HEALTH CARE FACILITIES ACT
Act of 1979, P.L. 130, No. 48

HEALTH CARE FACILITIES ACT
Act of 1979, P.L. 130, No. 48

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.

Compiler's Note: Section 1101 of Act 45 of 1999 provided that Act 45 shall not repeal or in any way affect Act 48.
Compiler's Note: Section 9(b) of Act 10 of 1996 provided that all provisions of Act 48 are repealed to the extent any of those provisions are inconsistent with provisions of section 2102(n) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

TABLE OF CONTENTS

Chapter 1. Preliminary Provisions

Section 101. Short title.
Section 102. Purposes.
Section 103. Definitions.

Chapter 2. Powers and Duties of the Department

Section 201. Powers and duties of the department.
Section 202. Encouragement of competition and innovation.

Chapter 3. Organization and Powers and Duties of the Health Care Policy Board

Section 301. Health Care Policy Board (Repealed).
Section 302. Health Care Policy Board; powers and duties (Repealed).
Section 303. Policy board compensation; expenses (Repealed).

Chapter 4. Statewide Health Coordinating Council and Health Systems Agencies

Section 401. Statewide Health Coordinating Council (Repealed).
Section 401.1. Health Policy Board.
Section 401.2. Powers and duties of policy board.
Section 401.3. State health services plan.
Section 402. Statewide Health Coordinating Council; powers (Repealed).
Section 403. Health systems agencies (Repealed).
Section 404. Health systems agencies; powers (Repealed).
Section 405. Health systems agencies; election of directors (Repealed).

Chapter 5. The State Health Facility Hearing Board (Repealed)

Section 501. State Health Facility Hearing Board (Repealed).
Section 502. Powers and duties of the hearing board (Repealed).
Section 503. Counsel (Repealed).
Section 504. Hearing board; compensation; expenses (Repealed).
Section 505. Hearings before the hearing board (Repealed).
Section 506. Appeals to the hearing board (Repealed).
Section 507. Appeals and procedures on appeals (Repealed).

Chapter 6. Administration of the Act

Section 601. Promulgation of rules and regulations.
Section 602. Regulations.
Section 603. Enforcement of orders relating to certificate of need.
Section 604. Immunity from legal liability.

Chapter 7. Certificate of Need

Section 701. Certificate of need required; clinically related health services subject to review.
Section 702. Certificates of need; notice of intent; application; issuance.
Section 703. Notice and hearings before health systems agencies.
Section 704. Notice of public meetings.
Section 705. Good cause.
Section 706. Information during review.
Section 707. Criteria for review of applications for certificates of need or amendments.
Section 708. Withdrawal of certificate of need (Repealed).
Section 708.1. Monitoring certificate of need; expiration of a certificate of need (Repealed).
Section 709. Emergencies.
Section 710. Notice of termination of services.
Section 711. Review of activities.
Section 712. Actions against violations of law and rules and regulations; bonds.

Chapter 8. Licensing of Health Care Facilities

Section 801. Actions against violations of law and rules and regulations (Repealed).
Section 801.1. Purpose.
Section 802. Bonds (Repealed).
Section 802.1. Definitions.
Section 803. Powers of the Department of Health.
Section 804. Administration.
Section 805. State Health Facility Hearing Board.
Section 806. Licensure.
Section 806.1. Reporting incidents of professional misconduct.
Section 806.2. Prohibited activities.
Section 806.3. Consumer protections.
Section 806.4. Inspections and plans of correction.
Section 807. Application for license.
Section 808. Issuance of license.
Section 809. Term and content of license.
Section 809.1 Home care agency and home care registry

regulations.
Section 810. Reliance on accrediting agencies and Federal Government.
Section 811. Reasons for revocation or nonrenewal of license.
Section 812. Provisional license.
Section 813. Right to enter and inspect.
Section 814. Provider violations.
Section 815. Effect of departmental orders.
Section 816. Actions against unlicensed health care providers.
Section 817. Actions against violations of law, rules and regulations.
Section 817.1. Employment of health care practitioners.
Section 818. Injunction or restraining order when appeal is pending.
Section 819. Remedies supplementary.
Section 820. Existing rules and regulations.
Section 821. Pet therapy programs.

Chapter 9. General Provisions; Repeals; Effective Date

Section 901. Existing facilities and institutions.
Section 902. Administration of act.
Section 902.1. Fees for review of certificate of need applications.
Section 903. Compliance with Federal law.
Section 903.1. Nonapplicability.
Section 904. Elimination of section 1122 reviews.
Section 904.1. Sunset.
Section 904.2. Severability.
Section 905. Repeals.
Section 906. Effective date.

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Health Care Facilities Act."

Section 102. Purposes.

The General Assembly finds that the health and welfare of Pennsylvania citizens will be enhanced by the orderly and economical distribution of health care resources to prevent needless duplication of services. Such distribution of resources will be further by governmental involvement to coordinate the health care system. Such a system will enhance the public health and welfare by making the delivery system responsive and adequate to the needs of its citizens, and assuring that new health care services and facilities are efficiently and effectively used; that health care services and facilities continue to meet high quality standards; and, that all citizens receive humane, courteous, and dignified treatment. In developing such a coordinated health care system, it is the policy of the Commonwealth to foster responsible private operation and ownership of health care facilities, to encourage innovation and continuous development of improved methods of

health care and to aid efficient and effective planning using local health systems agencies. It is the intent of the General Assembly that the Department of Health foster a sound health care system which provides for quality care at appropriate health care facilities throughout the Commonwealth.

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.

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

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

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

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

"Conflict of interest." 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 is not involved in the provision of health services or health insurance. For the purpose of this act, any person who holds a fiduciary position in any health care facility, health maintenance organization or third party payor 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.

