

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

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ENROLLED

Committee Substitute for
SENATE BILL NO. 277

(By Mr. *Hatfield* *Mr. Huffman*)

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PASSED *April 9,* 1977

In Effect *twenty days for* Passage



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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 277

(By MR. HATFIELD and MR. HUFFMAN)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to requiring certificate of need prior to the offering or development of all new institutional health services within this state; declaring legislative findings; defining terms; institutional health services subject to review; providing for exemptions; granting the state health planning and development agency the authority to administer the certificate of need program; criteria to be used in conducting a certificate of need program; procedure to be used in conducting a certificate of need review; rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional rules and regulations; giving power to render a final decision; authorizing power to issue a certificate of need where appropriate; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for denial of license; and providing for injunctions.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-d, to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-1. Legislative findings; review and evaluation of offerings or development of all new institutional health services; public interest.

1 (a) It is declared to be the public policy of this state:

2 (1) That the offering or development of all new insti-
3 tutional health services shall be accomplished in a manner
4 which is orderly, economical and consistent with the ef-
5 fective development of necessary and adequate means of
6 providing for the institutional health services of the
7 people of this state and to avoid unnecessary duplication
8 of institutional health services, and to contain or reduce
9 increases in the cost of delivering institutional health
10 services.

11 (2) That the general welfare and protection of the
12 lives, health and property of the people of this state
13 require that the type, level and quality of care, the
14 feasibility of providing such care and other criteria as
15 provided for in this article or by the state health plan-
16 ning and development agency pursuant to provisions of
17 this article, needed in new institutional health services
18 within this state be subject to review and evaluation
19 before any new institutional health services are offered
20 or developed in order that appropriate and needed in-
21 stitutional health services are made available for per-
22 sons in the area to be served.

§16-2D-2. Definitions.

1 As used in this article, unless otherwise indicated by
2 the context:

3 "Ambulatory health care facility" means a facility,
4 which is freestanding and not physically attached to a
5 health care facility and which provides health care to
6 noninstitutionalized and nonhomebound persons on an
7 outpatient basis. This definition does not include the
8 legally authorized practice of medicine by any one or
9 more persons in the private offices of any health care
10 providers.

11 "Ambulatory surgical facility" means a facility which is
12 freestanding and not physically attached to a health care

13 facility and which provides surgical treatment to patients
14 not requiring hospitalization. This definition does not in-
15 clude the legally authorized practice of surgery by any
16 one or more persons in the private offices of any health
17 care providers.

18 "Annual implementation plan" means a plan which
19 describes objectives which will achieve the goals of the
20 health systems plan and priorities among the objectives
21 and which shall be established, annually reviewed and
22 amended as necessary by the health systems agency.

23 "Community mental health and mental retardation
24 facility" means a public or private facility which provides
25 such comprehensive services and continuity of care as
26 emergency, outpatient, partial hospitalization, inpatient
27 and consultation and education for individuals with men-
28 tal illness, mental retardation or drug or alcohol addiction.

29 "Health care facility" is defined as including hospitals,
30 skilled nursing facilities, kidney disease treatment cen-
31 ters, including freestanding hemodialysis units, inter-
32 mediate care facilities, ambulatory health care facilities,
33 ambulatory surgical facilities, home health agencies and
34 community mental health and mental retardation facili-
35 ties; whether under public or private ownership, or as a
36 profit or nonprofit organization and whether or not li-
37 censed or required to be licensed in whole or in part by
38 the state.

39 "Health care provider" means a person, partnership,
40 corporation, facility or institution licensed or certified
41 or authorized by law to provide professional health care
42 service in this state to an individual during that individ-
43 ual's medical care, treatment or confinement.

44 "Health maintenance organization" means a public or
45 private organization, organized under the laws of this
46 state or the federal government which:

47 (a) Provides or otherwise makes available to enrolled
48 participants health care services, including substantially
49 the following basic health care services: Usual physician
50 services, hospitalization, laboratory, x-ray, emergency
51 and preventive services, and out-of-area coverage; and

52 (b) Is compensated except for copayments for the
53 provision of the basic health care services to enrolled
54 participants on a predetermined periodic rate basis;
55 and

56 (c) Provides physicians' services primarily (1) di-
57 rectly through physicians who are either employees or
58 partners of such organization, or (2) through arrange-
59 ments with individual physicians or one or more groups
60 of physicians organized on a group practice or individual
61 practice basis, or (3) a combination of (1) and (2) as
62 provided herein.

