

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 809 Session of 2013

INTRODUCED BY FERLO, TARTAGLIONE AND BOSCOLA, APRIL 4, 2013

REFERRED TO PUBLIC HEALTH AND WELFARE, APRIL 4, 2013

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
 2 act relating to health care; prescribing the powers and
 3 duties of the Department of Health; establishing and
 4 providing the powers and duties of the State Health
 5 Coordinating Council, health systems agencies and Health Care
 6 Policy Board in the Department of Health, and State Health
 7 Facility Hearing Board in the Department of Justice;
 8 providing for certification of need of health care providers
 9 and prescribing penalties," making extensive reenactments,
 10 revisions and additions by: in preliminary provisions,
 11 further providing for definitions; in administrative
 12 provisions, further providing for the Department of Health;
 13 in health systems, further providing for the Health Policy
 14 Board and its functions and for Statewide planning;
 15 establishing the Certificate of Need Review Board; in
 16 administration, further providing for regulations and for
 17 orders; in certificate of need, further providing for
 18 requirement and review, for operation, for procedure, for
 19 public meetings, for good cause, for information, for review
 20 criteria, for monitoring and expiration, for emergencies, for
 21 notice of termination, for review of activities and for
 22 sanctions; in health care facility licensing, further
 23 providing for issuance; and in miscellaneous provisions,
 24 further providing for existing facilities and institutions,
 25 for fees and for expiration.

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

28 Section 1. Section 103 of the act of July 19, 1979 (P.L.130,
 29 No.48), known as the Health Care Facilities Act, amended
 30 December 18, 1992 (P.L.1602, No.179) and October 16, 1998

1 (P.L.777, No.95), is reenacted and amended to read:

2 Section 103. Definitions.

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

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

7 "Board." The Health Policy Board established under section
8 401.1.

9 "Certificate of need." A notice of approval issued by the
10 department under the provisions of this act, including those
11 notices of approval issued as an amendment to an existing
12 certificate of need.

13 "Clinically related health service." Certain diagnostic,
14 treatment or rehabilitative services as determined in section
15 701.

16 "Community-based health services planning committee." A
17 committee established [in accordance with procedures approved by
18 the Department of Health which includes representatives of local
19 or regional groups of consumers, business, labor, health care
20 providers, payors or other affected interests] under section
21 702(h.1).

22 "Conflict of interest." [For the purpose of section 501,
23 the] The interest of any person, whether financial, by
24 association with, or as a contributor of money or time to, any
25 nonprofit corporation or other corporation, partnership,
26 association, or other organization, and whenever a person is a
27 director, officer or employee of such organization, but shall
28 not exist whenever the organization in which such person is
29 interested is being considered as part of a class or group for
30 whom regulations are being considered, if the material facts as

1 to the relationship or interest are disclosed or are known to
2 the board.

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

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

9 "Develop." When used in connection with health services or
10 facilities, means to undertake those activities which on their
11 completion will result in the offer of a new health service or
12 the incurring of a financial obligation in relation to the
13 offering of such a service.

14 "Health care facility." [For purposes of Chapter 7, any] A
15 health care facility providing clinically related health
16 services, including, but not limited to, a general or special
17 hospital, including psychiatric hospitals, rehabilitation
18 hospitals, ambulatory surgical facilities, diagnostic imaging
19 centers, MRI facilities, long-term care nursing facilities,
20 cancer treatment centers using radiation therapy on an
21 ambulatory basis and inpatient drug and alcohol treatment
22 facilities, both profit and nonprofit and including those
23 operated by an agency or State or local government. The term
24 shall also include a hospice. The term shall not include an
25 office used primarily for the private or group practice by
26 health care practitioners where no reviewable clinically related
27 health service is offered, a facility providing treatment solely
28 on the basis of prayer or spiritual means in accordance with the
29 tenets of any church or religious denomination or a facility
30 conducted by a religious organization for the purpose of

1 providing health care services exclusively to clergy or other
2 persons in a religious profession who are members of the
3 religious denominations conducting the facility.

4 "Health care practitioner." An individual who is authorized
5 to practice some component of the healing arts by a license,
6 permit, certificate or registration issued by a Commonwealth
7 licensing agency or board.

