WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED

Committee Substitute for
SENATE BILL NO. 277

(By Mr. HUFFMAN)

PASSED April 9, 1977

In Effect ninety days from Passage
ENROLLED
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.

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

(1) That the offering or development of all new institutional health services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the institutional health services of the people of this state and to avoid unnecessary duplication of institutional health services, and to contain or reduce increases in the cost of delivering institutional health services.

(2) That the general welfare and protection of the lives, health and property of the people of this state require that the type, level and quality of care, the feasibility of providing such care and other criteria as provided for in this article or by the state health planning and development agency pursuant to provisions of this article, needed in new institutional health services within this state be subject to review and evaluation before any new institutional health services are offered or developed in order that appropriate and needed institutional health services are made available for persons in the area to be served.

§16-2D-2. Definitions.

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

“Ambulatory health care facility” means a facility, which is freestanding and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private offices of any health care providers.

“Ambulatory surgical facility” means a facility which is freestanding and not physically attached to a health care
facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private offices of any health care providers.

“Annual implementation plan” means a plan which describes objectives which will achieve the goals of the health systems plan and priorities among the objectives and which shall be established, annually reviewed and amended as necessary by the health systems agency.

“Community mental health and mental retardation facility” means a public or private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

“Health care facility” is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies and community mental health and mental retardation facilities; whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state.

“Health care provider” means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual’s medical care, treatment or confinement.

“Health maintenance organization” means a public or private organization, organized under the laws of this state or the federal government which:

(a) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage; and
(b) Is compensated except for copayments for the provision of the basic health care services to enrolled participants on a predetermined periodic rate basis; and

(c) Provides physicians' services primarily (1) directly through physicians who are either employees or partners of such organization, or (2) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis, or (3) a combination of (1) and (2) as provided herein.

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

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

"Health systems plan" means a detailed statement of goals describing a healthful environment and health systems of an area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of that area; which are responsive to the unique needs and resources of that area; and which take into account and are consistent with the national guidelines for health planning policy issued by the secretary of the department of health, education and welfare with respect to supply, distribution and organization of health resources and services.

"Home health agency" is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services including but not limited to physical, speech and occupational therapy and nutritional and medical social services, to persons in their place of residence on a part-time or intermittent basis.
“Hospital” means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

“Institutional health services”, except as used in section three of this article, means health services provided in or through health care facilities or health maintenance organizations and, except as otherwise specified in this article, the term shall include the entities in or through which such services are provided.

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

“Offer” when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

“Person” means an individual, trust, estate, partnership, committee, corporation, association, and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof.

“Skilled nursing facility” means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for injured, disabled or sick persons.

“State Health Planning and Development Agency” shall be that agency designated by the governor and hereinafter referred to as the “state agency”, which shall
be operated in the manner described in P.L. 93-641, known as the "National Health Planning and Resources Development Act of 1974."

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

§16-2D-3. Certificate of need.

Any new institutional health service shall not be offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. For purposes of this section, "new institutional health service" shall include:

(a) The construction, development, or other establishment of a new health care facility or health maintenance organization;
(b) The partial or total closure or relocation of a health care facility or health maintenance organization;
(c) Any expenditure by or on behalf of a health care facility, health care provider except as exempted in section four or health maintenance organization in excess of one hundred fifty thousand dollars which, under generally accepted accounting principles consistently applied, is a capital expenditure; where a person makes an acquisition by or on behalf of a health care facility, health care provider except as exempted in section four or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase such acquisition shall be deemed an expenditure subject to review;
(d) A change in the existing bed complement of a health care facility or health maintenance organization through the addition or conversion of ten or more beds or more than ten percent of the total bed capacity of such facility or organization, whichever is less, or the relocation of ten or more beds or more than ten percent of the total bed capacity of such facility or organization,
whichever is less, from one physical facility or site to another;

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

(f) The deletion of one or more health services, previously offered on a regular basis by a health care facility or health maintenance organization or the relocation of one or more health services from one physical facility or site to another; and

(g) Expenditures in excess of one hundred fifty thousand dollars in preparation for the offering or development of a new institutional health service and any arrangement or commitment for financing the offering or development of the new institutional health service. Expenditures in preparation for the offering or development of a proposal for a new institutional health service shall include but not be limited to expenditures for surveys, studies, designs, plans, working drawings, specifications and site acquisition or commitment, which are related to the offering or development of the new institutional health service.