"Health care facility." For purposes of Chapter 7, any health care facility providing clinically related health services, including, but not limited to, a general or special hospital, including psychiatric hospitals, rehabilitation hospitals, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis and inpatient drug and alcohol treatment facilities, both profit and nonprofit and including those operated by an agency or State or local government. The term shall also include a hospice. The term shall not include an office used primarily for the private or group practice by health care practitioners where no reviewable clinically related health service is offered, a facility providing treatment solely on the basis of prayer or spiritual means in accordance with the

tenets of any church or religious denomination or a facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other persons in a religious profession who are members of the religious denominations conducting the facility. (Def. amended Oct. 16, 1998, P.L.777, No.95)

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

"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.

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

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

"Interested person" or "person expressing an interest." For the purposes of Chapter 7, a member of the public who is to be served by the proposed new health service in the area to be served by the applicant, a health care facility or health maintenance organization or any health care provider providing similar services in the area to be served by the applicant or who has received a certificate of need to provide services in the area to be served by the applicant or who has formally filed with the department a letter of intent to provide similar services in the area in which the proposed service is to be offered or developed and any third party payor of health services provided in that area who provides written notice to the department that the person is interested in a specific certificate of need application before the department.

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

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

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

"Secretary." The Secretary of the Department of Health of the Commonwealth of Pennsylvania.

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

"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. The term shall not include the Federal, State, or any local government unit, authority, or agency thereof or a health maintenance organization.

(103 amended Dec. 18, 1992, P.L.1602, No.179)

CHAPTER 2
POWERS AND DUTIES OF THE DEPARTMENT

Section 201. Powers and duties of the department.

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

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

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

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

(4) To withdraw expired certificates of need.

(5) 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.

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

(7) To collect and disseminate 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. Where such information is collected by any other agency of State government, duplication shall be avoided by coordination of data collection activities.

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

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

(10) 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.

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

(12) To enforce the rules and regulations promulgated by

the department as provided in this act.

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

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

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

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

(201 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 202. Encouragement of competition and innovation.

The department shall in its planning and review activities foster competition to promote cost efficiency, quality and access to care. The department shall encourage cooperative health care arrangements which focus on the health care needs of a health planning area and foster the prudent and economical control of the area's resources. The department shall also encourage innovations in the financing and delivery systems for clinically related health services that will promote economic behavior by consumers and providers of clinically related health services that leads to appropriate investment in, supply and use of health services.

(202 amended Dec. 18, 1992, P.L.1602, No.179)

CHAPTER 3
ORGANIZATION AND POWERS AND DUTIES OF THE HEALTH CARE POLICY BOARD

Section 301. Health Care Policy Board. (301 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 302. Health Care Policy Board; powers and duties. (302 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 303. Policy board compensation; expenses. (303 repealed Dec. 18, 1992, P.L.1602, No.179)

CHAPTER 4
STATEWIDE HEALTH COORDINATING COUNCIL AND HEALTH SYSTEMS AGENCIES

Section 401. Statewide Health Coordinating Council. (401 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 401.1. Health Policy Board.

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

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

(2) One representative of hospitals.
(3) One physician.
(4) One representative of a long-term care facility.
(5) Two health care providers not already designated, one of whom shall be a provider of home health services.
(6) One representative of Blue Cross or Blue Shield.
(7) One representative of health maintenance organizations.
(8) One representative of commercial insurance carriers.
(9) One representative of business.
(10) One representative of organized labor.
(11) Three consumers.
(12) One representative of county or municipal government.

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

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

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

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

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

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

(d) All meetings of the policy board shall be advertised and conducted pursuant to the act of July 3, 1986 (P.L.388, No.84), known as the "Sunshine Act." The board shall meet at least four times a year and may provide for special meetings as may be necessary.

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

(401.1 added Dec. 18, 1992, P.L.1602, No.179)

Section 401.2. Powers and duties of policy board.

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

(1) Advise and assist the department in development and revision of the State health services plan.

(2) Annually review a work plan developed by the department which identifies those provisions of the State health services plan which must be revised, reconsidered or developed within the succeeding calendar year.

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

(401.2 added Dec. 18, 1992, P.L.1602, No.179)

Section 401.3. State health services plan.

The State health services plan shall consist of at a minimum:

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

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

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

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

(401.3 added Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 402. Statewide Health Coordinating Council; powers. (402 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 403. Health systems agencies. (403 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 404. Health systems agencies; powers. (404 repealed Dec. 18, 1992, P.L.1602, No.179)

Section 405. Health systems agencies; election of directors. (405 repealed Dec. 18, 1992, P.L.1602, No.179)

CHAPTER 5
THE STATE HEALTH FACILITY HEARING BOARD
(Chap. repealed Feb. 23, 1996, P.L.27, No.10)

Compiler's Note: See section 9 of Act 10 of 1996 in the appendix to this act for special provisions relating to the repeal of Chapter 5.

Section 501. State Health Facility Hearing Board (501 repealed Feb. 23, 1996, P.L.27, No.10).

Compiler's Note: Section 301(5)(vi) of Act 164 of 1980 provided that the State Health Facility Board is made an administrative agency of the Office of General Counsel and the General Counsel is to serve as its chief administrative officer.

Section 502. Powers and duties of the hearing board (502 repealed Feb. 23, 1996, P.L.27, No.10).

Section 503. Counsel (503 repealed Feb. 23, 1996, P.L.27, No.10).

Section 504. Hearing board; compensation; expenses (504

repealed Feb. 23, 1996, P.L.27, No.10).
Section 505. Hearings before the hearing board (505 repealed Feb. 23, 1996, P.L.27, No.10).
Section 506. Appeals to the hearing board (506 repealed Feb. 23, 1996, P.L.27, No.10).
Section 507. Appeals and procedures on appeals (507 repealed Feb. 23, 1996, P.L.27, No.10).

