

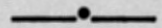
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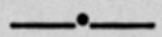
WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1985



ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 616

(By Mr. Lehr)



PASSED April 13, 1985

In Effect ninty days from Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 616**

(MR. LOEHR, *original sponsor*)

(Originating in the Committee on Health and Human Resources.)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, seven, nine and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend article two-d of said chapter by adding thereto two new sections, designated sections fourteen and fifteen, all relating to certificate of need; increasing the minimum levels for expenditures and major medical equipment subject to review and for health services exempted from review; providing for review of community mental health and retardation facilities and private office practice of licensed health professionals under certain circumstances, authorizing ninety-day agency imposed moratorium on applications involving new medical technology in absence of criteria for review; providing for imposition of conditions of operation for no longer than a three-year period with the issuance of a certificate of need; three-year statute of limitations for state agency to correct violations; previously approved rules and regulations to remain in force.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, five, seven, nine and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-d be further amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-2. Definitions.**

- 1 As used in this article, unless otherwise indicated by the
- 2 context:
- 3 (a) "Affected person" means:
- 4 (1) The applicant;
- 5 (2) An agency or organization representing consumers;
- 6 (3) Any individual residing within the geographic area
- 7 served or to be served by the applicant;
- 8 (4) Any individual who regularly uses the health care
- 9 facilities within that geographic area;
- 10 (5) The health care facilities located in the applicable
- 11 health service area which provide services similar to the
- 12 services of the facility under review;
- 13 (6) The health care facilities which, prior to receipt by
- 14 the state agency of the proposal being reviewed, have
- 15 formally indicated an intention to provide similar services
- 16 in the future;
- 17 (7) Third party payers who reimburse any health care
- 18 facilities for services in the applicable health service area;
- 19 (8) Any agency which establishes rates for the health
- 20 care facilities located in the applicable health service area;
- 21 or
- 22 (9) Organizations representing health care providers.
- 23 (b) "Ambulatory health care facility" means a facility,
- 24 which is free-standing and not physically attached to a
- 25 health care facility and which provides health care to
- 26 noninstitutionalized and nonhomebound persons on an
- 27 outpatient basis. This definition does not include the
- 28 private office practice of any one or more health
- 29 professionals licensed to practice in this state pursuant to
- 30 the provisions of chapter thirty of this code: *Provided*, That
- 31 such exemption from review of private office practice shall

32 not be construed to include such practices where major  
33 medical equipment otherwise subject to review under the  
34 provisions of this article is acquired, offered or developed.

35 (c) "Ambulatory surgical facility" means a facility  
36 which is free-standing and not physically attached to a  
37 health care facility and which provides surgical treatment  
38 to patients not requiring hospitalization. This definition  
39 does not include the private office practice of any one or  
40 more health professionals licensed to practice surgery in  
41 this state pursuant to the provisions of chapter thirty of this  
42 code: *Provided*, That such exemption from review of  
43 private office practice shall not be construed to include  
44 such practices where major medical equipment otherwise  
45 subject to review under the provisions of this article is  
46 acquired, offered or developed.

47 (d) "Annual implementation plan" means a plan  
48 established, annually reviewed and amended as necessary  
49 by a health systems agency in conformance with Section  
50 1513(b)(3) of the Public Health Service Act, as amended,  
51 Title 42 United States Code section 3001-2(b)(3), which  
52 describes objectives which will achieve the goals of the  
53 health systems plan, or, if those goals are amended by the  
54 statewide health coordinating council when included in the  
55 state health plan, as so amended, and priorities among the  
56 objectives.

57 (e) "Applicable health service area" means a health  
58 service area, as defined in this section, in which a new  
59 institutional health service is proposed to be located.

60 (f) "Applicant" means: (1) The governing body or the  
61 person proposing a new institutional health service who is,  
62 or will be, the health care facility licensee wherein the new  
63 institutional health service is proposed to be located, and (2)  
64 in the case of a proposed new institutional health service  
65 not to be located in a licensed health care facility, the  
66 governing body or the person proposing to provide such  
67 new institutional health service. Incorporators or  
68 promoters who will not constitute the governing body or  
69 persons responsible for the new institutional health service  
70 may not be an applicant.