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

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation or control in any manner of: (1) Private offices of physicians, private clinics of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boarding houses which provide medical, nursing personnel and health-related services; and (4) the remedial care or treatment of
residents or patients in any home or institution conducted
only for those who rely solely upon treatment by prayer or
spiritual means in accordance with the creed or tenets of
any recognized church or religious denomination.

Unless exempt as hereinafter provided and only to the
extent so exempt, any new institutional health service
which, on or after the effective date of this article, is
offered or developed within this state shall be subject
to all the provisions of this article. However, in the case
of new health care facilities or health maintenance
organizations, or health care facilities or health mainte-
nance organizations providing institutional health ser-
vices as of the effective date of this article, which on
such date are committed to a formal plan of development
or expansion of new institutional health services, where
preliminary expenditures toward a formal plan of de-
velopment or of new institutional health services, includ-
ing payments for studies, surveys, designs, plans, working
drawings, specifications, and site acquisition or commit-
tment, essential to the development or expansion of the
new institutional health services of the health care
facility or health maintenance organization of one hun-
dred fifty thousand dollars or more, had been made
during a three-year period ending as of the effective date
of this article, the provisions of this article shall not
apply to such development or expansion of new institu-
tional health services, or where a formal plan of develop-
ment or expansion of new institutional health services
has been submitted to and approved by the state com-
prehensive health planning agency (heretofore created
by the executive order of the governor of West Virginia),
the provisions of this article shall not apply to such develop-
ment or expansion: Provided, That upon the com-
pletion of such proposed development or expansion, all the
provisions of this article shall apply to such health care
facilities or health maintenance organizations not herein
specifically excluded.

A new or existing health care facility or health main-
tenance organization may apply to the state agency for
an exemption. The new or existing health care facility
or health maintenance organization shall supply such information as the state agency shall require. The state agency shall make the determination as to whether the new or existing health care facility or health maintenance organization is entitled to an exemption under the 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 the certificate of need program as provided by this article.

2 The state agency shall seek the advice of the designated health systems agencies in developing rules and regulations for the certificate of need program. The designated health systems agencies shall assist the state agency in 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 of need shall be issued, the state agency shall, at a minimum, consider the following:

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

3 (b) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted by the designated health systems agency for the health service area in which the proposed new institutional health service is to be located;

4 (c) The relationship of services reviewed to the long-range development plan of the person providing or proposing such services;

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

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

7 (f) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health
services by the person proposing the new institutional health service;

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

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

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

(j) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

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

(l) The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of P. L. 93-222 known as the Health Maintenance Organizations Act of 1973. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations.
The criteria established by the state agency pursuant to this subparagraph shall be consistent with standards and procedures established under section 1306 (c) of P. L. 93-222, known as the Health Maintenance Organizations Act of 1973;

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

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

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

In the case of any proposed new institutional health service, the state agency shall not grant a certificate of need under its certificate of need program, unless after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed the state agency makes each of the following findings in writing: (1) That superior alternatives to such services in terms of cost, efficiency and appropriateness do not exist and the development of such alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type
proposed in the absence of the proposed new service; and
(5) that in the case of a proposal for the addition of
beds for the provision of skilled nursing or intermediate
care services, the addition will be consistent with the
plans of other agencies of the state responsible for the
provision and financing of long-term care facilities or
services including home health services.

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

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

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

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

An application for a certificate of need shall be sub-
mitted to the state agency prior to the offering or de-
velopment of all new institutional services within this
state. In the case of construction projects persons pro-
posing such projects shall submit letters of intent prior
to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

The application shall be in such form and contain such information as the state agency shall establish by rule or regulation. Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency shall seek the advice of the designated health systems agency for the area in which the proposed new institutional health service will be located to determine if the application is complete and the state agency may request additional information from the applicant. The state agency shall notify the applicant that the review has begun on the day that the application has been determined to be complete. The state agency shall provide written notice to all affected persons of the beginning of the review, the proposed schedule for review, the period within which a public hearing may be requested by persons directly affected by the review, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested.

For purposes of this section, "affected person" includes the person whose proposal is being reviewed, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed and when deemed appropriate by the state agency, contiguous health systems agencies in adjacent states: Provided, That for the purposes of this section "affected persons" shall also include health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in the state, those members of the public who are to be served by the proposed new institutional health services, and all hospital service corporations and medical service corporations as defined in article twenty-four, chapter thirty-three of this code.
Written notification to members of the public may be provided through newspapers of general circulation in the appropriate area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

The state agency shall seek the recommendation of the designated health systems agency for the health service area in which the proposed new institutional health service is to be located as to whether a certificate of need should be issued. The state agency shall assist the designated health systems agency in the review of applications by supplying information and data on those proposed new institutional services which have statewide implications.