CHAPTER 6
ADMINISTRATION OF THE ACT

Section 601. Promulgation of rules and regulations.

(a) The department in the exercise of its duties under this act shall have the power to adopt such regulations as are necessary to carry out the purposes of this act. Regulations shall be adopted in conformity with the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, and the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

(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 care providers.

(601 amended Dec. 18, 1992, P.L.1602, No.179)

Section 602. Regulations.

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

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

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

(a) (1) No certificate of need shall be granted to any person for a health care facility or reviewable clinically related health service unless such facility or clinically related health service is found by the department to be needed.

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

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

(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.

(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 when such relief has not been barred by the failure to take a timely appeal.

(d) Any person operating a reviewable clinically related health service or health care facility 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 clinically related health service or health care facility after issuance of a cease and desist order shall constitute a separate offense.

(e) Any person who violates this act by failing to obtain a certificate of need, by deviating from the provisions of the certificate, by beginning construction, by providing services, or by 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 of each such violation shall be considered a separate offense.

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

(g) No license to operate a health care facility or reviewable clinically related health service by 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.

(603 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 604. Immunity from legal liability.

Any person, whether an employee or not, who as a member of any board, governing body, or committee, or other part of any agency established or designated under this act who performs duties or activities in good faith on behalf of that board, body committee or agency and without malice shall be immune from any liability for payment of any form of damages.

CHAPTER 7
CERTIFICATE OF NEED

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

(a) Any person, including, but not limited to, a health care facility, health maintenance organization or health care provider who offers, develops, constructs, renovates, expands or otherwise establishes or undertakes to establish within the State a clinically related health service that is included in the department's list of reviewable services developed under subsections (d) and (e) or a health care facility as defined in section 103 must obtain a certificate of need from the

department if one or more of the following factors applies:

(1) The proposal requires a capital expenditure in excess of $2,000,000 under generally accepted accounting principles, consistently applied.

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

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

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

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

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

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

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

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

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

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

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

(3) the operating costs associated with the service are reimbursed by major third party payors on a cost

reimbursement basis; or

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

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

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

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

(701 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

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

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

(b) A person desiring to obtain or amend a certificate of need shall apply in writing to the department, supplying such information as is required by the department and certifying that all data, information and statements are factual to the best of their knowledge, information and belief. The department shall have 60 days after receipt of the application within which to assess the application and in which to request specific further information. If further information is requested, the department shall complete its preliminary assessment of the application within 45 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) Timely notice of the beginning of review of the application by the department shall be published after preliminary assessment of the application is completed by the department. 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 the Pennsylvania Bulletin or in a newspaper of general circulation, whichever is latest.

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

(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 in granting or refusing approval of certificates of need.

(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 and provided to all persons expressing an interest in the proceedings and shall be made available to others upon written 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) Modification of the application at any stage of the proceeding shall not extend the time limits provided by this act unless the department expressly finds that the modification represents a substantial change in the character of the application.

(h) The responsibility of performing certificate of need review may not be delegated by the department. The department shall consider recommendations of one or more community-based health services planning committees whose localities are affected by specific applications.

(i) The department may provide that categories of projects shall receive simultaneous and comparative review.

(702 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 703. Notice and hearings before health systems agencies.

(a) Notice of 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. 7B (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. 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) 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 affected persons 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.

(703 amended July 12, 1980, P.L.655, No.136)

Section 704. Notice of public meetings.

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

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

(c) The applicant may, for good cause shown, request in writing a public hearing for the purpose of reconsideration of a decision of the department within ten days of service of the decision of the department. The department shall treat the request in accordance with the provisions of 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration). The department shall set forth the cause for the hearing and the

issues to be considered at such hearing. If such hearing is granted, it shall be held no sooner than six days and no later than 30 days after the notice to grant such a hearing and shall be limited to the issues submitted for reconsideration. A transcript shall be made of the hearing and a copy of the transcript shall be provided at cost to the applicant. The department shall affirm or reverse its decision and submit the same to the person requesting the hearing within 30 days of the conclusion of such hearing. Any change in the decision shall be supported by the reasons for the change.

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

(704 amended Dec. 18, 1992. P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 705. Good cause.

Good cause shall be deemed to have been shown if:

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

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

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

(4) good cause is otherwise found to exist.

(705 amended Dec. 18, 1992, P.L.1602, No.179)

Section 706. Information during review.

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

(706 amended Dec. 18, 1992, P.L.1602, No.179)

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

(a) An application for certificate of need shall be considered for approval when the department determines that the application substantially meets the requirements listed below:

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

(2) The proposed service or facility will provide care consistent with quality standards established by the State health services plan.

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

(b) The department shall issue a certificate of need if the project substantially meets the criteria of subsection (a)(1), (2) and (3) and the project is consistent with the State health

services plan unless the department can demonstrate:

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

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

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

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

(c) Notwithstanding the provisions of subsections (a) and (b), applications for projects described in subsection (d) 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 services plan. An application made under this subsection shall be approved only to the extent that the department determines it is required to overcome the conditions described in subsection (d).

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

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

(2) comply with State licensure standards; or

(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.

(707 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 708. Withdrawal of certificate of need. (708 repealed Dec. 18, 1992, P.L.1602, No.179)

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

A certificate of need or an amendment to it shall expire two years from the date issued unless substantially implemented, as defined by regulation. The department may grant extensions for a specified time upon request of the applicant and upon a showing that the applicant has or is making a good faith effort to substantially implement the project. An expired certificate of need shall be invalid, and no person may proceed to undertake any activity pursuant to it for which a certificate of need or amendment is required. The applicant shall report to the department, on forms prescribed by the department, the status of

the project until such time as the project is licensed or operational, if no license is required.

(708.1 added Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 709. Emergencies.