63 "Health services" means clinically related preventive,
64 diagnostic, treatment or rehabilitative services, including
65 alcohol, drug abuse and mental health services.

66 "Health systems agency" means an entity which is
67 designated and operated in the manner described in P.L.
68 93-641, known as the "National Health Planning and
69 Resources Development Act of 1974."

70 "Health systems plan" means a detailed statement of
71 goals describing a healthful environment and health
72 systems of an area which, when developed, will assure
73 that quality health services will be available and acces-
74 sible in a manner which assures continuity of care, at
75 reasonable cost, for all residents of that area; which are
76 responsive to the unique needs and resources of that
77 area; and which take into account and are consistent
78 with the national guidelines for health planning policy
79 issued by the secretary of the department of health,
80 education and welfare with respect to supply, distri-
81 bution and organization of health resources and ser-
82 vices.

83 "Home health agency" is an organization primarily
84 engaged in providing directly or through contract ar-
85 rangements, professional nursing services, home health
86 aide services, and other therapeutic and related services
87 including but not limited to physical, speech and occu-
88 pational therapy and nutritional and medical social ser-
89 vices, to persons in their place of residence on a part-
90 time or intermittent basis.

91 "Hospital" means an institution which is primarily
92 engaged in providing to inpatients, by or under the super-
93 vision of physicians, diagnostic and therapeutic services
94 for medical diagnosis, treatment, and care of injured, dis-
95 abled, or sick persons, or rehabilitation services for
96 the rehabilitation of injured, disabled, or sick persons.

97 "Institutional health services", except as used in section
98 three of this article, means health services provided in or
99 through health care facilities or health maintenance orga-
100 nizations and, except as otherwise specified in this article,
101 the term shall include the entities in or through which
102 such services are provided.

103 "Intermediate care facility" means an institution which
104 provides, on a regular basis, health-related care and
105 services to individuals who do not require the degree of
106 care and treatment which a hospital or skilled nursing
107 facility is designed to provide, but who because of their
108 mental or physical condition require care and services
109 above the level of room and board which can be made
110 available to them only through institutional facilities.

111 "Offer" when used in connection with health services,
112 means that the health care facility or health maintenance
113 organization holds itself out as capable of providing,
114 or as having the means for the provision of, specified
115 health services.

116 "Person" means an individual, trust, estate, partner-
117 ship, committee, corporation, association, and other or-
118 ganizations such as joint-stock companies and insurance
119 companies, a state or a political subdivision or instru-
120 mentality thereof.

121 "Skilled nursing facility" means an institution or a
122 distinct part of an institution which is primarily engaged
123 in providing to inpatients skilled nursing care and re-
124 lated services for patients who require medical or nurs-
125 ing care, or rehabilitation services for injured, disabled
126 or sick persons.

127 "State Health Planning and Development Agency"
128 shall be that agency designated by the governor and
129 hereinafter referred to as the "state agency", which shall

130 be operated in the manner described in P.L. 93-641,
131 known as the "National Health Planning and Resources
132 Development Act of 1974."

133 "To develop", when used in connection with health
134 services, means to undertake those activities which upon
135 their completion will result in the offer of a new insti-
136 tutional health service or the incurring of a financial
137 obligation, in relation to the offering of such a service.

§16-2D-3. Certificate of need.

1 Any new institutional health service shall not be
2 offered or developed within this state except upon appli-
3 cation for and receipt of a certificate of need as provided
4 by this article. For purposes of this section, "new institu-
5 tional health service" shall include:

6 (a) The construction, development, or other establish-
7 ment of a new health care facility or health maintenance
8 organization;

9 (b) The partial or total closure or relocation of a
10 health care facility or health maintenance organization;

11 (c) Any expenditure by or on behalf of a health care
12 facility, health care provider except as exempted in sec-
13 tion four or health maintenance organization in excess of
14 one hundred fifty thousand dollars which, under generally
15 accepted accounting principles consistently applied, is a
16 capital expenditure; where a person makes an acquisition
17 by or on behalf of a health care facility, health care
18 provider except as exempted in section four or health
19 maintenance organization under lease or comparable ar-
20 rangement, or through donation, which would have requir-
21 ed review if the acquisition had been by purchase such ac-
22 quisition shall be deemed an expenditure subject to
23 review;

