor delivery and postpartum care related to medically uncomplicated pregnancies.

“Health care facility.” A general, tuberculosis, chronic disease or other type of hospital, a skilled nursing facility, a home health care agency, an intermediate care facility, an ambulatory surgical facility, birth center regardless of whether such health care facility is operated for profit, nonprofit or by an agency of the Commonwealth or local government. The term health care facility shall not include an office used primarily for the private practice of medicine, osteopathy, optometry, chiropractic, podiatry or dentistry, nor a program which renders treatment or care for drug or alcohol abuse or dependence unless located within a health facility, nor a facility providing treatment solely on the basis of prayer or spiritual means. A mental retardation facility is not a health care facility except to the extent that it provides skilled nursing care. The term health care facility shall not apply to a facility which is conducted by a religious organization for the purpose of providing health care services exclusively to clergymen or other persons in a religious profession who are members of a religious denomination.

“Health care provider” or “provider.” An individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), the Commonwealth, or a political subdivision or instrumentality (including a municipal corporation or authority) thereof, that operates a health care facility.

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

“Hospital.” An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the care of injured, disabled, pregnant, diseased or sick or mentally ill persons, or rehabilitation services for the rehabilitation of injured, disabled, pregnant, diseased or sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for the mentally ill.

“Intermediate care facility.” An institution which provides on a regular basis health-related care and services to resident individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of

their mental or physical condition require health-related care and services above the level of room and board. Intermediate care facilities exclusively for the mentally retarded commonly called ICF/MR shall not be considered intermediate care facilities for the purpose of this act and shall be licensed by the Department of Public Welfare.

“Skilled nursing facility.” Any facility or part of a facility in which professionally supervised nursing care and related medical and other health services are provided for a period exceeding 24 hours for two or more individuals who are not in need of hospitalization and are not relatives of the nursing home administrator, but who because of age, illness, disease, injury convalescence or physical or mental infirmity need such care.

Section 803. Powers of the Department of Health.

The Department of Health shall have the power and its duty shall be:

- (1) to promulgate, after consultation with the policy board, the rules and regulations necessary to carry out the purposes and provisions of this chapter; and*
- (2) to assure that the provisions of this chapter and all rules and regulations promulgated under this chapter are enforced.*

Section 804. Administration.

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

(b) Prevention of duplication.—In carrying out the provisions of this chapter and other statutes of this Commonwealth relating to health care facilities, the department and other departments and agencies of the State and local governments shall make every reasonable effort to prevent duplication of inspections and examinations. Within 12 months of the enactment date of this chapter, the department shall establish subject to the approval of the Governor a method of scheduling inspections whereby inspections of health care facilities by all departments and agencies of the Commonwealth shall be coordinated insofar as reasonably possible. Within 24 months of the enactment date of this chapter, the department shall make the dates of expiration of Medicaid and Medicare certification coincide with licensure and shall subsequently combine these surveys and inspections where practical.

(c) Health care innovation.—The department shall administer this chapter so as to encourage innovation and experimentation in health care and health care facilities and shall encourage contributions of private funds and services to health care facilities.

(d) Reports.—The department shall report annually to the General Assembly on the effectiveness of the licensing and enforcement of this chapter. Such report shall include appropriate data according to nature of facility relating to provisional licenses issued, nature of violations of regulations, number of facilities against which sanctions

had to be taken and the number of facilities with pending serious violations. The report shall also include recommendations for statutory and administrative changes which the department deems desirable to enhance the quality of care provided by health care facilities.

Section 805. State Health Facility Hearing Board.

(a) Hearings and adjudications.—In addition to the powers and duties otherwise provided by law, the hearing board shall have the power and its duty shall be to hold hearings and issue adjudications in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) upon appeal from any final order, decision, decree, determination or ruling of the Department of Health relating to licensure. The issuance of a provisional license may also be appealed.

(b) Actions of the board.—Hearings relating to licensure may be held before one or more members of the hearing board, but actions of the board shall be made by the majority vote of those members holding the hearing. Evidentiary hearings when feasible shall be held in the locality where the health care facility is located. Hearings shall be conducted in accordance with rules and regulations adopted by the board. Such rules and regulations shall include procedures for the taking of appeals, locations at which hearings shall be held and such other procedural rules and regulations as may be determined advisable by the board.