71 (g) "Bed capacity" means the number of beds for which  
72 a license is issued to a health care facility, or, if a facility is  
73 unlicensed, the number of adult and pediatric beds

74 permanently staffed and maintained for immediate use by  
75 inpatients in patient rooms or wards.

76 (h) "Capital expenditure" means an expenditure:

77 (1) Made by or on behalf of a health care facility; and

78 (2) (A) Which (i) under generally accepted accounting  
79 principles is not properly chargeable as an expense of  
80 operation and maintenance, or (ii) is made to obtain either  
81 by lease or comparable arrangement any facility or part  
82 thereof or any equipment for a facility or part; and (B)  
83 which (i) exceeds the expenditure minimum, or (ii) is a  
84 substantial change to the bed capacity of the facility with  
85 respect to which the expenditure is made, or (iii) is a  
86 substantial change to the services of such facility. For  
87 purposes of part (i), subparagraph (B), subdivision (2) of  
88 this definition, the cost of any studies, surveys, designs,  
89 plans, working drawings, specifications, and other  
90 activities, including staff effort and consulting and other  
91 services, essential to the acquisition, improvement,  
92 expansion, or replacement of any plant or equipment with  
93 respect to which an expenditure described in subparagraph  
94 (B), subdivision (2) of this definition is made shall be  
95 included in determining if such expenditure exceeds the  
96 expenditure minimum. Donations of equipment or facilities  
97 to a health care facility which if acquired directly by such  
98 facility would be subject to review shall be considered  
99 capital expenditures, and a transfer of equipment or  
100 facilities for less than fair market value shall be considered  
101 a capital expenditure for purposes of such subdivisions if a  
102 transfer of the equipment or facilities at fair market value  
103 would be subject to review. A series of expenditures, each  
104 less than the expenditure minimum, which when taken  
105 together are in excess of the expenditure minimum, may be  
106 determined by the state agency to be a single capital  
107 expenditure subject to review. In making its determination,  
108 the state agency shall consider: Whether the expenditures  
109 are for components of a system which is required to  
110 accomplish a single purpose; whether the expenditures are  
111 to be made over a two-year period and are directed towards  
112 the accomplishment of a single goal within the health care  
113 facility's long-range plan; or, whether the expenditures are  
114 to be made within a two-year period within a single  
115 department such that they will constitute a significant  
116 modernization of the department.

117 (i) "Expenditure minimum" means seven hundred  
118 fourteen thousand dollars for the twelve-month period  
119 beginning the first day of October, one thousand nine  
120 hundred eighty-five. For each twelve-month period  
121 thereafter, the state agency may, by regulations adopted  
122 pursuant to section eight of this article, adjust the  
123 expenditure minimum to reflect the impact of inflation.

124 (j) "Health," used as a term, includes physical and  
125 mental health.

126 (k) "Health care facility" is defined as including  
127 hospitals, skilled nursing facilities, kidney disease  
128 treatment centers, including free-standing hemodialysis  
129 units, intermediate care facilities, ambulatory health care  
130 facilities, ambulatory surgical facilities, home health  
131 agencies, rehabilitation facilities, and health maintenance  
132 organizations, community mental health and mental  
133 retardation facilities; whether under public or private  
134 ownership, or as a profit or nonprofit organization and  
135 whether or not licensed or required to be licensed in whole  
136 or in part by the state. For purposes of this definition,  
137 "community mental health and mental retardation facility"  
138 means a private facility which provides such  
139 comprehensive services and continuity of care as  
140 emergency, outpatient, partial hospitalization, inpatient  
141 and consultation and education for individuals with mental  
142 illness, mental retardation or drug or alcohol addiction.

143 (l) "Health care provider" means a person, partnership,  
144 corporation, facility or institution licensed or certified or  
145 authorized by law to provide professional health care  
146 service in this state to an individual during that individual's  
147 medical care, treatment or confinement.