24 (d) A change in the existing bed complement of a
25 health care facility or health maintenance organization
26 through the addition or conversion of ten or more
27 beds or more than ten percent of the total bed capacity
28 of such facility or organization, whichever is less, or the
29 relocation of ten or more beds or more than ten percent
30 of the total bed capacity of such facility or organization,

31 whichever is less, from one physical facility or site to
32 another;

33 (e) Health services which are offered in or through
34 a health care facility or health maintenance organization
35 and which were not offered on a regular basis in or
36 through such health care facility or health maintenance
37 organization within the twelve-month period prior to the
38 time such services would be offered;

39 (f) The deletion of one or more health services, pre-
40 viously offered on a regular basis by a health care facility
41 or health maintenance organization or the relocation of
42 one or more health services from one physical facility or
43 site to another; and

44 (g) Expenditures in excess of one hundred fifty thou-
45 sand dollars in preparation for the offering or develop-
46 ment of a new institutional health service and any
47 arrangement or commitment for financing the offering or
48 development of the new institutional health service. Ex-
49 penditures in preparation for the offering or development
50 of a proposal for a new institutional health service shall
51 include but not be limited to expenditures for surveys,
52 studies, designs, plans, working drawings, specifications
53 and site acquisition or commitment, which are related
54 to the offering or development of the new institutional
55 health service.

§16-2D-4. Exemptions from certificate of need program.

1 Nothing in this article or the rules and regulations
2 adopted pursuant to the provisions of this article shall
3 be construed to authorize the licensure, supervision, regu-
4 lation or control in any manner of: (1) Private offices
5 of physicians, private clinics of physicians, dentists or other
6 practitioners of the healing arts; (2) dispensaries and first
7 aid stations located within business or industrial establish-
8 ments maintained solely for the use of employees: *Pro-*
9 *vided*, That such facility does not contain inpatient or resi-
10 dent beds for patients or employees who generally remain
11 in the facility for more than twenty-four hours; (3) estab-
12 lishments, such as motels, hotels and boarding houses
13 which provide medical, nursing personnel and health re-
14 lated services; and (4) the remedial care or treatment of

15 residents or patients in any home or institution conducted
16 only for those who rely solely upon treatment by prayer or
17 spiritual means in accordance with the creed or tenets of
18 any recognized church or religious denomination.

19 Unless exempt as hereinafter provided and only to the
20 extent so exempt, any new institutional health service
21 which, on or after the effective date of this article, is
22 offered or developed within this state shall be subject
23 to all the provisions of this article. However, in the case
24 of new health care facilities or health maintenance
25 organizations, or health care facilities or health mainte-
26 nance organizations providing institutional health ser-
27 vices as of the effective date of this article, which on
28 such date are committed to a formal plan of development
29 or expansion of new institutional health services, where
30 preliminary expenditures toward a formal plan of de-
31 velopment or of new institutional health services, includ-
32 ing payments for studies, surveys, designs, plans, working
33 drawings, specifications, and site acquisition or commit-
34 ment, essential to the development or expansion of the
35 new institutional health services of the health care
36 facility or health maintenance organization of one hun-
37 dred fifty thousand dollars or more, had been made
38 during a three-year period ending as of the effective date
39 of this article, the provisions of this article shall not
40 apply to such development or expansion of new institu-
41 tional health services, or where a formal plan of develop-
42 ment or expansion of new institutional health services
43 has been submitted to and approved by the state com-
44 prehensive health planning agency (heretofore created
45 by the executive order of the governor of West Virginia),
46 the provisions of this article shall not apply to such de-
47 velopment or expansion: *Provided*, That upon the com-
48 pletion of such proposed development or expansion, all the
49 provisions of this article shall apply to such health care
50 facilities or health maintenance organizations not herein
51 specifically excluded.

52 A new or existing health care facility or health main-
53 tenance organization may apply to the state agency for
54 an exemption. The new or existing health care facility

55 or health maintenance organization shall supply such
56 information as the state agency shall require. The state
57 agency shall make the determination as to whether the
58 new or existing health care facility or health maintenance
59 organization is entitled to an exemption under the
60 provisions of this section.