8 "Health care provider" or "provider." An individual, a trust
9 or estate, a partnership, a corporation (including associations,
10 joint stock companies and insurance companies), the
11 Commonwealth, or a political subdivision or instrumentality
12 (including a municipal corporation or authority) thereof, that
13 operates a health care facility.

14 "Health planning area." A geographic area within the
15 Commonwealth designated by the Department of Health for purposes
16 of health planning.

17 "Hearing board." The State Health Facility Hearing Board
18 created in the Office of General Counsel under the provisions of
19 this act.

20 "Interested person" or "person expressing an interest." [For
21 the purposes of Chapter 7, a] A member of the public who is to
22 be served by the proposed new health service in the area to be
23 served by the applicant, a health care facility or health
24 maintenance organization or any health care provider providing
25 similar services in the area to be served by the applicant or
26 who has received a certificate of need to provide services in
27 the area to be served by the applicant or who has formally filed
28 with the department a letter of intent to provide similar
29 services in the area in which the proposed service is to be
30 offered or developed and any third party payor of health

1 services provided in that area who provides written notice to
2 the department that the person is interested in a specific
3 certificate of need application before the department.

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

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

8 "Person." A natural person, corporation (including
9 associations, joint stock companies and insurance companies),
10 partnership, trust, estate, association, the Commonwealth, and
11 any local governmental unit, authority and agency thereof.

12 "Policy board." The Health Policy Board [created in the
13 Department of Health under the provisions of this act]
14 established under section 401.1(a).

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

19 "Review board." The Certificate of Need Review Board
20 established under section 501(a).

21 "Secretary." The Secretary of [the Department of] Health of
22 the Commonwealth of Pennsylvania.

23 "State health [services] improvement plan." A document
24 developed by the Department of Health, after consultation with
25 the policy board and approved by the Governor, that is
26 consistent with section 401.3, that meets the current and
27 projected needs of the Commonwealth's citizens. The State health
28 [services] improvement plan shall contain, in part, the
29 standards and criteria against which certificate of need
30 applications are reviewed and upon which decisions are based.

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

9 Section 2. Sections 201, 401.1, 401.2 and 401.3 of the act,
10 amended or added December 18, 1992 (P.L.1602, No.179), are
11 reenacted and amended to read:

12 Section 201. Powers and duties of the department.

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

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

17 [(2) To issue determinations of reviewability or
18 nonreviewability of certificate of need proposals.

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

22 (4) To withdraw expired certificates of need.]

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

27 (6) Upon consultation with the policy board, to
28 research, prepare and, after approval by the Governor,
29 publish, no later than 18 months after the effective date of
30 this act and annually thereafter, a revised State health

1 [services] improvement plan for the Commonwealth as defined
2 under this act. Until the State health [services] improvement
3 plan as defined in section 401.3 is adopted, the department
4 shall apply the State health plan in existence on the
5 effective date of this act, along with any subsequent updates
6 to that plan.

7 (7) [To] In consultation with the policy board, to
8 collect and disseminate such other information as may be
9 appropriate to determine the appropriate level of facilities
10 and services for the effective implementation of
11 certification of need under this act. Where such information
12 is collected by any other agency of State government,
13 duplication shall be avoided by coordination of data
14 collection activities, if such coordination does not
15 otherwise unduly burden those State agencies.

16 (8) To furnish such staff support and expertise to the
17 policy board and the review board as may be needed to
18 [perform its] fulfill their responsibilities.

19 [(9) To receive, log and review all applications for
20 certificates of need or amendments thereof and approve or
21 disapprove the same.]

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

27 (11) To adopt and promulgate regulations necessary to
28 carry out the purposes and provisions of this act relating to
29 certificate of need.

30 (12) To enforce the rules and regulations promulgated by

1 the department as provided in this act.

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

5 [(14) To establish and publish in the Pennsylvania
6 Bulletin a fee schedule for certificate of need applications
7 and letters of intent in accordance with section 902.1.]

8 (15) To coordinate any data collection activities
9 necessary for administration of this act so as not to
10 duplicate unnecessarily the data collection activities of
11 other Federal and State agencies.

12 (16) [~~To~~] In consultation with the policy board, to
13 modify the list of reviewable clinically related health
14 services established under section 701.

15 Section 401.1. Health Policy Board.

16 (a) An advisory board is hereby established in the
17 department known as the Health Policy Board. The membership of
18 the board shall consist of:

19 (1) The Secretary of Health or his designee who shall
20 act as chairman.