148 (m) "Health maintenance organization" means a public  
149 or private organization, organized under the laws of this  
150 state, which:

151 (1) Is a qualified health maintenance organization  
152 under Section 1310(d) of the Public Health Service Act, as  
153 amended, Title 42 United States Code Section 300e-9(d); or

154 (2) (A) Provides or otherwise makes available to  
155 enrolled participants health care services, including  
156 substantially the following basic health care services:  
157 Usual physician services, hospitalization, laboratory, X-  
158 ray, emergency and preventive services, and out-of-area  
159 coverage; and

160 (B) Is compensated except for copayments for the  
161 provision of the basic health care services listed in  
162 subparagraph (2)(A), subdivision (m) of this definition to  
163 enrolled participants on a predetermined periodic rate  
164 basis without regard to the date the health care services are  
165 provided and which is fixed without regard to the  
166 frequency, extent, or kind of health service actually  
167 provided; and

168 (C) Provides physicians' services primarily (i) directly  
169 through physicians who are either employees or partners of  
170 such organization, or (ii) through arrangements with  
171 individual physicians or one or more groups of physicians  
172 organized on a group practice or individual practice basis.

173 (n) "Health service area" means a geographic area  
174 designated by the Federal Secretary of Health and Human  
175 Services pursuant to Section 1511 of the Public Health  
176 Services Act, as amended, Title 42 United States Code  
177 Section 3001, with respect to which health systems agencies  
178 shall be designated under Section 1515 of such act, as  
179 amended, Title 42 United States Code Section 3001-4.

180 (o) "Health services" means clinically related  
181 preventive, diagnostic, treatment or rehabilitative services,  
182 including alcohol, drug abuse and mental health services.

183 (p) "Home health agency" is an organization primarily  
184 engaged in providing directly or through contract  
185 arrangements, professional nursing services, home health  
186 aide services, and other therapeutic and related services  
187 including, but not limited to, physical, speech and  
188 occupational therapy and nutritional and medical social  
189 services, to persons in their place of residence on a part-  
190 time or intermittent basis.

191 (q) "Hospital" means an institution which is primarily  
192 engaged in providing to inpatients, by or under the  
193 supervision of physicians, diagnostic and therapeutic  
194 services for medical diagnosis, treatment, and care of  
195 injured, disabled, or sick persons, or rehabilitation services  
196 for the rehabilitation of injured, disabled or sick persons.  
197 This term also includes psychiatric and tuberculosis  
198 hospitals.

199 (r) "Intermediate care facility" means an institution  
200 which provides, on a regular basis, health-related care and  
201 services to individuals who do not require the degree of care

202 and treatment which a hospital or skilled nursing facility is  
203 designed to provide, but who, because of their mental or  
204 physical condition, require health related care and services  
205 above the level of room and board.

206 (s) "Long-range plan" means a document formally  
207 adopted by the legally constituted governing body of an  
208 existing health care facility or by a person proposing a new  
209 institutional health service. Each long-range plan shall  
210 consist of the information required by the state agency in  
211 regulations adopted pursuant to section eight of this article.

212 (t) "Major medical equipment" means a single unit of  
213 medical equipment or a single system of components with  
214 related functions which is used for the provision of medical  
215 and other health services and which costs in excess of four  
216 hundred thousand dollars, except that such term does not  
217 include medical equipment acquired by or on behalf of a  
218 clinical laboratory to provide clinical laboratory services if  
219 the clinical laboratory is independent of a physician's office  
220 and a hospital and it has been determined under Title XVIII  
221 of the Social Security Act to meet the requirements of  
222 paragraphs ten and eleven of Section 1861(s) of such act,  
223 Title 42 United States Code Sections 1395x (10) and (11). In  
224 determining whether medical equipment costs more than  
225 four hundred thousand dollars, the cost of studies, surveys,  
226 designs, plans, working drawings, specifications, and other  
227 activities essential to the acquisition of such equipment  
228 shall be included. If the equipment is acquired for less than  
229 fair market value, the term "cost" includes the fair market  
230 value.

231 (u) "Medically underserved population" means the  
232 population of an urban or rural area designated by the state  
233 agency as an area with a shortage of personal health  
234 services or a population having a shortage of such services,  
235 after taking into account unusual local conditions which  
236 are a barrier to accessibility or availability of such services.  
237 Such designation shall be in regulations adopted by the  
238 state agency pursuant to section eight of this article, and the  
239 population so designated may include the state's medically  
240 underserved population designated by the Federal  
241 Secretary of Health and Human Services under Section  
242 330(b)(3) of the Public Health Service Act, as amended,  
243 Title 42 United States Code Section 254(b)(3).



244 (v) "New institutional health service" means such  
245 service as described in section three of this article.