**§16-2D-5. Authority of state health planning and development
agency; assistance of health systems agencies.**

1 The state agency is hereby empowered to administer
2 the certificate of need program as provided by this article.

3 The state agency shall seek the advice of the designated
4 health systems agencies in developing rules and regulations
5 for the certificate of need program. The designated
6 health systems agencies shall assist the state agency in
7 carrying out its certificate of need program.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 In making its determination as to whether a certificate
2 of need shall be issued, the state agency shall, at a
3 minimum, consider the following:

4 (a) The recommendation of the designated health
5 systems agency for the health service area in which the
6 proposed new institutional health service is to be located;

7 (b) The relationship of the health services being re-
8 viewed to the applicable health systems plan and annual
9 implementation plan adopted by the designated health
10 systems agency for the health service area in which the
11 proposed new institutional health service is to be located;

12 (c) The relationship of services reviewed to the long-
13 range development plan of the person providing or pro-
14 posing such services;

15 (d) The need that the population served or to be
16 served by such services has for such services;

17 (e) The availability of less costly or more effective
18 alternative methods of providing such services;

19 (f) The immediate and long-term financial feasibility
20 of the proposal as well as the probable impact of the
21 proposal on the costs of and charges for providing health

22 services by the person proposing the new institutional
23 health service;

24 (g) The relationship of the services proposed to the
25 existing health care system of the area in which such
26 services are proposed to be provided;

27 (h) The availability of resources, including health care
28 providers, management personnel, and funds for capital
29 and operating needs, for the provision of the services
30 proposed to be provided and the availability of alternative
31 uses of such resources for the provision of other health
32 services;

33 (i) The appropriate and nondiscriminatory utilization
34 of existing and available health care providers;

35 (j) The relationship, including the organizational rela-
36 tionship, of the health services proposed to be provided to
37 ancillary or support services;

38 (k) Special needs and circumstances of those entities
39 which provide a substantial portion of their services or
40 resources, or both, to individuals not residing in the
41 health service areas in which the entities are located
42 or in adjacent health service areas. Such entities may
43 include medical and other health professional schools,
44 multidisciplinary clinics and specialty centers;

45 (l) The special needs and circumstances of health
46 maintenance organizations for which assistance may be
47 provided under title XIII of P. L. 93-222 known as the
48 Health Maintenance Organizations Act of 1973. Such
49 needs and circumstances include the needs of and costs
50 to members and projected members of the health main-
51 tenance organization in obtaining health services and
52 the potential for a reduction in the use of inpatient care
53 in the community through an extension of preventive
54 health services and the provision of more systematic
55 and comprehensive health services. The consideration
56 of a new institutional health service proposed by a health
57 maintenance organization shall also address the avail-
58 ability and cost of obtaining the proposed new insti-
59 tutional health service from the existing providers in
60 the area that are not health maintenance organizations.

61 The criteria established by the state agency pursuant
62 to this subparagraph shall be consistent with standards
63 and procedures established under section 1306 (c) of
64 P. L. 93-222, known as the Health Maintenance Orga-
65 nizations Act of 1973;

66 (m) The special needs and circumstances of biomedical
67 and behavioral research projects which are designed to
68 meet a national need and for which local conditions
69 offer special advantages;

70 (n) In the case of the deletion or relocation of beds
71 or services or the partial or total closure or relocation of a
72 health care facility or health maintenance organization,
73 the state agency shall consider the impact on the person
74 proposing such new institutional health service, on other
75 health care facilities or health maintenance organizations
76 and on the needs of the population to be served or
77 previously served;

78 (o) In the case of a construction project: (1) The cost
79 and methods of the proposed construction, including the
80 costs and methods of energy provision and (2) the
81 probable impact of the construction project reviewed on
82 the costs of providing health services by the person
83 proposing such construction project.

84 In the case of any proposed new institutional health
85 service, the state agency shall not grant a certificate of
86 need under its certificate of need program, unless after
87 consideration of the appropriateness of the use of exist-
88 ing facilities providing services similar to those being
89 proposed the state agency makes each of the following
90 findings in writing: (1) That superior alternatives to
91 such services in terms of cost, efficiency and appropriate-
92 ness do not exist and the development of such alternatives
93 is not practicable; (2) that existing facilities providing
94 services similar to those proposed are being used in an
95 appropriate and efficient manner; (3) that in the case
96 of new construction, alternatives to new construction,
97 such as modernization or sharing arrangements, have
98 been considered and have been implemented to the
99 maximum extent practicable; (4) that patients will
100 experience serious problems in obtaining care of the type

101 proposed in the absence of the proposed new service; and
102 (5) that in the case of a proposal for the addition of
103 beds for the provision of skilled nursing or intermediate
104 care services, the addition will be consistent with the
105 plans of other agencies of the state responsible for the
106 provision and financing of long-term care facilities or
107 services including home health services.