21 (2) One representative of hospitals.

22 (3) One physician.

23 (4) One representative of a long-term care facility.

24 (5) Two health care providers not already designated,
25 one of whom shall be a provider of home health services.

26 (6) One representative of Blue Cross or Blue Shield.

27 (7) One representative of health maintenance
28 organizations.

29 (8) One representative of commercial insurance carriers.

30 (9) One representative of business.

1 (10) One representative of organized labor.

2 (11) Three consumers.

3 (12) One representative of county or municipal
4 government.

5 (b) All members shall be appointed to the policy board by
6 the Governor and confirmed by a majority vote of the Senate. The
7 Governor shall make all appointments to the policy board within
8 90 days of the effective date of this act, and the operations of
9 the policy board shall begin immediately upon confirmation of
10 the full board. The secretary shall convene the first meeting
11 within 30 days after the confirmation of the full board.

12 (1) Appointments shall be made in a manner that provides
13 representation of the various geographical regions of this
14 Commonwealth, including those medically underserved areas in
15 rural and inner-city locations. At least two of the
16 appointments shall be individuals knowledgeable of rural
17 health care needs.

18 (2) Of the 15 members first appointed, five shall be
19 appointed for a term of one year, five for a term of two
20 years and five for a term of three years. Thereafter,
21 appointments shall be made for a term of three years.

22 (3) No appointed member shall serve more than two full
23 consecutive terms of three years.

24 (4) No policy board member, other than the secretary,
25 may act or attend through a designee or a proxy.

26 (c) A simple majority of those members with current
27 appointments of the policy board shall constitute a quorum for
28 the transaction of any business. The act by the majority of the
29 members present at any meeting in which there is a quorum shall
30 be deemed to be an act of the board.

1 (d) All meetings of the policy board shall be advertised and
2 conducted pursuant to [the act of July 3, 1986 (P.L.388, No.84),
3 known as the "Sunshine Act."] 65 Pa.C.S. Ch. 7 (relating to open
4 meetings). The board shall meet at least four times a year and
5 may provide for special meetings as may be necessary.

6 (e) The members of the policy board shall not receive any
7 compensation for serving as members of the board but shall be
8 reimbursed at established Commonwealth rates for necessary
9 expenses incurred in the performance of their duties.

10 Section 401.2. Powers and duties of policy board.

11 The policy board shall exercise all powers necessary and
12 appropriate to carry out its duties, including the following:

13 (1) Advise and assist the department in development and
14 revision of the State health [services] improvement plan.

15 (2) Annually review a work plan developed by the
16 department which identifies those provisions of the State
17 health [services] improvement plan which must be revised,
18 reconsidered or developed within the succeeding calendar
19 year.

20 (3) Annually review the list of clinically related
21 health services subject to review developed by the department
22 pursuant to the provisions of section 701.

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

24 The State health [services] improvement plan shall consist of
25 at a minimum:

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

30 (2) An analysis of the availability, accessibility and

1 affordability of the clinically related health services
2 necessary to meet the health needs of the population of this
3 Commonwealth.

4 (3) Qualitative and quantitative standards and criteria
5 for the review of certificate of need applications by the
6 department under this act.

7 (4) An exceptions process which permits exceptions to be
8 granted to the standards and criteria in order to reflect
9 local experience or ensure access or to respond to
10 circumstances which pose a threat to public health and
11 safety.

12 Section 3. The act is amended by adding a chapter to read:

13 CHAPTER 5

14 REVIEW BOARD

15 Section 501. Establishment and operation.

16 (a) Members.--The Certificate of Need Review Board is
17 established within the department. The membership of the review
18 board shall consist of:

19 (1) The secretary.

20 (2) Three consumers.

21 (3) One health care administrator.

22 (4) One physician.

23 (5) One nurse.

24 (6) One representative of health insurance providers.

25 (7) Three health economics experts.

26 (b) Appointments.--Members under subsection (a) (2) through
27 (7) shall be appointed by the Governor and must be confirmed by
28 a majority vote of the Senate. The Governor shall make all
29 appointments to the policy board within 60 days of the effective
30 date of this section.

1 (c) Terms.--Terms shall be as follows:

2 (1) The secretary shall serve ex officio.