The state agency shall adopt schedules for reviews which provide that no review shall, to the extent practicable, take longer than ninety days from the date that notification is sent to the applicant, to the date of the final decision of the state agency.

The state agency shall adopt criteria for determining when it would not be practicable to complete a review within ninety days. Where a proposed new institutional health service is to be provided in a health service area for which a health systems agency has been designated, such schedule shall set forth the period within which the health systems agency must complete its review and provide its recommendation with respect to such new institutional health service to the state agency: Provided, That the period allotted by the state agency to a health systems agency for completion of its review and submission of its recommendations may not be less than sixty days, except with the written consent of the health systems agency.

The state agency shall provide in its review procedures for a public hearing in the course of agency review if requested by one or more persons directly affected by the review. For purposes of this section, “person directly affected by the review” include, the person whose proposal is being reviewed, members of the public who are
to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review; any agency which establishes rates for health care facilities or health maintenance organizations in the state; and health care facilities and health maintenance organizations which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future, either through the filing of a letter of intent or by adoption of a plan. Where such a hearing is requested, the state agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to this section. The procedure for the hearing must provide an opportunity for any person to present testimony. The procedures may, at the option of the state agency, provide that the requirement of this section shall be deemed satisfied if an opportunity for a public hearing with respect to the new institutional health service under review has been provided to all persons directly affected by the review as defined by the state agency pursuant to this article by the appropriate health systems agency. Neither the state agency nor the health systems agency may impose fees for such a public hearing.

The state agency shall issue written findings which state the basis for any final decision or recommendation it may make. Such findings shall be sent to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed, and shall be available to others upon request. The state agency shall notify, upon request, providers of health services and other persons subject to review under this article of the status of the state agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.
The state agency shall prepare and publish, at least annually, reports of reviews completed and being conducted, with general statements about the status of each review still in progress and the findings and rationale for each completed review.

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

The state agency shall provide in its review procedures a provision that any person directly affected by the review, as defined in this section, may, for good cause shown, request in writing within thirty days of a final decision of the state agency, a public hearing for purposes of reconsideration of that decision, and the procedures for such a hearing. No fees may be imposed by the state agency for the hearing. For purposes of this section, a request for a public hearing for purposes of reconsideration shall be deemed to have shown good cause if it:

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

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

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

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

To be effective a request for such a hearing shall be received within the thirty days of the state agency decision, and the hearing shall commence within thirty days of receipt of the request. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area.
in which the new institutional health service is proposed
to be offered or developed, and shall be sent to others
upon request. The state agency shall make written find-
ings which state the basis for its decision within forty-
five days after the conclusion of such hearing.

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

§16-2D-8. Agency to promulgate additional rules and
regulations.
1 The state agency is hereby empowered to promulgate
additional rules and regulations for review of certificate
of need applications beyond those required by sections
six and seven of this article. All rules and regulations
shall be promulgated pursuant to chapter twenty-nine-a
of this code and as described herein. In addition, before
adopting proposed rules and regulations the state agency
shall give interested persons an opportunity to offer
written comments on the rules and regulations, or any
revisions thereof, which it proposes to adopt, as follows:

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

(b) The state agency shall publish, in at least one
newspaper in each planning and development region in
this state, a notice stating that rules and regulations for
review of certificate of need applications or any revisions
thereof, have been proposed for adoption and are avail-
able at specified addresses for inspection and copying by
interested persons. Such notice shall appear in other than
the legal notices of such newspapers; in addition, notice
may be given through other public information channels;
(c) The state agency shall distribute copies of its adopted review rules and regulations, and any revisions thereof, to the agencies and organizations specified in this section and to the secretary of health, education and welfare, and shall provide such copies to other persons upon request.

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

The state agency shall render a final decision on every application for a certificate of need in the form of an approval, a denial, an approval with conditions or a deferral. Approval with conditions does not give the state agency authority to mandate new institutional health services not proposed by the health care facility or health maintenance organization. As part of a deferral, the state agency may return the application to the person proposing the new institutional health service or to the health systems agency for reconsideration of its recommendations. The state agency shall send its decision along with written findings to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed and shall make it available to others upon request. In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service. If the state agency fails to make a decision within the time period specified for the review, the proposed new institutional health service shall be deemed to have been found to be not needed.