108 In the case of any new institutional health service
109 proposed to be provided by or through a health main-
110 tenance organization the state agency shall not deny a
111 certificate of need with respect to such service (or
112 otherwise make a finding under this section that such
113 service is not needed) in those cases (1) when the state
114 agency has granted a certificate of need which authorized
115 the development of the service, or expenditures in
116 preparation for such offering or development (or has
117 otherwise made a finding that such development or ex-
118 penditure is needed) and (2) when the offering of this
119 new institutional health service will be consistent with
120 the basic objectives, time schedules, and plans of the
121 previously approved application.

122 Criteria adopted for review in accordance with this
123 section shall be in the form of rules and regulations, and
124 shall be adopted pursuant to section eight of this article.

§16-2D-7. Procedures for certificate of need reviews.

1 Prior to submission of an application for a certificate
2 of need, the state agency shall require the submission at
3 least biennially of long-range plans by providers of
4 health services and other persons subject to state agency
5 review with respect to the development of proposals
6 subject to review under this article. The plans shall be
7 in such form and contain such information as the state
8 agency shall require.

9 An application for a certificate of need shall be sub-
10 mitted to the state agency prior to the offering or de-
11 velopment of all new institutional services within this
12 state. In the case of construction projects persons pro-
13 posing such projects shall submit letters of intent prior

14 to submitting an application. The letters of intent shall
15 be of such detail as specified by the state agency.

16 The application shall be in such form and contain such
17 information as the state agency shall establish by rule
18 or regulation. Within fifteen days of receipt of applica-
19 tion, the state agency shall determine if the application
20 is complete. The state agency shall seek the advice of
21 the designated health systems agency for the area in
22 which the proposed new institutional health service will
23 be located to determine if the application is complete
24 and the state agency may request additional information
25 from the applicant. The state agency shall notify the
26 applicant that the review has begun on the day that the
27 application has been determined to be complete. The
28 state agency shall provide written notice to all affected
29 persons of the beginning of the review, the proposed
30 schedule for review, the period within which a public
31 hearing may be requested by persons directly affected
32 by the review, which period may not be less than thirty
33 days from the date of the written notification of the
34 beginning of the review required by this section, and
35 the manner in which notification will be provided of
36 the time and place of any public hearing so requested.
37 For purposes of this section, "affected person" includes
38 the person whose proposal is being reviewed, the health
39 systems agency for the health service area in which the
40 proposed new institutional health service is to be offered
41 or developed and when deemed appropriate by the state
42 agency, contiguous health systems agencies in adjacent
43 states: *Provided*, That for the purposes of this section
44 "affected persons" shall also include health care facilities
45 and health maintenance organizations located in the
46 health service area which provide institutional health
47 services, any agency which establishes rates for health
48 care facilities or health maintenance organizations in the
49 state, those members of the public who are to be served
50 by the proposed new institutional health services, and
51 all hospital service corporations and medical service cor-
52 porations as defined in article twenty-four, chapter thirty-
53 three of this code.

54 Written notification to members of the public may be
55 provided through newspapers of general circulation in
56 the appropriate area and public information channels;
57 notification to all other affected persons shall be by mail
58 which may be as part of a newsletter.

59 The state agency shall seek the recommendation of the
60 designated health systems agency for the health service
61 area in which the proposed new institutional health
62 service is to be located as to whether a certificate of
63 need should be issued. The state agency shall assist the
64 designated health systems agency in the review of appli-
65 cations by supplying information and data on those pro-
66 posed new institutional services which have statewide
67 implications.

68 The state agency shall adopt schedules for reviews
69 which provide that no review shall, to the extent prac-
70 ticable, take longer than ninety days from the date that
71 notification is sent to the applicant, to the date of the final
72 decision of the state agency.