3 (2) Except as set forth in paragraph (1), the following
4 apply:

5 (i) Of the members initially appointed:

6 (A) four shall serve one-year terms;

7 (B) four shall serve two-year terms; and

8 (C) three shall serve three-year terms.

9 (ii) Except as set forth in subparagraph (iii), a
10 member appointed subsequent to initial appointment shall
11 serve a three-year term.

12 (iii) A member appointed to fill a vacancy shall
13 serve the unexpired term.

14 (iv) A member may not serve more than two full
15 consecutive terms of three years.

16 (d) Procedure.--The following apply to procedure:

17 (1) The secretary shall serve as chair. The secretary
18 shall convene the first meeting within 30 days after the
19 confirmation of the full review board.

20 (2) A simple majority of those members with current
21 appointments of the review board shall constitute a quorum.
22 The act by the majority of the members present at a meeting
23 in which there is a quorum shall be deemed to be an act of
24 the review board.

25 (3) The secretary may act through a designee.

26 (4) Except as set forth in paragraph (3), a member may
27 not act or attend through a designee or a proxy.

28 (5) The review board shall meet as necessary for the
29 conduct of its business and the timely processing of
30 certificate of need applications and fulfillment of the

1 responsibilities and duties of this act.

2 (6) Meetings of the review board are subject to 65
3 Pa.C.S. Ch. 7 (relating to open meetings). The review board
4 shall be deemed a Commonwealth agency for purposes of the act
5 of February 14, 2008 (P.L.6, No.3), known as the Right-to-
6 Know Law.

7 (e) Compensation.--The members of the review board may not
8 receive any compensation for serving as members of the board.
9 Except for the secretary, members shall be reimbursed at
10 established Commonwealth rates for necessary expenses incurred
11 in the performance of their functions.

12 Section 502. Powers and duties.

13 The review board has the following powers and duties:

14 (1) In consultation with department staff, to develop
15 and approve guidelines for filing certificate of need letters
16 of intent and certificate of need applications.

17 (2) To issue determinations of reviewability or
18 nonreviewability of certificate of need proposals.

19 (3) To issue and amend certificates of need in
20 accordance with the provisions of this act using the
21 qualitative and quantitative standards and criteria developed
22 by the policy board.

23 (4) To withdraw expired certificates of need.

24 (5) To develop a certificate of need exception process
25 that permits an exception to be granted to the standards and
26 criteria in order to reflect local experience, to ensure
27 access or to respond to circumstances that pose a threat to
28 public health and safety. The exceptions process shall begin
29 only after the review board issues a denial of a certificate
30 of need application. An exception must be publicly disclosed.

1 This paragraph creates no right or entitlement to an
2 exception.

3 (6) To receive, log, review and approve or disapprove
4 applications for certificates of need and for amendments to
5 certificates of need.

6 (7) To establish and publish in the Pennsylvania
7 Bulletin a fee schedule for certificate of need applications
8 and letters of intent in accordance with section 902.1.

9 (8) To establish and publish in the Pennsylvania
10 Bulletin a detailed schedule of the review process, including
11 at least one public meeting in the region from which the
12 application was filed, for each certificate of need
13 application submitted to the review board.

14 (9) To work in collaboration with the community-based
15 health services planning committees to review certificate of
16 need applications.

17 (10) To ensure that the intent of section 202 is upheld.

18 (11) To take action necessary and appropriate to carry
19 out the powers and duties under this section.

20 Section 4. Section 602 of the act is reenacted and amended
21 to read:

22 Section 602. Regulations.

23 The department [is] and the review board are hereby
24 authorized and empowered pursuant to the provisions of this act
25 to adopt rules and regulations establishing procedures required
26 by this act for administration of certificate of need.

27 Section 5. Sections 603, 701 and 702 of the act, amended
28 December 18, 1992 (P.L.1602, No.179), are reenacted and amended
29 to read:

30 Section 603. Enforcement of orders relating to certificate of

1 need.

2 (a) The following apply:

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

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

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

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

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

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

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

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

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

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

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

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

1 subsections (d) and (e) or a health care facility as defined in
2 section 103 must obtain a certificate of need from the
3 [department] review board if one or more of the following
4 factors applies:

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

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

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

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

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

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

25 (i) If the additional beds are acute care beds and
26 are not beds in a distinct-part psychiatric,
27 rehabilitation or long-term care unit, all licensed beds
28 of the acute-care facility shall be counted in
29 determining whether the increased number of beds exceeds
30 10%.