246 (w) "Offer" when used in connection with health  
247 services, means that the health care facility or health  
248 maintenance organization holds itself out as capable of  
249 providing, or as having the means for the provision of,  
250 specified health services.

251 (x) "Person" means an individual, trust, estate,  
252 partnership, committee, corporation, association and other  
253 organizations such as joint-stock companies and insurance  
254 companies, a state or a political subdivision or  
255 instrumentality thereof or any legal entity recognized by  
256 the state.

257 (y) "Physician" means a doctor of medicine or  
258 osteopathy legally authorized to practice medicine and  
259 surgery by the state.

260 (z) "Proposed new institutional health service" means  
261 such service as described in section three of this article.

262 (aa) "Psychiatric hospital" means an institution which  
263 primarily provides to inpatients, by or under the  
264 supervision of a physician, specialized services for the  
265 diagnosis, treatment and rehabilitation of mentally ill and  
266 emotionally disturbed persons.

267 (bb) "Rehabilitation facility" means an inpatient  
268 facility which is operated for the primary purpose of  
269 assisting in the rehabilitation of disabled persons through  
270 an integrated program of medical and other services which  
271 are provided under competent professional supervision.

272 (cc) "Review agency" means an agency of the state  
273 designated by the governor as the agency for the review of  
274 state agency decisions.

275 (dd) "Skilled nursing facility" means an institution or a  
276 distinct part of an institution which is primarily engaged in  
277 providing to inpatients skilled nursing care and related  
278 services for patients who require medical or nursing care, or  
279 rehabilitation services for the rehabilitation of injured,  
280 disabled or sick persons.

281 (ee) "State agency" means that agency of state  
282 government selected by the governor and designated as the  
283 state health planning and development agency in an  
284 agreement entered into pursuant to Section 1521 of the  
285 Public Health Service Act, as amended, Title 42 United  
286 States Code Section 300m.

287 (ff) "State health plan" means the document approved  
 288 by the governor after preparation by the statewide health  
 289 coordinating council pursuant to Section 1524(c)(2) of the  
 290 Public Health Service Act, as amended, Title 42 United  
 291 States Code Section 300m-3(c)(2).

292 (gg) "Statewide health coordinating council" means the  
 293 body established pursuant to Section 1524 of the Public  
 294 Health Service Act, as amended, Title 42 United States  
 295 Code Section 300m-3, to advise the state agency.

296 (hh) "Substantial change to the bed capacity" of a  
 297 health care facility means a change, with which a capital  
 298 expenditure is associated, in any two-year period of ten or  
 299 more beds or more than ten percent, whichever is less, of the  
 300 bed capacity of such facility that increases or decreases the  
 301 bed capacity, redistributes beds among various categories,  
 302 or relocates beds from one physical facility or site to  
 303 another. A series of changes to the bed capacity of a health  
 304 care facility in any two-year period, each less than ten beds  
 305 or ten percent of the bed capacity of such facility, but which  
 306 when taken together comprise ten or more beds or more  
 307 than ten percent of the bed capacity of such facility,  
 308 whichever is less, is a substantial change to the bed  
 309 capacity.

310 (ii) "Substantial change to the health services" of a  
 311 health care facility means the addition of a health service  
 312 which is offered by or on behalf of the health care facility  
 313 and which was not offered by or on behalf of the facility  
 314 within the twelve-month period before the month in which  
 315 the service is first offered, or the termination of a health  
 316 service which was offered by or on behalf of the facility.

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

322 (kk) "Tuberculosis hospital" means an institution  
 323 which is primarily engaged in providing to inpatients, by or  
 324 under the supervision of a physician, medical services for  
 325 the diagnosis and treatment of tuberculosis.

### **§16-2D-3. Certificate of need.**

1 Except as provided in section four of this article, any new

2 institutional health service may not be acquired, offered or  
3 developed within this state except upon application for and  
4 receipt of a certificate of need as provided by this article.  
5 Whenever a new institutional health service for which a  
6 certificate of need is required by this article is proposed for  
7 a health care facility for which, pursuant to section four of  
8 this article, no certificate of need is or was required, a  
9 certificate of need shall be issued before the new  
10 institutional health service is offered or developed. No  
11 person may knowingly charge or bill for any health services  
12 associated with any new institutional health service that is  
13 knowingly acquired, offered or developed in violation of  
14 this article, and any bill made in violation of this sentence is  
15 legally unenforceable. For purposes of this article, a  
16 proposed "new institutional health service" includes:

17 (a) The construction, development, acquisition or other  
18 establishment of a new health care facility or health  
19 maintenance organization;

20 (b) The partial or total closure of a health care facility or  
21 health maintenance organization with which a capital  
22 expenditure is associated;

23 (c) Any obligation for a capital expenditure incurred by  
24 or on behalf of a health care facility, except as exempted in  
25 section four of this article, or health maintenance  
26 organization in excess of the expenditure minimum or any  
27 obligation for a capital expenditure incurred by any person  
28 to acquire a health care facility. An obligation for a capital  
29 expenditure is considered to be incurred by or on behalf of a  
30 health care facility:

31 (1) When a contract, enforceable under state law, is  
32 entered into by or on behalf of the health care facility for the  
33 construction, acquisition, lease or financing of a capital  
34 asset;

35 (2) When the governing board of the health care facility  
36 takes formal action to commit its own funds for a  
37 construction project undertaken by the health care facility  
38 as its own contractor; or

39 (3) In the case of donated property, on the date on which  
40 the gift is completed under state law;

41 (d) A substantial change to the bed capacity of a health  
42 care facility with which a capital expenditure is associated;

43 (e) The addition of health services which are offered by

44 or on behalf of a health care facility or health maintenance  
 45 organization and which were not offered on a regular basis  
 46 by or on behalf of such health care facility or health  
 47 maintenance organization within the twelve-month period  
 48 prior to the time such services would be offered;

49 (f) The deletion of one or more health services,  
 50 previously offered on a regular basis by or on behalf of a  
 51 health care facility or health maintenance organization  
 52 which deletion is associated with a capital expenditure;

53 (g) A substantial change to the bed capacity or health  
 54 services offered by or on behalf of a health care facility,  
 55 whether or not the change is associated with a proposed  
 56 capital expenditure, if the change is associated with a  
 57 previous capital expenditure for which a certificate of need  
 58 was issued and if the change will occur within two years  
 59 after the date the activity which was associated with the  
 60 previously approved capital expenditure was undertaken;

61 (h) The acquisition of major medical equipment; and

62 (i) A substantial change in an approved new  
 63 institutional health service for which a certificate of need is  
 64 in effect. For purposes of this subdivision "substantial  
 65 change" shall be defined by the state agency in regulations  
 66 adopted pursuant to section eight of this article.

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

1 (a) Except as provided in subdivision (h), section three  
 2 of this article, nothing in this article or the rules and  
 3 regulations adopted pursuant to the provisions of this  
 4 article may be construed to authorize the licensure,  
 5 supervision, regulation or control in any manner of: (1)  
 6 Private office practice of any one or more health  
 7 professionals licensed to practice in this state pursuant to  
 8 the provisions of chapter thirty of this code: *Provided, That*  
 9 such exemption from review of private office practice shall  
 10 not be construed to include such practices where major  
 11 medical equipment otherwise subject to review under the  
 12 provisions of this article is acquired, offered or developed;  
 13 (2) dispensaries and first-aid stations located within  
 14 business or industrial establishments maintained solely for  
 15 the use of employees: *Provided, however, That* such facility  
 16 does not contain inpatient or resident beds for patients or  
 17 employees who generally remain in the facility for more

18 than twenty-four hours; (3) establishments, such as motels,  
19 hotels and boardinghouses, which provide medical, nursing  
20 personnel and health related services; and (4) the remedial  
21 care or treatment of residents or patients in any home or  
22 institution conducted only for those who rely solely upon  
23 treatment by prayer or spiritual means in accordance with  
24 the creed of tenets of any recognized church or religious  
25 denomination.