73 The state agency shall adopt criteria for determining
74 when it would not be practicable to complete a review
75 within ninety days. Where a proposed new institutional
76 health service is to be provided in a health service area
77 for which a health systems agency has been designated,
78 such schedule shall set forth the period within which
79 the health systems agency must complete its review and
80 provide its recommendation with respect to such new
81 institutional health service to the state agency: *Provided*,
82 That the period allotted by the state agency to a health
83 systems agency for completion of its review and sub-
84 mission of its recommendations may not be less than
85 sixty days, except with the written consent of the health
86 systems agency.

87 The state agency shall provide in its review procedures
88 for a public hearing in the course of agency review if
89 requested by one or more persons directly affected by
90 the review. For purposes of this section, "person directly
91 affected by the review" include, the person whose pro-
92 posal is being reviewed, members of the public who are

93 to be served by the proposed new institutional health
94 services; health care facilities and health maintenance
95 organizations located in the health service area in which
96 the service is proposed to be offered or developed which
97 provide services similar to the proposed services under
98 review; any agency which establishes rates for health
99 care facilities or health maintenance organizations in the
100 state; and health care facilities and health maintenance
101 organizations which, prior to receipt by the state agency
102 of the proposal being reviewed, have formally indicated
103 an intention to provide such similar services in the future,
104 either through the filing of a letter of intent or by adop-
105 tion of a plan. Where such a hearing is requested, the
106 state agency shall, prior to such hearing, provide notice
107 of such hearing, in accordance with its procedure adopted
108 pursuant to this section. The procedure for the hearing
109 must provide an opportunity for any person to present
110 testimony. The procedures may, at the option of the
111 state agency, provide that the requirement of this section
112 shall be deemed satisfied if an opportunity for a public
113 hearing with respect to the new institutional health
114 service under review has been provided to all persons
115 directly affected by the review as defined by the state
116 agency pursuant to this article by the appropriate health
117 systems agency. Neither the state agency nor the health
118 systems agency may impose fees for such a public
119 hearing.

120 The state agency shall issue written findings which
121 state the basis for any final decision or recommendation
122 it may make. Such findings shall be sent to the person
123 proposing the new institutional health service and to the
124 health systems agency for the health service area in
125 which the new service is proposed to be offered or de-
126 veloped, and shall be available to others upon request.
127 The state agency shall notify, upon request, providers of
128 health services and other persons subject to review under
129 this article of the status of the state agency review of
130 new institutional health services subject to review, find-
131 ings made in the course of such review, and other ap-
132 propriate information respecting such review.

133 The state agency shall prepare and publish, at least
134 annually, reports of reviews completed and being con-
135 ducted, with general statements about the status of each
136 review still in progress and the findings and rationale
137 for each completed review.

138 The state agency shall provide for access by the general
139 public to all applications reviewed by the state agency
140 and to all other written materials pertinent to agency
141 review.

142 The state agency shall provide in its review procedures
143 a provision that any person directly affected by the
144 review, as defined in this section, may, for good cause
145 shown, request in writing within thirty days of a final
146 decision of the state agency, a public hearing for pur-
147 poses of reconsideration of that decision, and the pro-
148 cedures for such a hearing. No fees may be imposed by
149 the state agency for the hearing. For purposes of this
150 section, a request for a public hearing for purposes of
151 reconsideration shall be deemed to have shown good
152 cause if it:

153 (a) Presents significant, relevant information not
154 previously considered by the state agency;

155 (b) Demonstrates that there have been significant
156 changes in factors or circumstances relied upon by the
157 state agency in reaching its decision;

158 (c) Demonstrates that the state agency has materially
159 failed to follow its adopted procedures in reaching its
160 decision; or

161 (d) Provides such other bases for a public hearing
162 as the state agency determines constitutes good cause.

163 To be effective a request for such a hearing shall be
164 received within the thirty days of the state agency de-
165 cision, and the hearing shall commence within thirty
166 days of receipt of the request. Notification of such a
167 public hearing shall be sent, prior to the date of the
168 hearing, to the person requesting the hearing, the per-
169 son proposing the new institutional health service, and
170 the health systems agency for the health service area

171 in which the new institutional health service is proposed
172 to be offered or developed, and shall be sent to others
173 upon request. The state agency shall make written find-
174 ings which state the basis for its decision within forty-
175 five days after the conclusion of such hearing.