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

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

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

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

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

28 (d) A list of reviewable clinically related health services
29 shall be published by the department and the policy board within
30 30 days of the effective date of this act and may be modified by

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

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

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

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

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

16 (e) Any changes to the list required under subsection (d)
17 and proposed by regulation shall be developed by the department
18 after consultation with the policy board.

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

27 (g) As used in this section, "new high-cost technology"
28 means new technological equipment with an aggregate purchase
29 cost of greater than \$500,000. The department and the policy
30 review board shall consult with national medical and surgical

1 speciality organizations recognized by the American Board of
2 Medical Specialities (ABMS) and other nationally recognized
3 scientific resources in the determination of what constitutes
4 new technological equipment.

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

7 (a) Projects requiring a certificate of need shall, at the
8 earliest possible time in their planning, be submitted to the
9 department and the review board in a letter of intent in such
10 detail advising of the scope and nature of the project as
11 required by regulations. Within 30 days after receipt of the
12 letter of intent, the [department] review board shall inform the
13 applicant providing the letter of intent whether the proposed
14 project is subject to a certificate of need review or if
15 additional information is required to make that determination.
16 If the [department] review board determines that the project is
17 subject to a certificate of need review, the project shall be
18 subject to the remaining provisions of this act.

19 (b) A person desiring to obtain or amend a certificate of
20 need shall apply in writing to the department and the review
21 board, supplying such information as is required by the
22 department and the review board, including, but not limited to,
23 a cost impact analysis as further defined by the department in
24 regulations implementing this act, and certifying that all data,
25 information and statements are factual to the best of their
26 knowledge, information and belief. The [department] review board
27 shall have 60 days after receipt of the application within which
28 to assess the application and in which to request specific
29 further information. If further information is requested, the
30 [department] review board shall complete its preliminary

1 assessment of the application within 45 days of receipt of the
2 same. No information shall be required that is not specified in
3 the rules and regulations promulgated by the department and the
4 review board.

5 (c) Timely notice of the beginning of review of the
6 application by the [department] review board shall be published
7 after preliminary assessment of the application is completed by
8 the [department] review board. The "date of notification" of the
9 beginning of review shall be the date such notice is sent, or
10 the date such notice is published in the Pennsylvania Bulletin
11 or in a newspaper of general circulation, whichever is latest.

12 (c.1) The review board shall conduct at least one public
13 meeting within 45 days from the date of notification in the
14 region where the certificate of need application is filed.

15 (d) The [department] review board shall approve or
16 disapprove the application within [90] 120 days from the date of
17 notification of the beginning of the review unless the period
18 for review is extended by the applicant in writing.

19 (e) The following apply:

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

27 (2) A certificate of need shall state the maximum amount
28 of expenditures which may be obligated under it and
29 applicants proceeding with an approved project may not exceed
30 this level of expenditure except as allowed under the

1 conditions and procedures established by the department
2 through regulation.

3 (f) The following apply:

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

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

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

24 (h) The responsibility of performing certificate of need
25 review may not be delegated by the department and the review
26 board. The department and the review board shall consider
27 recommendations of [one or more] the community-based health
28 services planning [committees] committee whose localities are
29 affected by specific applications in reviewing the applications.

30 (h.1) The following shall apply to a community-based health

1 planning committee:

2 (1) A community-based health planning committee shall be
3 formed within 15 days from the date of notification of the
4 beginning of the review.

5 (2) The secretary shall appoint and form the community-
6 based health planning committee and the committee shall
7 contain at least 12 members including:

8 (i) The State Senator and State Representative
9 representing the location for which the certificate of
10 need is being applied.

11 (ii) At least three consumers of health care
12 services representing local, regional and underserved
13 populations.

14 (iii) A representative of the county health
15 department.

16 (iv) A representative of business.

17 (v) A representative of labor.

18 (vi) A physician.

19 (vii) A nurse.

20 (viii) A representative of a third party payor.

21 (ix) Other local citizens that the secretary
22 believes can provide additional guidance and
23 recommendations related to the certificate of need
24 application.

25 (3) The community-based health planning committee shall
26 consult the review board during the review of the certificate
27 of need application and may nominate one of its members to
28 provide testimony at the hearing required under subsection
29 (c.1).