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

(709 amended Dec. 18, 1992, P.L.1602, No.179)

Section 710. Notice of termination of services.

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

Section 711. Review of activities.

(a) The department 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 it and statements of the decisions made in the course of such reviews since the last report. The department shall also make available to the general public for examination at reasonable times of the business day all applications reviewed by it. Such reports and applications shall be considered public records.

(b) The department's 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:

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

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

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

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

(711 amended Dec. 18, 1992, P.L.1602, No.179)

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) ((b) repealed Dec. 20, 1982, P.L.1409, No.326)

(712 added July 12, 1980, P.L.655, No.136)

CHAPTER 8
LICENSING OF HEALTH CARE FACILITIES
(Hdg. amended July 12, 1980, P.L.655, No.136)

Compiler's Note: Section 25 of Act 179 of 1992 provided that any cancer treatment center required to be licensed pursuant to the provisions of Act 179 shall obtain the required license within two years of the effective date of Act 179.

Section 801. Actions against violations of law and rules and regulations. (801 repealed July 12, 1980, P.L.655, No.136)

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.

(801.1 added July 12, 1980, P.L.655, No.136)

Section 802. Bonds. (802 repealed July 12, 1980, P.L.655, No.136 and Oct. 5, 1980, P.L.693, No.142)

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:

"Activities of daily living." The term includes, but is not limited to, services furnished to a consumer by an employee of a home care agency or an independent contractor referred from a home care registry in a consumer's place of residence or other independent living environment for compensation and which services provide assistance to the consumer with home management activities, respite care, companionship services and with personal care, including, but not limited to, assistance with self-administered medications, feeding, oral, skin and mouth care, shaving, assistance with ambulation, bathing, hair care and grooming, dressing, toileting and transfer activities. The term also includes instrumental activities of daily living. The term does not include services provided by a religious organization for the purpose of providing services exclusively to clergymen or consumers in a religious profession who are members of a religious denomination. (Def. added July 7, 2006, P.L.334, No.69)

"Ambulatory surgical facility." A facility or portion thereof not located upon the premises of a hospital which provides specialty or multispecialty 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." For purposes of Chapter 8, a health care facility includes, but is not limited to, a general, chronic disease or other type of hospital, a home health care agency, a home care agency, a hospice, a long-term care nursing facility, cancer treatment centers using radiation therapy on an ambulatory basis, an ambulatory surgical facility, a 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 department shall have the authority to license other health care facilities as may be necessary due to emergence of new modes of health care. When the department so finds, it shall publish its intention to license a particular type of health care facility in the Pennsylvania Bulletin in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." The term health care facility shall not include an office used primarily for the private practice of a health care practitioner, 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. 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. (Def. amended July 7, 2006, P.L.334, No.69)

"Home care agency." An organization, exclusive of a home health care agency, that supplies, arranges or schedules employees to provide or perform activities of daily living or instrumental activities of daily living or companionship services or specialized care on an hourly, shift or continual basis to a consumer in the consumer's place of residence or other independent living environment for which the organization receives a fee, consideration or compensation of any kind. The term shall not include durable medical equipment providers or volunteer providers. (Def. added July 7, 2006, P.L.334, No.69)

"Home care registry" or "registry." An organization or business entity or part thereof that supplies, arranges or refers independent contractors to provide activities of daily living or instrumental activities of daily living or specialized care in the consumer's place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind. (Def. added July 7, 2006, P.L.334, No.69)

"Home health care agency." An organization or part thereof staffed and equipped to provide nursing and at least one therapeutic service to persons who are disabled, aged, injured or sick in their place of residence or other independent living environment. The agency may also provide other health-related

services to protect and maintain persons in their place of residence or other independent living environment. (Def. amended July 7, 2006, P.L.334, No.69)

"Hospice." An organization licensed under this act to provide a coordinated program of palliative and supportive services provided in a home, independent living environment or inpatient setting which provides for physical, psychological, social and spiritual care of dying persons and their families. Services are provided by a medically directed interdisciplinary team of professionals and volunteers, and bereavement care is available to the family following the death of the patient. The term shall also be deemed to refer to services provided by such an organization. (Def. added Oct. 16, 1998, P.L.777, No.95)

"Hospital." An institution having an organized medical staff established for the purpose of providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the care of persons who are injured, disabled, pregnant, diseased, sick or mentally ill or rehabilitation services for the rehabilitation of persons who are injured, disabled, pregnant, diseased, sick or mentally ill. 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.

"Inspection." An examination by the department or its representatives, including interviews with the office staff, clients and individuals providing care and a review of documents pertinent to initial and continued licensure for the purpose of determining a home care agency's or home care registry's compliance with licensure requirements. (Def. added July 7, 2006, P.L.334, No.69)

"Instrumental activities of daily living" or "IADL." This term includes, but is not limited to, meal preparation, shopping and errands, telephone use, light housework, laundry and transportation. (Def. added July 7, 2006, P.L.334, No.69)

"Long-term care nursing facility." A facility that provides either skilled or intermediate nursing care or both levels of care to two or more patients, who are unrelated to the licensee, for a period exceeding 24 hours. Intermediate care facilities exclusively for the mentally retarded, commonly called ICF/MR, shall not be considered long-term care nursing facilities for the purpose of this act and shall be licensed by the Department of Public Welfare.

(802.1 amended Dec. 18, 1992, P.L.1602, No.179)

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.

(803 added July 12, 1980, P.L.655, No.136)

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. The department may make the dates of licensure expiration coincide with medical assistance and Medicare certification or applicable nationally recognized accrediting agencies accreditation and shall 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 consistent with the provisions of this chapter 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 and number of facilities against which sanctions had to be taken.

(804 amended Dec. 18, 1992, P.L.1602, No.179)

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.

(805 added July 12, 1980, P.L.655, No.136)

Section 806. Licensure.