176 Notwithstanding other provisions of this article, the
177 state agency shall adopt rules and regulations for de-
178 termining when there is an emergency application which
179 requires immediate review and shall adopt regular proce-
180 dures in accordance with the provisions of this article
181 for handling such emergency applications as expedi-
182 tiously as possible.

§16-2D-8. Agency to promulgate additional rules and regulations.

1 The state agency is hereby empowered to promulgate
2 additional rules and regulations for review of certificate
3 of need applications beyond those required by sections
4 six and seven of this article. All rules and regulations
5 shall be promulgated pursuant to chapter twenty-nine-a
6 of this code and as described herein. In addition, before
7 adopting proposed rules and regulations the state agency
8 shall give interested persons an opportunity to offer
9 written comments on the rules and regulations, or any
10 revisions thereof, which it proposes to adopt, as follows:

11 (a) The state agency shall distribute copies of its
12 proposed review rules and regulations, and proposed
13 revisions thereof, to statewide health agencies and or-
14 ganizations, the statewide health coordinating council,
15 and each health systems agency for a health service area
16 located in whole or in part within the state;

17 (b) The state agency shall publish, in at least one
18 newspaper in each planning and development region in
19 this state, a notice stating that rules and regulations for
20 review of certificate of need applications or any revisions
21 thereof, have been proposed for adoption and are avail-
22 able at specified addresses for inspection and copying by
23 interested persons. Such notice shall appear in other than
24 the legal notices of such newspapers; in addition, notice
25 may be given through other public information channels;

26 (c) The state agency shall distribute copies of its
27 adopted review rules and regulations, and any revisions
28 thereof, to the agencies and organizations specified in
29 this section and to the secretary of health, education and
30 welfare, and shall provide such copies to other persons
31 upon request.

§16-2D-9. State agency to render final decision; issue certificate of need.

1 The state agency shall render a final decision on every
2 application for a certificate of need in the form of an
3 approval, a denial, an approval with conditions or a de-
4 ferral. Approval with conditions does not give the state
5 agency authority to mandate new institutional health
6 services not proposed by the health care facility or health
7 maintenance organization. As part of a deferral, the
8 state agency may return the application to the person
9 proposing the new institutional health service or to the
10 health systems agency for reconsideration of its recom-
11 mendations. The state agency shall send its decision along
12 with written findings to the person proposing the new
13 institutional health service and to the health systems
14 agency for the health service area in which the new
15 service is proposed to be offered or developed and shall
16 make it available to others upon request. In the case
17 of a final decision to approve or approve with conditions
18 a proposal for a new institutional health service, the
19 state agency shall issue a certificate of need to the person
20 proposing the new institutional health service. If the
21 state agency fails to make a decision within the time
22 period specified for the review, the proposed new insti-
23 tutional health service shall be deemed to have been
24 found to be not needed.

§16-2D-10. Appeal of certificate of need decisions.

1 If the state agency makes a final decision regarding
2 a proposed new institutional health service which is in-
3 consistent with a recommendation made with respect
4 thereto by a designated health systems agency, the state
5 agency shall submit to such health systems agency a
6 written, detailed statement of the reasons for the incon-

7 sistency. Such decisions and the record upon which it
8 was made shall, upon request of the health systems
9 agency, made within thirty days of the issuing of the
10 decision, be subject to review by an agency of the state
11 (other than the state agency) designated by the governor.
12 To be effective, the health systems agency's request must
13 be received within thirty days of the state agency deci-
14 sion, and the hearing shall commence within thirty days
15 of receipt of the request. The decision of the reviewing
16 agency shall be made in writing within forty-five days
17 after the conclusion of such hearing.

18 A final decision of the state agency, and the record
19 upon which it was made, shall, upon request of the per-
20 son proposing the new institutional health service or
21 other "persons directly affected by the review", as de-
22 fined in section seven of this article, made within thirty
23 days of the issuing of the decision, be reviewed by an
24 agency of the state (other than the state agency) desig-
25 nated by the governor. To be effective, such request must
26 be received within thirty days of the state agency deci-
27 sion, and the hearing shall commence within thirty days
28 of receipt of the request. The decision of the reviewing
29 agency shall be made in writing within forty-five days
30 after the conclusion of such hearing. The written findings
31 of the review agency shall be sent to the person
32 who requested the review, to the person proposing the
33 new institutional health service, to the health systems
34 agency requesting a review and to the state agency,
35 and shall be made available by the state agency to others
36 upon request. The decision of the reviewing agency shall
37 be considered the final decision of the state agency; how-
38 ever, the reviewing agency may remand the matter to
39 the state agency for further action or consideration.