(c) Review of regulation.—The board shall receive any evidence as to challenges of the authority of the department or the reasonableness of the criteria or regulations used in the review of the license for the sole purpose of creating a record for any subsequent appeal to the court.

(d) Appeal.—No action of the department relating to licensure adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the board. Any such action shall be final as to any person who has not perfected his appeal in the manner specified. A decision by the department choosing to proceed under one or more of the remedies available to it shall not be subject to review by the board.

(e) Supersedeas.—An appeal taken to the board from a decision of the department relating to licensure shall not act as a supersedeas, but upon cause shown and where circumstances require it, the department or the board or both shall have the power to grant a supersedeas.

Section 806. Licensure.

(a) License required.—No person shall maintain or operate a health care facility without first having obtained a license therefor issued by the department. No health care facility can be a provider of medical assistance services unless it is licensed by the department and certified as a medical assistance provider.

(b) Development of regulations.—In developing rules and regulations for licensure the department shall take into consideration condi-

tions for participation in government and other third party payments for health care services and the standards of the Joint Commission on Accreditation of Hospitals, the Committee on Hospital Accreditation of the American Osteopathic Association and such other accrediting bodies as the department may find appropriate.

(c) Fire and emergency standards.—Notwithstanding any other provision of law other than standards required by the Federal Government as a condition of participation by that type of health care facility in the Medicare or Medicaid program, no health care facility shall be required to satisfy any regulation relating to fire or similar emergency circumstance more stringent than those required of hospitals by the Joint Commission on Accreditation of Hospitals and the department shall adopt and enforce the appropriate standards.

(d) Home health care agency regulations.—In developing rules and regulations for licensure of home health care agencies the department shall take into consideration the standards of the National Association of Home Health Agencies, National League of Nursing, Joint Commission on the Accreditation of Hospitals and National Council for Homemakers, Home Health Aides and other accrediting bodies as the department may find appropriate. Home health care agencies certified as providers by the department to the Federal Government for purposes of the Medicare program shall be deemed to comply with and satisfy the department's regulations governing home health care agencies.

(e) Public disclosure.—Rules and regulations of the department shall require:

(1) The licensee to provide to the appropriate health systems agency information that the health systems agency is required to collect pursuant to section 1513(b) of the Federal National Health Planning and Resources Development Act.

(2) The licensee to make available to the public upon request the licensee's current daily cost reimbursement under Blue Cross, medical assistance and Medicare as well as the average daily charge to other insured and noninsured private pay patients.

(3) Disclosure of the persons owning 5% or more of the licensee as well as the licensee's officers and members of the board of directors.

Section 807. Application for license.

(a) Submission to department.—Any person desiring to secure a license to maintain and operate a health care facility shall submit an application therefor to the department upon forms prepared and furnished by it, containing such information as the department considers necessary to determine that the health care provider and the health care facility meet the requirements of licensure under the provisions of this act and the rules and regulations relating to licensure. Application for renewal of a license shall be made upon forms prepared and furnished by the department in accordance with the rules and regulations of the department.

(b) Fees.—Application for a license or for renewal of a license shall be accompanied by a fee of \$50 plus \$2 for each inpatient bed in excess of 75 beds.

Section 808. Issuance of license.

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

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

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

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

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

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

(b) Separate and limited licenses.—Separate licenses shall not be required for different services within a single health care facility except that home health care or skilled or intermediate nursing care will require separate licenses. A single facility providing both skilled and intermediate care shall need only one separate license to cover those services. A limited license, excluding from its terms a particular service or portion of a health care facility, may be issued under the provisions of this act.

(c) Modification of license.—When the certificate of need for a facility is amended as to services which can be offered, the department shall issue a modified license for those services upon demonstration of compliance with licensure requirements.

Section 809. Term and content of license.