(a) License required.--No person shall maintain or operate or hold itself out to be 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. ((a) amended Oct. 16, 1998, P.L.777, No.95)

(b) Development of regulations.--In developing rules and regulations for licensure the department shall take into consideration Federal certification standards and the standards of other third party payors for health care services and such nationally recognized accrediting agencies as the department may find appropriate.

(c) Fire and emergency standards.--Notwithstanding any other provision of law other than standards required for Federal certification 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 Health Organizations or such nationally recognized accrediting agencies as the department may find appropriate, 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 nationally recognized accrediting agencies 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.

(d.1) Home care agency and home care registry licensure requirements.--

(1) An individual with direct consumer contact employed by the home care agency and an individual referred to a consumer by a home care registry after the effective date of this subsection shall meet at least one of the following requirements prior to referral to consumers:

(i) A valid nurse's license in this Commonwealth.

(ii) The successful completion of a nurse aide training program approved by the department.

(iii) The successful completion of a home health aide training program as provided in 42 CFR 484.36 (relating to condition of participation: home health aide services) approved by the department.

(iv) The successful completion of a personal care worker training credentialing program approved by the department.

(v) The successful completion of a competency examination for persons performing only activities of daily living services.

(2) An individual employed by a home care agency or referred by a home care registry on the effective date of this subsection shall successfully complete one of the training requirements set forth in paragraph (1) within two

years of the effective date of this subsection.

(3) Documentation of compliance with at least one of the training requirements under paragraph (1) shall be maintained in each individual's file in the home care agency or home care registry office. Documentation of applicable State licensure for any health care practitioner shall also be maintained on file in the home care agency or registry office.

(4) (i) Prior to licensing a home care agency or a home care registry, the department shall determine that all individuals employed by an agency or referred by a registry, staff working within each entity and the owner or owners have obtained criminal history record information, in accordance with the requirements of section 503 of the act of November 6, 1987 (P.L.381, No.79), known as the "Older Adults Protective Services Act," and maintain that information on file in the home care agency or registry office.

(ii) Prior to licensing a home care agency or a home care registry which provides services to persons under 18 years of age, the department shall determine that all individuals employed by an agency or referred by a registry, all office staff working within each entity and the owner or owners have obtained clearance from the child abuse registry, in accordance with 23 Pa.C.S. Ch. 63 (relating to child protective services), and maintain that information on file in the home care agency or registry office.

(5) Prior to referral to consumers, all individuals and any other office staff or contractors with direct consumer contact must obtain documentation from a physician or other appropriate health care professional that the individual is free from communicable disease, including, at a minimum, a tuberculosis screening as outlined by the screening guidelines of the department. Such documentation must be maintained on file in the home care agency or home care registry office.

(6) Ongoing supervision of an employee by a home care agency or ongoing documentation of the referral of an independent contractor by a home care registry shall be maintained to ensure that the employee has the skills necessary to provide the care required by the consumer.

((d.1) added July 7, 2006, P.L.334, No.69)

(e) Public disclosure.--The department shall require disclosure of the persons owning 5% or more of the health care facility as well as the health care facility's officers and members of the board of directors.

(f) Ambulatory surgical facilities standards.--Within one year of the effective date of this act, to the extent possible, the department shall publish in the Pennsylvania Bulletin proposed regulations establishing revised standards for licensure of ambulatory surgical facilities. Such standards shall provide for separate licensure criteria for office-based surgical facilities and for comprehensive freestanding ambulatory surgical facilities, including, but not limited to:

(1) fire and safety standards;

(2) personnel and equipment requirements; and

(3) quality assurance procedures.

The purpose of such criteria shall be to assure quality care

delivery in said facilities. Until such time the revised regulations are adopted, the existing rules and regulations governing the licensure of ambulatory surgical facilities shall apply.

(g) Hospices.--

(1) The department shall promulgate regulations to provide for a fee for application for the licensure of hospices. The fee shall be an amount sufficient to offset all costs incurred by the department related to the licensure and inspection of hospices. The department shall from time to time, as may be necessary, increase or decrease the fee to reflect actual expenditures related to hospices. Until such time as the department provides for the fee by regulation, an application for a hospice license shall be accompanied by a fee of $250.

(2) The department shall promulgate regulations for licensure of hospices. The regulations shall, at a minimum, contain the standards set forth in regulations for hospices certified as providers of the Medicare program under Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.). The department may develop additional regulations as necessary to administer the licensure program and to protect the health and safety of the citizens of this Commonwealth. Until final regulations are adopted, the department shall operate the licensing program pursuant to interim guidelines consistent with this paragraph.

(3) Notwithstanding any provision to the contrary, any organization which provides or coordinates the provision of volunteer services for Medicare-certified hospice providers in the hospice delivery systems of its community and which:

(i) used "hospice" in its name prior to January 1, 1990;

(ii) qualified for exemption from Federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) prior to the effective date of this subsection; and

(iii) registered with the Department of State pursuant to the act of December 19, 1990 (P.L.1200, No.202), known as the "Solicitation of Funds for Charitable Purposes Act," prior to the effective date of this subsection;

may continue to use its name as heretofore.

((g) added Oct. 16, 1998, P.L.777, No.95)

(806 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: See the preamble to Act 69 of 2006 in the apendix to this act for special provisions relating to legislative intent.

Section 806.1. Reporting incidents of professional misconduct.

(a) Reports required.--Health care facilities and hospitals, licensed under this act, shall make a report or cause a report to be made to the State Board of Medical Education and Licensure or the State Board of Osteopathic Examiners, whichever is applicable, within 60 days of the occurrence of any of the following:

(1) The termination or curtailment of the employment, association or professional privileges of a physician, licensed under the provisions of the act of July 20, 1974 (P.L.551, No.190), known as the "Medical Practice Act of

1974," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act," whichever the case may be, with a health care facility or hospital where there exists reasonable cause to believe malpractice or misconduct has occurred.