26 (b) (1) A certificate of need is not required for the  
27 offering of an inpatient institutional health service or the  
28 acquisition of major medical equipment for the provision of  
29 an inpatient institutional health service or the obligation of a  
30 capital expenditure for the provisions of an inpatient  
31 institutional health service, if with respect to such offering,  
32 acquisition, or obligation, the state agency has, upon  
33 application under subdivision (2), subsection (b) of this  
34 section, granted an exemption to:

35 (A) A health maintenance organization or a  
36 combination of health maintenance organizations if (i) the  
37 organization or combination of organizations has, in the  
38 service area of the organization or the service areas of the  
39 organizations in the combination, an enrollment of at least  
40 fifty thousand individuals, (ii) the facility in which the  
41 service will be provided is or will be geographically located  
42 so that the service will be reasonably accessible to such  
43 enrolled individuals, and (iii) at least seventy-five percent  
44 of the patients who can reasonably be expected to receive  
45 the institutional health service will be individuals enrolled  
46 with such organization or organizations in the  
47 combination;

48 (B) A health care facility if (i) the facility primarily  
49 provides or will provide inpatient health services, (ii) the  
50 facility is or will be controlled, directly or indirectly, by a  
51 health maintenance organization or a combination of  
52 health maintenance organizations which has, in the service  
53 area of the organization or service areas of the  
54 organizations in the combination, an enrollment of at least  
55 fifty thousand individuals, (iii) the facility is or will be  
56 geographically located so that the service will be  
57 reasonably accessible to such enrolled individuals, and (iv)  
58 at least seventy-five percent of the patients who can  
59 reasonably be expected to receive the institutional health

60 service will be individuals enrolled with such organization  
61 or organizations in the combination; or

62 (C) A health care facility, or portion thereof, if (i) the  
63 facility is or will be leased by a health maintenance  
64 organization or combination of health maintenance  
65 organizations which has, in the service area of the  
66 organization or the service areas of the organizations in the  
67 combination, an enrollment of at least fifty thousand  
68 individuals and on the date the application is submitted  
69 under subdivision (2), subsection (b) of this section, at least  
70 fifteen years remain in the term of the lease, (ii) the facility  
71 is or will be geographically located so that the service will  
72 be reasonably accessible to such enrolled individuals, and  
73 (iii) at least seventy-five percent of the patients who can  
74 reasonably be expected to receive the new institutional  
75 health service will be individuals enrolled with such  
76 organization.

77 (2) (A) A health maintenance organization,  
78 combination of health maintenance organizations, or other  
79 health care facility is not exempt under subdivision (1),  
80 subsection (b) of this section, from obtaining a certificate of  
81 need unless:

82 (i) It has submitted, at such time and in such form and  
83 manner as the state agency shall prescribe, an application  
84 for such exemption to the state agency;

85 (ii) The application contains such information  
86 respecting the organization, combination, or facility and  
87 the proposed offering, acquisition, or obligation as the state  
88 agency may require to determine if the organization or  
89 combination meets the requirements of subdivision (1),  
90 subsection (b) of this section, or the facility meets or will  
91 meet such requirements; and

92 (iii) The state agency approves such application.

93 (B) The state agency shall approve an application  
94 submitted under subparagraph (A), subdivision (2),  
95 subsection (b) of this section, if it determines that the  
96 applicable requirements of subdivision (1), subsection (b) of  
97 this section, are met or will be met on the date the proposed  
98 activity for which an exemption was requested will be  
99 undertaken.

100 (3) A health care facility, or any part thereof, or medical  
101 equipment with respect to which an exemption was granted

102 under subdivision (1), subsection (b) of this section, may not  
103 be sold or leased and a controlling interest in such facility or  
104 equipment or in a lease of such facility or equipment may  
105 not be acquired and a health care facility described in  
106 subparagraph (C), subdivision (1), subsection (b) of this  
107 section, which was granted an exemption under subdivision  
108 (1), subsection (b) of this section, may not be used by any  
109 person other than the lessee described in subparagraph (C),  
110 subdivision (1), subsection (b) of this section, unless:

111 (A) The state agency issues a certificate of need  
112 approving the sale, lease, acquisition, or use; or

113 (B) The state agency determines, upon application, that  
114 the entity to which the facility or equipment is proposed to  
115 be sold or leased, which intends to acquire the controlling  
116 interest in or to use the facility is:

117 (i) A health maintenance organization or a combination  
118 of health maintenance organizations which meets the  
119 enrollment requirements of part (i), subparagraph (A),  
120 subdivision (1), subsection (b) of this section, and with  
121 respect to such facility or equipment, the entity meets the  
122 accessibility and patient enrollment requirements of parts  
123 (ii) and (iii), subparagraph (A), subdivision (1), subsection  
124 (b) of this section; or

125 (ii) A health care facility which meets the inpatient,  
126 enrollment, and accessibility requirements of parts (i), (ii)  
127 and (iii), subparagraph (B), subdivision (1), subsection (b) of  
128 this section, and with respect to its patients meets the  
129 enrollment requirements of part (iv), subparagraph (B),  
130 subdivision (1), subsection (b) of this section.