30 (4) If simultaneous and comparative reviews are

1 proceeding in a similar region as permitted under subsection
2 (i), the same community-based health planning committee may
3 be used.

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

7 Section 6. Section 703 of the act, amended July 12, 1980
8 (P.L.655, No.136), is reenacted and amended to read:

9 Section 703. Notice and hearings before [health systems
10 agencies] the review board.

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

1 (b) [Affected persons may request a public hearing or the
2 health systems agency may require a public hearing during the
3 course of such review.] Fourteen days written notice of the
4 hearing shall be given to affected persons in the same manner as
5 a notice of a completed application is provided in subsection
6 (a). In the hearing, any person shall have the right to be
7 represented by counsel and to present oral or written arguments
8 and relevant evidence. Any person directly affected may conduct
9 reasonable questioning of persons who make relevant factual
10 allegations. A record of the hearing shall be maintained.

11 Section 7. Section 704 of the act, amended December 18, 1992
12 (P.L.1602, No.179), is reenacted and amended to read:

13 Section 704. Notice of public meetings.

14 (a) Notification of the beginning of review of a certificate
15 of need application shall be published by the [department]
16 review board in the appropriate news media and in the
17 Pennsylvania Bulletin in accordance with 45 Pa.C.S. Ch. 7 Subch.
18 B (relating to publication of documents). The notice shall
19 identify the schedule for review[,] and the date by which a
20 public meeting [must be requested and the manner in which notice
21 will be given of a meeting, if one is] will be held.

22 (b) [Interested persons may request a public meeting within
23 15 days of publication, and the department shall hold such a
24 meeting or the department may require a public meeting during
25 the course of such review.] The [department] review board shall
26 publish written notice of the meeting in the appropriate news
27 media and the Pennsylvania Bulletin at least 14 days prior to
28 the public meeting date. In the meeting, the applicant and any
29 interested person providing prior notice to the [department]
30 review board shall have the right to present oral or written

1 comments and relevant evidence on the application in the manner
2 prescribed by the [department] review board. The [department]
3 review board shall prepare a transcript of the oral testimony
4 presented at the meeting. Meetings shall be held in accordance
5 with the guidelines and procedures established by the
6 [department] review board and published in the Pennsylvania Code
7 as a statement of policy. The [department] review board may
8 require the applicant to provide copies of the application to
9 any interested person making a request for such application, at
10 the expense of the interested person.

11 (c) The applicant may, for good cause shown, request in
12 writing a public hearing for the purpose of reconsideration of a
13 decision of the [department] review board within ten days of
14 service of the decision of the [department] review board. The
15 [department] review board shall treat the request in accordance
16 with the provisions of 1 Pa. Code § 35.241 (relating to
17 application for rehearing or reconsideration). The [department]
18 review board shall set forth the cause for the hearing and the
19 issues to be considered at such hearing. If such hearing is
20 granted, it shall be held no sooner than six days and no later
21 than 30 days after the notice to grant such a hearing and shall
22 be limited to the issues submitted for reconsideration. A
23 transcript shall be made of the hearing and a copy of the
24 transcript shall be provided at cost to the applicant. The
25 [department] review board shall affirm or reverse its decision
26 and submit the same to the person requesting the hearing within
27 30 days of the conclusion of such hearing. Any change in the
28 decision shall be supported by the reasons for the change.

29 (d) Where hearings under subsection (b) are held on more
30 than two days, consecutive days of hearings and intervening

1 weekends and holidays shall be excluded in calculating the time
2 permitted for the [department] review board to conduct its
3 review, and, if briefs are to be filed, ten days subsequent to
4 the adjournment of the hearing shall also be excluded.

5 Section 8. Section 705 of the act, amended December 18, 1992
6 (P.L.1602, No.179), is reenacted to read;

7 Section 705. Good cause.

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

9 (1) there is significant, relevant information not
10 previously considered;

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

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

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

16 Section 9. Sections 706, 707 and 708.1 of the act, amended
17 or added December 18, 1992 (P.L.1602, No.179), are reenacted and
18 amended to read:

19 Section 706. Information during review.

20 During the course of review the [department] review board
21 shall upon request of any person set forth the status, any
22 findings made in the proceeding and other appropriate
23 information requested. The [department] review board may require
24 such request in writing.