(2) The resignation or withdrawal of association or of privileges with a facility or hospital to avoid the imposition of disciplinary measures.

(3) The receipt of written information which establishes that any physician who has a right to practice or who has applied to practice at the health care facility or hospital has been convicted of a felony.

(b) Contents.--Reports made pursuant to this section shall be made in writing to the State Board of Medical Education and Licensure or the State Board of Osteopathic Examiners, whichever is appropriate, with respect to any physician as licensed under acts referred to in subsection (a). Written reports shall include the following information: name, address, profession and license number of the person involved, a description of the action taken by the facility or hospital, including the reason therefor and date thereof, or the nature of the action or conduct which led to the resignation or withdrawal and the date thereof, any conviction of a felony of which the facility or hospital has received the written information required by subsection (a)(3) and such other information as the Department of State may require.

(c) Confidentiality.--

(1) Any report or information furnished to the boards in question, in accordance with the provisions of this section, shall be deemed a confidential communication and shall not be subject to inspection or disclosure, in any manner, except upon formal written request by a duly authorized public agency or pursuant to a judicial subpoena issued in a pending action or proceeding.

(2) Any person, facility or corporation which makes a report pursuant to this section in good faith and without malice shall have immunity from any liability, civil or criminal, for having made such a report. For the purpose of any proceeding, civil or criminal, the good faith of any person required to make a report shall be presumed.

(806.1 added July 10, 1985, P.L.191, No.48)

Section 806.2. Prohibited activities.

(a) Personal representative.--No individual as a result of the individual's affiliation with a home care agency or home care registry may assume power of attorney or guardianship over a consumer utilizing the services of that home care agency or home care registry.

(b) Endorsement of checks.--No consumer may be required to endorse checks over to a home care agency or home care registry.

(806.2 added July 7, 2006, P.L.334, No.69)

Section 806.3. Consumer protections.

(a) General rule.--A consumer shall be provided the following protections when receiving services:

(1) The ability to be involved in the service planning process and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual direct care worker is at risk.

(2) The receipt of at least ten calendar days' advance written notice of the intent of the home care agency or home

care registry to terminate services with the consumer unless lack of payment or an immediate threat to the health or safety of the consumer or provider, in accordance with regulations promulgated by the department, warrants less notice.

(b) Information to be provided.--Each consumer or the consumer's legal representative or responsible family member shall receive an information packet from the home care agency or home care registry prior to the commencement of services which includes the following in a form that is able to be easily understood and read:

(1) A listing of the available home care agency or home care registry services that will be provided to the consumer to assist with activities of daily living.

(2) The hours when those services will be provided.

(3) Commensurate fees and total costs for those services on an hourly or weekly basis.

(4) Department contact information for questions regarding requirements for and compliance by home care agencies or home care registries.

(5) Information about the availability of access to contact information for the department's 24-hour hotline and the local ombudsman program.

(6) A description of ongoing documentation maintained by a home care agency or a home care registry to ensure that the employee or independent contractor has met the requirements of this act and has the requisite skills necessary to provide care to the consumer.

(7) Documentation from the home care agency or a home care registry that demonstrates personal face-to-face interviews with all employees from a home care agency or independent contractors referred by the home care registry and documentation of at least two satisfactory reference checks prior to referral to the consumer.

(8) Disclosure of whether the direct care worker referred is an employee of the home care agency or is an independent contractor of a home care registry.

(9) Information regarding the tax obligations and employment responsibilities of the consumer and the home care agency or home care registry.

(806.3 added July 7, 2006, P.L.334, No.69)

Section 806.4. Inspections and plans of correction.

(a) Consent to entry and access.--An application for licensure or the issuance and renewal of any license by the department shall constitute consent by the applicant or licensee for a representative of the department to have access to enter the premises for inspection purposes during regular business hours.

(b) Violations and plan of correction.--If violations are identified as a result of an inspection, the home care agency or home care registry will be given a report of inspection that clearly outlines the nature of the violation. The home care agency or home care registry shall submit a written plan of correction in response to the report, stating actions to be taken by the agency or registry to correct the violations and a time frame for those corrective actions.

(806.4 added July 7, 2006, P.L.334, No.69)

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 the following fees:

(1) Regular or special license:	
Home health agency	$250.00
Home care agency or home care registry	100.00
Ambulatory surgical facility	250.00
Birth center	70.00
Long-term care nursing facility	250.00
Plus per each long-term care bed in excess of 75 beds	2.00
Hospital	
Every two years	500.00
Plus per each inpatient bed every two years	4.00
Other health care facility	100.00
(2) Provisional license all facilities:	
Provisional I	$400.00
Plus per each inpatient bed	4.00
Provisional II	600.00
Plus per each inpatient bed	6.00
Provisional III	800.00
Plus per each inpatient bed	8.00
Provisional IV	1,000.00
Plus per each inpatient bed	10.00

((b) amended July 7, 2006, P.L.334, No.69)

(c) Bond.--The department by regulations may require new applicants for a license to post a bond.

(807 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 15 of Act 67 of 1990 provided that section 807 is repealed insofar as it relates to fee payments.

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, home care, hospice or long-term nursing care will require separate licenses. 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. ((b) amended July 7, 2006, P.L.334, No.69)

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

(808 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 809. Term and content of license.

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

(1) be issued for a specified length of time as follows, including the provision of section 804(b):

(i) all health care facilities other than hospitals for a period of one year, and for hospitals for a period of two years with the expiration date to be the last day of the month in which license is issued;

(ii) provisional licenses for the length of time to be determined by the department upon issuance of the provisional license;

(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 limitations which have been placed on the facility.

(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.