40 If the state agency or the reviewing agency makes a
41 decision regarding a proposed new institutional health
42 service which is not consistent with the goals of the
43 health systems plan of a designated health systems
44 agency or the priorities of the annual implementation
45 plan of a designated health systems agency, the state
46 agency or the reviewing agency shall submit to the health

47 systems agency a written, detailed statement of the rea-
48 sons for the inconsistency. Upon the entry of a final
49 decision by the reviewing agency the designated health
50 systems agency, the person proposing the new institu-
51 tional health service and any other "person directly af-
52 fected by the review" as defined in section seven of this
53 article shall have standing in and may take an appeal
54 to the circuit court of Kanawha county from any deci-
55 sion of the state agency granting, with or without con-
56 ditions, denying or revoking a certificate of need.

§16-2D-11. Time period of certificate of need.

1 A certificate of need shall be valid for a maximum of
2 one year from the date of issuance. Upon the expiration
3 of the certificate or during the certification period the
4 person proposing the new institutional health service
5 shall provide the state agency such information on the
6 development of the project as the state agency may re-
7 quest. The state agency shall determine at the end of
8 the certification period whether sufficient progress is be-
9 ing made on the development of the project and whether
10 there has been compliance with the conditions of cer-
11 tification. The state agency shall seek the advice of the
12 health systems agency in making its determination. The
13 certificate of need may be extended by the state agency
14 for additional periods of time as are reasonably neces-
15 sary to expeditiously complete the project. The certifi-
16 cate of need may be revoked by the state agency for in-
17 sufficient progress in developing the project or noncom-
18 pliance with any conditions of certification at the end of
19 the first certification period or at the end of any subse-
20 quent certification periods. Appeals of revocation shall
21 be made pursuant to section ten of this article.

§16-2D-12. Licensing prohibited.

1 Any person offering or developing any new institu-
2 tional health service within the meaning of this article
3 without first obtaining a certificate of need therefor as
4 herein provided, or who shall violate any of the provi-
5 sions of this article shall be subject to denial or revo-
6 cation of a license to operate such institutional health
7 service or facility. Upon a showing to the state agency

8 that any person is offering or developing any new in-
9 stitutional health service within the meaning of this
10 article without having first obtained a certificate of need
11 therefor as provided herein or that such person is other-
12 wise in violation of the provisions of this article, the state
13 agency shall provide such person with written notice
14 which notice shall state the nature of the violation and
15 the time and place at which such person shall appear
16 to show good cause why its license should not be revoked
17 or denied, at which time and place such person shall be
18 afforded a reasonable opportunity to present testimony
19 and other evidence in support of its position. If, there-
20 after, the state agency determines that such person's
21 license to operate such institutional health service or fa-
22 cility should be revoked or denied, the state agency shall
23 issue an order, in writing, to the appropriate responsible
24 licensing agency of the state, requiring that such person's
25 license to operate such institutional health service or
26 facility be revoked or denied, which order shall be binding
27 upon such licensing agency.

§16-2D-13. Injunctive relief.

1 In addition to all other remedies, and aside from various
2 penalties provided by law, if any person offers or develops
3 any new institutional health service without first having
4 a certificate of need therefor as herein provided, or vio-
5 lates any other provision of this article or any lawful
6 rule or regulation promulgated thereunder, the state
7 agency, and/or the health systems agency, may main-
8 tain a civil action in the circuit court of the county where-
9 in such violation has occurred, or wherein such person
10 may be found, to enjoin, restrain or prevent such viola-
11 tion. This remedy shall also be available to "persons
12 directly affected by the review" as defined in this article.
13 No injunction bond shall be required to be filed in any
14 such proceeding.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chance C. Christy Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Hiller Jr.
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

W. C. B. B. B. B.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 25
day of April, 1977.

John D. R. R. R.
Governor

RECEIVED

APR 10 4 02 PM '77
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 25, 1977

Time 4:00 p.m.

RECEIVED

77 APR 27 P 4:36

OFFICE
SECY. OF STATE