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

27 (a) An application for certificate of need shall be
28 considered for approval when the [department] review board
29 determines that the application substantially meets the
30 requirements listed below:

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

3 (2) The proposed service or facility will provide care
4 consistent with quality standards established by the State
5 health [services] improvement plan.

6 (3) The proposed service or facility will meet the
7 standards identified in the State health [services]
8 improvement plan for access to care by medically underserved
9 groups, including individuals eligible for medical assistance
10 and persons without health insurance.

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

13 (i) There is not a more appropriate, less costly or
14 more effective alternative method of providing the
15 proposed services.

16 (ii) The service or facility is financially and
17 economically feasible, considering anticipated volume of
18 care and the availability of reasonable financing based
19 on information from the applicant and other sources
20 during the review process.

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

24 (iv) The proposed service or facility does not
25 adversely impact the maintenance and development of rural
26 and inner-city health services generally and, in
27 particular, those services provided by health care
28 providers which are based in rural and inner-city
29 locations and which have an established history of
30 providing services to medically underserved populations.

1 (b) The [department] review board shall issue a certificate
2 of need if the project substantially meets the criteria of
3 subsection [(a) (1), (2) and (3)] (a) and the project is
4 consistent with the State health [services] improvement plan
5 unless the [department] review board can demonstrate:

6 (1) There is a more appropriate, less costly or more
7 effective alternative method of providing the proposed
8 services.

9 (2) The service or facility is not financially and
10 economically feasible, considering anticipated volume of care
11 and the availability of reasonable financing based on
12 information received from the applicant and other sources
13 during the review process.

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

17 (4) The proposed service or facility adversely impacts
18 the maintenance and development of rural and inner-city
19 health services generally and, in particular, those services
20 provided by health care providers which are based in rural
21 and inner-city locations and which have an established
22 history of providing services to medically underserved
23 populations.

24 (c) Notwithstanding the provisions of subsections (a) and
25 (b), applications for projects described in subsection (d) shall
26 be approved unless the [department] review board finds that the
27 facility or service with respect to such expenditure as proposed
28 is not needed or that the project is not consistent with the
29 State health [services] improvement plan. An application made
30 under this subsection shall be approved only to the extent that

1 the [department] review board determines it is required to
2 overcome the conditions described in subsection (d).

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

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

7 (2) comply with State licensure standards; or

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

11 Section 708.1. Monitoring certificate of need; expiration of a
12 certificate of need.

13 A certificate of need or an amendment to it shall expire two
14 years from the date issued unless substantially implemented, as
15 defined by regulation. The [department] review board may grant
16 extensions for a specified time upon request of the applicant
17 and upon a showing that the applicant has or is making a good
18 faith effort to substantially implement the project. An expired
19 certificate of need shall be invalid, and no person may proceed
20 to undertake any activity pursuant to it for which a certificate
21 of need or amendment is required. The applicant shall report to
22 the department and the review board, on forms prescribed by the
23 department and the review board, the status of the project until
24 such time as the project is licensed or operational, if no
25 license is required.

26 Section 10. Section 709 of the act, amended December 18,
27 1992 (P.L.1602, No.179), is reenacted to read:

28 Section 709. Emergencies.

29 Notwithstanding any other provision of this act, in the event
30 of an emergency the department may suspend the foregoing

1 application process and permit such steps to be taken as may be
2 required to meet the emergency including the replacement of
3 equipment or facilities.

4 Section 11. Section 710 of the act is reenacted and amended
5 to read:

6 Section 710. Notice of termination of services.

7 For informational purposes only, at least 30 days prior to
8 termination or substantial reduction of a service or a permanent
9 decrease in the bed complement, the provider shall notify the
10 [health systems agency and the] department of its intended
11 action.

12 Section 12. Section 711 of the act, amended December 18,
13 1992 (P.L.1602, No.179), is reenacted and amended to read:

14 Section 711. Review of activities.

15 (a) The department and the review board shall prepare and
16 publish not less frequently than annually reports of reviews
17 conducted under this act, including a statement on the status of
18 each such review and of reviews completed by it and statements
19 of the decisions made in the course of such reviews since the
20 last report. The department and the review board shall also make
21 available to the general public for examination at reasonable
22 times of the business day all applications reviewed by it. Such
23 reports and applications shall be considered public records.