(809 amended Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 809.1. Home care agency and home care registry regulations.

(a) Regulations.--The department shall promulgate regulations to implement sections 806(d.1) and 806.3.

(b) Consultation.--Regulations pertaining to sections 806(d.1) and 806.3 shall be developed in consultation with the Department of Public Welfare and other advisory groups that represent persons in the home health care industry, persons with physical disabilities and the aging community.

(c) Input.--In developing regulations pertaining to section 806(d.1), the department shall take into consideration the preferences and philosophies of persons with physical disabilities who receive services through home-based and community-based Medicaid waivers.

(d) Submittal.--Pursuant to the requirements of the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," the department shall submit proposed regulations pertaining to section 806.1 to the Public Health and Welfare Committee of the Senate, the Health and Human Services Committee of the House of Representatives, the Aging and Youth Committee of the Senate and the Aging and Older Adult Services Committee of the House of Representatives.

(e) Publication.--Within one year of the effective date of this section, the department shall publish the regulations in the Pennsylvania Bulletin.

(809.1 added July 7, 2006, P.L.334, No.69)

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 two 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 to the extent those standards are determined by the department to be 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.--The department shall coordinate, to the extent possible, inspections by State

agencies other than 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.

(810 amended Dec. 18, 1992, P.L.1602, No.179)

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 or safety of patients or residents.

(2) Failure of a licensee to submit a plan with 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.

(10) Serious violation of other applicable Federal or State laws.

(811 amended Dec. 18, 1992, P.L.1602, No.179)

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 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 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 substantial compliance, including payment of any fines levied pursuant to section 817(d), a regular license shall be issued.

(812 amended Dec. 18, 1992, P.L.1602, No.179)

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.

(813 added July 12, 1980, P.L.655, No.136)

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 or sooner if directed to do so by the department. The department may ban admissions or revoke a license before a plan of correction is submitted whenever deficiencies pose a significant threat to the health or safety of patients or residents.

(b) Appointment of temporary management.--When the health care provider has failed to bring the facility into compliance within the time specified by the department, or when the facility has demonstrated that it is unwilling or unable to achieve compliance, 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 temporary management designated as qualified by the department to assume operation of the facility at the facility's expense to assure the health and safety of the facility's patients or residents until improvements are made to bring the facility into compliance with the laws and regulations for licensure or until there is an orderly closure of the facility. In the alternative, the department in its discretion may proceed in accordance with this chapter.

(814 amended Dec. 18, 1992, P.L.1602, No.179)

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 Court, are final orders and may be enforced in court. ((a) repealed in part Dec. 20, 1982, P.L.1409, No.326)

(b) ((b) repealed Dec. 20, 1982, P.L.1409, No.326)

(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.

(815 added July 12, 1980, P.L.655, No.136)

Compiler's Note: Section 504 of Act 164 of 1980 provided that section 815 is repealed insofar as it is inconsistent with Act 164.

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.

(816 added July 12, 1980, P.L.655, No.136)

Compiler's Note: Section 504 of Act 164 of 1980 provided that section 816 is repealed insofar as it is inconsistent with Act 164.

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 $500 for each deficiency for each day that each deficiency continues. Civil penalties shall be collected from the date the facility receives notice of the violation until the department confirms correction of such violation.

(c) Funds collected as a result of the assessment of a civil penalty.--When all other sources of funding have been exhausted, the department shall apply funds collected as a result of the assessment of a civil penalty to the protection of the health or property of patients or residents of the health care facility. Funds may be utilized to:

(1) Provide payment to temporary management.

(2) Maintain the operation of the health care facility pending correction of deficiencies or closure.

(3) In the case of a long-term care nursing facility,

relocate residents to other licensed health care facilities.

(4) In the case of a long-term care nursing facility, reimburse residents for misappropriated personal needs allowance.

(d) Facility closure for threat to health or safety.--Whenever the department determines that deficiencies pose an immediate and serious threat to the health or safety of the patients or residents of the health care facility, the department may direct the closure of the facility and the transfer of patients or residents to other licensed health care facilities.

(817 amended Dec. 18, 1992, P.L.1602, No.179)

Section 817.1. Employment of health care practitioners.

A health care practitioner may practice the healing arts as an employee or independent contractor of a health care facility or health care provider or an affiliate of a health care facility or health care provider established to provide health care.

(817.1 added December 16, 2003, P.L.235, No.42)

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 Court, the Court may, during pendence 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.

(818 added July 12, 1980, P.L.655, No.136 and repealed in part Dec. 20, 1982, P.L.1409, No.326)

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.

(819 added July 12, 1980, P.L.655, No.136)

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. Sections 103.2 and 103.6 of Title 28 of the Pennsylvania Code are repealed.

(b) Expiration of licenses.--All health care providers licensed 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. At the expiration of the existing license, the health care facility shall be subject to licensure pursuant to this chapter.

(820 amended Dec. 18, 1992, P.L.1602, No.179)

Section 821. Pet therapy programs.

(a) Use of pet therapy.--Notwithstanding any inconsistent

provision of law, rule or regulation to the contrary, and subject to the approval of the secretary, every health care facility may, at the discretion of the health care provider, invite a nonprofit organization or an individual to bring domesticated pets onto the premises of the facility or may board domesticated pets on the premises of the facility if the pet therapy would, in the determination of the secretary and the health care provider, tend to promote the general well-being of the residents of the facility. The secretary shall adopt rules and regulations necessary to implement the provisions of this act.