(a) Contents.—All licenses issued by the department under this chapter shall:

(1) with the exception of provisional licenses for health care facilities other than hospitals expire one year from the date on which issued and for hospitals expire two years from the date on which issued unless renewed;

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

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

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

(5) specify the maximum number of beds, if any, to be used for the care of patients in the facility at any one time; and

(6) specify whether the license has been granted to the health care facility as a whole or, if not, shall specify those portions of or services offered by the facility which have been excluded from the terms of the license.

(b) Posting.—*The license shall at all times be posted in a conspicuous place on the provider's premises.*

(c) Visitation.—*Whenever practicable, the department shall make its visitations and other reviews necessary for licensure contemporaneously with similar visitations and other reviews necessary for provider certification in the Medicare and medical assistance programs and the department shall endeavor to avoid duplication of effort by the department and providers in the certificate of need, medical assistance and Medicare provider certification and licensure procedures. This shall not preclude the department from unannounced visits.*

(d) Use of beds in excess of maximum.—*Except in case of extreme emergency, no license shall permit the use of beds for inpatient use in the licensed facility in excess of the maximum number set forth in the license without first obtaining written permission from the department: Provided, That during the period of a license, a health care facility may without the prior approval of the department increase the total number of beds by not more than ten beds or 10% of the total bed capacity, whichever is less.*

Section 810. Reliance on accrediting agencies and Federal Government.

(a) Reports of other agencies.—*After a provider has been licensed or approved to operate a health care facility for at least three years under this or prior acts, none of which has been pursuant to a provisional license, the department may rely on the reports of the Federal Government or nationally recognized accrediting agencies if the government or agency standards are substantially similar to regulations of the department and if the provider agrees to:*

(1) *direct the agency or government to provide a copy of its findings to the department; and*

(2) *permit the department to inspect those areas or programs of the health care facility not covered by the agency or government inspection or where the agency or government report discloses more than a minimal violation of department regulations.*

(b) Coordination of inspections.—*All State agencies and all divisions or units of such agencies which conduct regular on-site inspections of health care facilities shall, within 120 days of the enactment of this amendatory act, advise the department of the type of inspections they conduct, the time required to inspect and the frequency of such inspections. In accordance with the plan approved by the Governor, the department shall coordinate, to the extent possible, inspections by State agencies other than the department and shall advise other agencies which inspections shall be made only after written notice to the department and may require other State agencies to make their inspections simultaneously with the inspection by the department. Nothing herein shall be interpreted to preclude the department from any follow-up inspection of a health care facility in which deficiencies were found in the original inspections or more*

frequent inspections of health care facilities that received provisional licenses.

(c) Right of inspection preserved.—This section shall not be construed to be a limitation on the department's right of inspection otherwise permitted by section 813.

Section 811. Reasons for revocation or nonrenewal of license.

The department may refuse to renew a license or may suspend or revoke or limit a license for all or any portion of a health care facility, or for any particular service offered by a facility, or may suspend admissions for any of the following reasons:

(1) A serious violation of provisions of this act or of the regulations for licensure issued pursuant to this act or of Federal laws and regulations. For the purpose of this paragraph, a serious violation is one which poses a significant threat to the health of patients.

(2) Failure of a licensee to submit a reasonable timetable to correct deficiencies.

(3) The existence of a cyclical pattern of deficiencies over a period of two or more years.

(4) Failure, by the holder of a provisional license, to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the department.

(5) Fraud or deceit in obtaining or attempting to obtain a license.

(6) Lending, borrowing or using the license of another, or in any way knowingly aiding or abetting the improper granting of a license.

(7) Incompetence, negligence or misconduct in operating the health care facility or in providing services to patients.

(8) Mistreating or abusing individuals cared for by the health care facility.

(9) Serious violation of the laws relating to medical assistance or Medicare reimbursement.

Section 812. Provisional license.

When there are numerous deficiencies or a serious specific deficiency in compliance with applicable statutes, ordinances or regulations, and when the department finds:

(1) the applicant is taking appropriate steps to correct the deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the department; and

(2) there is no cyclical pattern of deficiencies over a period of two or more years, then the department may issue a provisional license for a specified period of not more than six months which may be renewed three times at the discretion of the department.