24 (b) The department's and the review board's report which
25 shall be submitted to the members of the Health and Welfare
26 Committees of the Senate and House of Representatives shall
27 contain the following information:

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

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

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

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

8 (5) The fees collected for reviews and the cost of the
9 program.

10 Section 13. Section 712 of the act, added July 12, 1980
11 (P.L.655, No.136) and repealed in part December 20, 1982
12 (P.L.1409, No.326), is reenacted and amended to read:

13 Section 712. Actions against violations of law and rules and
14 regulations[; bonds].

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

21 Section 14. Section 808 of the act, amended December 18,
22 1992 (P.L.1602, No.179), July 7, 2006 (P.L.334, No.69) and
23 December 22, 2011 (P.L.563, No.122), is reenacted to read:
24 Section 808. Issuance of license.

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

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

30 (2) that the place to be used as a health care facility

1 is adequately constructed, equipped, maintained and operated
2 to safely and efficiently render the services offered;

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

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

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

11 (6) that, in the case of abortion facilities, such
12 facility is in compliance with the requirements of 18 Pa.C.S.
13 Ch. 32 (relating to abortion) and such regulations
14 promulgated thereunder.

15 (b) Separate and limited licenses.--Separate licenses shall
16 not be required for different services within a single health
17 care facility except that home health care, home care, hospice
18 or long-term nursing care will require separate licenses. A
19 limited license, excluding from its terms a particular service
20 or portion of a health care facility, may be issued under the
21 provisions of this act.

22 (c) Addition of services.--When the certificate of need for
23 a facility is amended as to services which can be offered, the
24 department shall issue an appropriate license for those services
25 upon demonstration of compliance with licensure requirements.

26 Section 15. Section 901 of the act, amended July 12, 1980
27 (P.L.655, No.136), is reenacted and amended to read:

28 Section 901. Existing facilities and institutions.

29 (a) The following apply:

30 (1) No certificate of need shall be required for any

1 buildings, real property and equipment owned, leased or being
2 operated, or under contract for construction, purchase, or
3 lease and for all services being rendered by licensed or
4 approved providers [on April 1, 1980.] prior to the effective
5 date of this paragraph.

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

18 (b) Existing facilities and institutions shall be required
19 to obtain a certificate of need for projects outlined in section
20 701.

21 Section 16. Section 902.1 of the act, added December 18,
22 1992 (P.L.1602, No.179), is reenacted and amended to read:
23 Section 902.1. Fees for review of certificate of need
24 applications.

25 (a) The [department] review board shall charge a fee of
26 [\$150] \$500 for each letter of intent filed. The letter of
27 intent fee shall be deducted from the total application fee
28 required under subsection (b) if an application is submitted on
29 the project proposed in the letter of intent.

30 (b) For each application the [department] review board shall

1 charge a fee, payable on submission of an application. The fee
2 shall not be less than \$500 plus up to [~~\$3~~] \$10 per \$1,000 of
3 proposed capital expenditure and shall not be more than
4 [~~\$20,000~~] \$50,000.

5 (c) The [department] review board shall publish a fee
6 schedule in the Pennsylvania Bulletin which shall explain the
7 procedure for filing fees.

8 (d) All fees payable under this section are due upon the
9 date of filing a letter of intent or application. If a person
10 fails to file the appropriate fee, all time frames required of
11 the [department] review board under this act, with respect to
12 review of a letter of intent or application, are suspended until
13 the applicable fee is paid in full.

14 (e) Each community-based health services planning committee
15 may apply for up to \$10,000 in funding from the department for
16 administrative functions associated with reviewing certificate
17 of need proposals. This funding is to be allocated from the
18 Patient Safety Authority appropriation.

19 Section 17. Section 904.1 of the act, added December 18,
20 1992 (P.L.1602, No.179), is repealed:
21 [Section 904.1. Sunset.

22 The authority, obligations and duties arising under Chapter 7
23 and all other provisions of this act pertaining to certificates
24 of need shall terminate four years after the effective date of
25 this section. Twelve months prior to this expiration, the
26 Legislative Budget and Finance Committee shall commence a review
27 of the impact of the certificate of need program on quality,
28 access and cost of health care services, including the costs of
29 appeals, reviewable under this act.]

30 Section 18. This act shall take effect immediately.