(b) Limitation of liability.--If a health care facility boards domesticated pets in the facility or if a health care facility or health care provider invites a nonprofit organization to bring domesticated pets onto the premises of the facility for the well-being of the residents of the facility, the health care facility or health care provider, or a director, officer or employee of the health care facility or health care provider, or the nonprofit organization, or a director, officer or employee of the nonprofit organization, shall not be liable to any person for civil damages as a result of any acts or omissions arising from the boarding of domesticated pets in the facility or the bringing of domesticated pets onto the premises of the facility unless the conduct of the person falls below the standards generally practiced and accepted in like circumstances by similar persons performing the same or similar acts, and unless it is shown that the person did an act or omitted the doing of an act which the person was under a recognized duty to another to do, knowing or having reason to know that the act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of the person fell below ordinary standards of care.

(821 added Oct. 4, 1989, P.L.580, No.60)

CHAPTER 9
GENERAL PROVISIONS; REPEALS; EFFECTIVE DATE

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.

(901 amended July 12, 1980, P.L.655, No.136)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority,

obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 902. Administration of act.

(a) No health care provider shall be required by any provisions of this act or rules and regulations promulgated thereunder, to provide facilities or render services contrary to the stated religious or moral beliefs of the provider, nor shall any applicant be denied a certificate of need or the right to apply for or receive public funds on the grounds he will not provide the facilities or render the services for such reasons.

(b) In making determinations under this act, consideration shall be given to the needs of patients having preferences as to theories of medical practice, both allopathic and osteopathic, or religious affiliations or other preferences, the need for teaching facilities for various theories of medical practice, as well as to the size or functions of the health care provider involved, subject, however, to the other provisions of this act.

(c) In carrying out the provisions of this act and other statutes of this Commonwealth relating to health care facilities or institutions, the department and other agencies and officials of State and local governments shall make every reasonable effort to prevent duplication of inspections and examinations.

(d) The department shall not administer this act in a way that will stifle innovation or experimentation in health care and health care facilities or that will discourage contributions of private funds and services to health care facilities or institutions.

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

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

(a) The department shall charge a fee of $150 for each letter of intent filed. The letter of intent fee shall be deducted from the total application fee required under subsection (b) if an application is submitted on the project proposed in the letter of intent.

(b) For each application the department shall charge a fee, payable on submission of an application. The fee shall not be less than $500 plus up to $3 per $1,000 of proposed capital expenditure and shall not be more than $20,000.

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

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

(902.1 added Dec. 18, 1992, P.L.1602, No.179)

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 903. Compliance with Federal law.

It is the intent of this act to meet minimal Federal requirements for compliance with Federal law and regulations under Title XV of the Public Health Service Act requiring State certificate of need legislation as interpreted by the General Assembly. Should any provisions be found by a court to violate such requirements, such provisions shall be invalid and severable.

Compiler's Note: Section 904.1 of Act 48 of 1979, which was added by Act 179 of 1992, provided that the authority, obligations and duties arising under Chapter 7 and all other provisions of this act pertaining to certificates of need shall terminate four years after the effective date of section 904.1. Section 904.1 took effect December 18, 1992.

Section 903.1. Nonapplicability.

Nothing in this act shall apply to:

(1) A private contract or arrangement entered into by a consumer and caregiver, provided that the caregiver was not supplied, arranged, scheduled or referred to the consumer by a home care agency or a home care registry.

(2) Any mental health and mental retardation services authorized or paid for by the Department of Public Welfare or a county mental health or mental retardation program. The provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966," and all related regulations shall continue to be applicable to such services.

(903.1 added July 7, 2006, P.L.334, No.69)

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, after August 1, 1980 except to complete review for which application has been filed prior to August 1, 1980.

(904 amended July 12, 1980, P.L.655, No.136)

Section 904.1. Sunset.

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

(904.1 added Dec. 18, 1992, P.L.1602, No.179)

Section 904.2. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

(904.2 added Dec. 18, 1992, P.L.1602, No.179)

Section 905. Repeals.

All acts or parts thereof are hereby repealed insofar as they may be inconsistent with the provisions of this act.

Section 906. Effective date.

This act shall take effect October 1, 1979; provided that implementation of reviews pursuant to this act shall not begin until April 1, 1980.

(906 amended Dec. 13, 1979, P.L.532, No.118)

APPENDIX

Supplementary Provisions of Amendatory Statutes

1996, FEBRUARY 23, P.L.27, NO.10

Section 9. (a) The following acts and parts of acts are repealed:

* * *

Chapter 5 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, except that:

(1) The board shall continue to function until June 30, 1996, for the sole purpose of completing action on appeals which have proceeded to the stage that a hearing has been scheduled or to a further stage of the proceedings; and the Department of Health shall provide funding for the board for the period of time needed to complete action on such appeals.

(2) Pending appeals on which the board is not able to complete action by June 30, 1996, will be transferred to the Department of Health to be adjudicated in accordance with section 2102(n) of the act.

(3) Appeals for which a hearing has not been scheduled as of December 31, 1995, shall be transferred to the Department of Health to be adjudicated in accordance with section 2102(n) of the act.

(4) Section 506 shall continue as it pertains to time frames and manner of appeal, issues to be considered on appeal, receipt and consideration of evidence on appeal, deference to be given to expertise of the Department of Health, and written notification of decisions rendered.

* * *

Compiler's Note: Act 10 amended or added sections 622, 625, 1714, 1932-A, 2102, 2210, 2211.1, 2401-A, 2402-A, 2404-A, 2405-A and 2406-A of The Administrative Code of 1929.

2006, JULY 7, P.L.334, NO.69

Preamble

The General Assembly finds and declares that:

The intent of this act is to license home care agencies and home care registries in order to provide for consumer protection by establishing oversight, by requiring criminal background checks and communicable disease screens for individuals employed

by a home care agency and referred by a home care registry to provide care and by ensuring the physical health and competency of individuals employed by a home care agency and referred by a home care registry to provide care.

Compiler's Note: Act 60 amended or added sections 802.1, 806, 806.2, 806.3, 806.4, 807, 808, 809.1 and 903.1 of Act 48.