Upon overall compliance, a regular license shall be issued.

Section 813. Right to enter and inspect.

For the purpose of determining the suitability of the applicants and of the premises or for determining the adequacy of the care and

treatment provided or the continuing conformity of the licensees to this act and to applicable local, State and Federal regulations, any authorized agent of the department may enter, visit and inspect the building, grounds, equipment and supplies of any health care facility licensed or requiring a license under this act and shall have full and free access to the records of the facility and to the patients and employees therein and their records, and shall have full opportunity to interview, inspect, and examine such patients and employees. Upon entering a health care facility the inspectors shall properly identify themselves to the individual on the premises then in charge of the facility.

Section 814. Provider violations.

(a) Notice of violations.—Whenever the department shall upon inspection, investigation or complaint find a violation of this chapter or regulations adopted by the department pursuant to this chapter or pursuant to Federal law, it shall give written notice thereof specifying the violation or violations found to the health care provider. Such notice shall require the health care provider to take action or to submit a plan of correction which shall bring the health care facility into compliance with applicable law or regulation within a specified time. The plan of correction must be submitted within 30 days of receipt of the written notice.

(b) Appointment of master.—When the health care provider has failed to bring the facility into compliance within the time so specified, or when the facility has demonstrated a pattern of episodes of noncompliance alternating with compliance over a period of at least two years, such as would convince a reasonable person that any correction of violations would be unlikely to be maintained, the department may petition the Commonwealth Court or the court of common pleas of the county in which the facility is located to appoint a master designated as qualified by the department to assume operation of the facility at the facility's expense for a specified period of time or until all violations are corrected and all applicable laws and regulations are complied with, or the department in its discretion may proceed in accordance with this chapter.

Section 815. Effect of departmental orders.

(a) Enforcement.—Orders of the department from which no appeal is taken to the board, and orders of the board from which no timely appeal is taken to the Commonwealth Court, are final orders and may be enforced in the court of common pleas of the county in which the health care facility is located, or in the Commonwealth Court.

(b) Supersedeas.—Orders of the department, to the extent that they are sustained by the board, shall be effective, notwithstanding an appeal, unless the appellant obtains an order of supersedeas from the Commonwealth Court.

(c) Medical assistance payments.—Orders of the department, to the extent that they are sustained by the board, which fail to renew a license or which suspend or revoke a license, shall likewise revoke or suspend certification of the facility as a medical assistance provider, and no medical assistance payment for services rendered subsequent to the final order shall be made during the pendency of an appeal for the period of revocation or suspension without an order of supersedeas by the appellate court.

Section 816. Actions against unlicensed health care providers.

(a) Actions in equity.—Whenever a license is required by this chapter to maintain or operate a health care facility, the department may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting any person from establishing, conducting or operating any unlicensed health care facility.

(b) Permanent injunction.—Should a person who is refused a license or the renewal of a license to operate or conduct a health care facility, or whose license to operate or conduct a health care facility is suspended or revoked, fail to appeal, or should such appeal be decided finally favorable to the department, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a health care facility without a license as required by this chapter.

Section 817. Actions against violations of law, rules and regulations.

(a) Actions brought by department.—Whenever any person, regardless of whether such person is a licensee, has violated any of the provisions of this chapter or the regulations issued pursuant thereto, the department may maintain an action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

(b) Civil penalty.—Any person, regardless of whether such person is a licensee, who has committed a violation of any of the provisions of this chapter or of any rule or regulation issued pursuant thereto, including failure to correct a serious licensure violation (as defined by regulation) within the time specified in a deficiency citation, may be assessed a civil penalty by an order of the department of up to \$100 for each day that such violation continues.

Section 818. Injunction or restraining order when appeal is pending.

Whenever the department shall have refused to grant or renew a license, or shall have suspended or revoked a license required by this act to operate or conduct a health care facility, or shall have ordered the person to refrain from conduct violating the rules and regulations of the department, and the person, deeming himself aggrieved by such refusal or suspension or revocation or order, shall have appealed from the action of the department to the board, or from the order of the board to the Commonwealth Court, the Commonwealth Court may, during pendency of such appeal, issue a restraining order or injunction

upon a showing that the continued operation of the health care facility adversely affects the well-being, safety or interest of the patients of the health care facility; or the court may authorize continued operation of the facility or make such other order, pending final disposition of the case, as justice and equity require.