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

If the state agency makes a final decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by a designated health systems agency, the state agency shall submit to such health systems agency a written, detailed statement of the reasons for the incon-
sistency. Such decisions and the record upon which it was made shall, upon request of the health systems agency, made within thirty days of the issuing of the decision, be subject to review by an agency of the state (other than the state agency) designated by the governor. To be effective, the health systems agency’s request must be received within thirty days of the state agency decision, and the hearing shall commence within thirty days of receipt of the request. The decision of the reviewing agency shall be made in writing within forty-five days after the conclusion of such hearing.

A final decision of the state agency, and the record upon which it was made, shall, upon request of the person proposing the new institutional health service or other “persons directly affected by the review”, as defined in section seven of this article, made within thirty days of the issuing of the decision, be reviewed by an agency of the state (other than the state agency) designated by the governor. To be effective, such request must be received within thirty days of the state agency decision, and the hearing shall commence within thirty days of receipt of the request. The decision of the reviewing agency shall be made in writing within forty-five days after the conclusion of such hearing. The written findings of the review agency shall be sent to the person who requested the review, to the person proposing the new institutional health service, to the health systems agency requesting a review and to the state agency, and shall be made available by the state agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the state agency; however, the reviewing agency may remand the matter to the state agency for further action or consideration.

If the state agency or the reviewing agency makes a decision regarding a proposed new institutional health service which is not consistent with the goals of the health systems plan of a designated health systems agency or the priorities of the annual implementation plan of a designated health systems agency, the state agency or the reviewing agency shall submit to the health
systems agency a written, detailed statement of the reasons for the inconsistency. Upon the entry of a final decision by the reviewing agency the designated health systems agency, the person proposing the new institutional health service and any other "person directly affected by the review" as defined in section seven of this article shall have standing in and may take an appeal to the circuit court of Kanawha county from any decision of the state agency granting, with or without conditions, 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 one year from the date of issuance. Upon the expiration of the certificate or during the certification period the person proposing the new institutional health service shall provide the state agency such information on the development of the project as the state agency may request. The state agency shall determine at the end of the certification period whether sufficient progress is being made on the development of the project and whether there has been compliance with the conditions of certification. The state agency shall seek the advice of the health systems agency in making its determination. The certificate of need may be extended by the state agency for additional periods of time as are reasonably necessary to expeditiously complete the project. The certificate of need may be revoked by the state agency for insufficient progress in developing the project or noncompliance with any conditions of certification at the end of the first certification period or at the end of any subsequent certification periods. Appeals of revocation shall be made pursuant to section ten of this article.

§16-2D-12. Licensing prohibited.
1 Any person offering or developing any new institutional health service within the meaning of this article without first obtaining a certificate of need therefor as herein provided, or who shall violate any of the provisions of this article shall be subject to denial or revocation of a license to operate such institutional health service or facility. Upon a showing to the state agency
that any person is offering or developing any new institutional health service within the meaning of this article without having first obtained a certificate of need therefor as provided herein or that such person is otherwise in violation of the provisions of this article, the state agency shall provide such person with written notice which notice shall state the nature of the violation and the time and place at which such person shall appear to show good cause why its license should not be revoked or denied, at which time and place such person shall be afforded a reasonable opportunity to present testimony and other evidence in support of its position. If, thereafter, the state agency determines that such person’s license to operate such institutional health service or facility should be revoked or denied, the state agency shall issue an order, in writing, to the appropriate responsible licensing agency of the state, requiring that such person’s license to operate such institutional health service or facility be revoked or denied, which order shall be binding upon such licensing agency.

§16-2D-13. Injunctive relief.

In addition to all other remedies, and aside from various penalties provided by law, if any person offers or develops any new institutional health service without first having a certificate of need therefor as herein provided, or violates any other provision of this article or any lawful rule or regulation promulgated thereunder, the state agency, and/or the health systems agency, may maintain a civil action in the circuit court of the county where such violation has occurred, or wherein such person may be found, to enjoin, restrain or prevent such violation. This remedy shall also be available to “persons directly affected by the review” as defined in this article. No injunction bond shall be required to be filed in any such proceeding.

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

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. W. Johnson Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within approved this the 25

day of April, 1977.

Governor
APPROVED AND SIGNED BY THE GOVERNOR

Date: April 26, 1977
Time: 4:00 p.m.

OFFICE OF THE GOVERNOR

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