Section 819. Remedies supplementary.

The provisions of this chapter are supplementary to any other legal rights created in this act or any other act available for the enforcement of provisions of this act and rules and regulations promulgated thereunder.

Section 820. Existing rules and regulations.

(a) Continuation of rules and regulations.—Existing rules and regulations applicable to health care facilities not clearly inconsistent with the provisions of this chapter, shall remain in effect until replaced, revised or amended. In developing regulations, the department shall give priority to developing minimum standards for home health agencies and other health care facilities not previously subject to regulation. Sections 103.2 and 103.6 of Title 28 of the Pennsylvania Code are repealed.

(b) Expiration of licenses.—All health care providers licensed, approved or certified on the effective date of this chapter to establish, maintain or operate a health care facility shall be licensed for the period remaining on the license, certification or approval. If a health care facility has a license, approval or equivalent certification without an expiration date, it shall be deemed for the purposes of this section to expire one year after its date of issuance. At the expiration of the existing license certification or approval, the health care facility shall be subject to licensure pursuant to this chapter.

Section 8. Section 901 of the act, amended December 13, 1979 (P.L.532, No.118), is amended to read:

[Section 901. Certificates for existing facilities and institutions.

All health care providers operating a health care facility shall be issued forthwith a certificate of need by the department to all buildings, real property and equipment owned, leased or being operated under contract for construction, purchase or lease and for all services being rendered by the licensed, approved or certified providers on April 1, 1980: Provided, That this section shall not apply to a new institutional health service offered, developed, constructed or otherwise established after September 30, 1979 and before April 1, 1980 if the new institutional health service is covered by section 1122 of the Federal Social Security Act and application for approval is not made to or the project is disapproved by the Secretary of Health and Welfare.]

Section 901. Existing facilities and institutions.

No certificate of need shall be required for any buildings, real property and equipment owned, leased or being operated, or under contract for construction, purchase, or lease and for all services being

rendered by licensed or approved providers on April 1, 1980. Nor shall a certificate of need be required for any new institutional health services for which an approval has been granted under section 1122 of the Social Security Act or for which an application is found pursuant to such section to be in conformity with the standards, criteria or plans to which such section refers, or as to which the Federal Secretary of Health and Human Services makes a finding that reimbursement shall be granted: Provided, however, That such approval is in force on August 1, 1980 or such application shall have been filed prior to August 1, 1980 or the acceptance of applications for reviews under this act, whichever shall last occur.

Section 9. Section 904 of the act is amended to read:

Section 904. Elimination of section 1122 reviews.

No further reviews shall be performed under section 1122 of the Federal Social Security Act, 42 U.S.C. §1320a-1, [one year after implementation of reviews under this act.] *after August 1, 1980 except to complete review for which application has been filed prior to August 1, 1980.*

Section 10. Repeals.

(a) Articles IX and X, act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code," are repealed insofar as they relate to health care facilities as defined in Chapter 8.

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

Section 11. Effective date.

(a) As to health care facilities defined in Chapter 8 of the act subject to licensure or approval pursuant to Article IX or X of the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code," Chapter 8 shall take effect in 120 days and regulations affecting such health care facilities in effect on the date of enactment of this act shall remain effective until replaced or amended in accordance with this act.

(b) As to health care facilities defined in Chapter 8 of this act not subject to licensure or approval pursuant to Article IX or X of the "Public Welfare Code," Chapter 8 shall take effect in one year.

(c) Sections 103, 202, 502, 603(h), 701, 702(i) and (j), 707 (other than the introductory sentence), 708 and 709 shall take effect October 1, 1980.

(d) Section 10(a) of this act shall take effect in 120 days.

(e) The remainder of this act shall take effect immediately.

APPROVED—The 12th day of July, A. D. 1980.

DICK THORNBURGH