131 (4) In the case of a health maintenance organization or  
132 an ambulatory care facility or health care facility which  
133 ambulatory or health care facility is controlled, directly or  
134 indirectly, by a health maintenance organization or a  
135 combination of health maintenance organizations, the  
136 certificate of need requirements apply only to the offering  
137 of inpatient institutional health services, the acquisition of  
138 major medical equipment, and the obligation of capital  
139 expenditures for the offering of inpatient institutional  
140 health services and then only to the extent that such  
141 offering, acquisition, or obligation is not exempt under  
142 subdivision (1), subsection (b) of this section.

143 (5) The state agency shall establish the period within

144 which approval or disapproval by the state agency of  
145 applications for exemptions under subdivision (1),  
146 subsection (b) of this section, shall be made.

147 (c) (1) A health care facility is not required to obtain a  
148 certificate of need for the acquisition of major medical  
149 equipment to be used solely for research, the addition of  
150 health services to be offered solely for research, or the  
151 obligation of a capital expenditure to be made solely for  
152 research if the health care facility provides the notice  
153 required in subdivision (2), subsection (c) of this section,  
154 and the state agency does not find, within sixty days after it  
155 receives such notice, that the acquisition, offering or  
156 obligation will, or will have the effect to:

157 (A) Affect the charges of the facility for the provision of  
158 medical or other patient care services other than the  
159 services which are included in the research;

160 (B) Result in a substantial change to the bed capacity of  
161 the facility; or

162 (C) Result in a substantial change to the health services  
163 of the facility.

164 (2) Before a health care facility acquires major medical  
165 equipment to be used solely for research, offers a health  
166 service solely for research, or obligates a capital  
167 expenditure solely for research, such health care facility  
168 shall notify in writing the state agency of such facility's  
169 intent and the use to be made of such medical equipment,  
170 health service, or capital expenditure.

171 (3) If major medical equipment is acquired, a health  
172 service is offered, or a capital expenditure is obligated and a  
173 certificate of need is not required for such acquisition,  
174 offering, or obligation as provided in subdivision (1),  
175 subsection (c) of this section, such equipment or service or  
176 equipment or facilities acquired through the obligation of  
177 such capital expenditure may not be used in such a manner  
178 as to have the effect or to make a change described in  
179 subparagraphs (A), (B) and (C), subdivision (1), subsection  
180 (c) of this section, unless the state agency issues a certificate  
181 of need approving such use.

182 (4) For purposes of this subsection, the term "solely for  
183 research" includes patient care provided on an occasional  
184 and irregular basis and not as part of a research program.

185 (d) (1) The state agency may adopt regulations



186 pursuant to section eight of this article to specify the  
187 circumstances under which a certificate of need may not be  
188 required for the obligation of a capital expenditure to  
189 acquire, either by purchase or under lease or comparable  
190 arrangement, an existing health care facility: *Provided*,  
191 That a certificate of need shall be required for the  
192 obligation of a capital expenditure to acquire, either by  
193 purchase or under lease or comparable arrangement, an  
194 existing health care facility if:

195 (A) The notice required by subdivision (2), subsection  
196 (d) of this section, is not filed in accordance with that  
197 subdivision with respect to such acquisition; or (B) the state  
198 agency finds, within thirty days after the date it receives a  
199 notice in accordance with subdivision (2), subsection (d) of  
200 this section, with respect to such acquisition, that the  
201 services or bed capacity of the facility will be changed by  
202 reason of said acquisition.

203 (2) Before any person enters into a contractual  
204 arrangement to acquire an existing health care facility,  
205 such person shall notify the state agency of his or her intent  
206 to acquire the facility and of the services to be offered in the  
207 facility and its bed capacity. Such notice shall be made in  
208 writing and shall be made at least thirty days before  
209 contractual arrangements are entered into to acquire the  
210 facility with respect to which the notice is given. The notice  
211 shall contain all information the state agency requires in  
212 accordance with subsections (e) and (u), section seven of  
213 this article.

214 (e) The state agency shall adopt regulations, pursuant to  
215 section eight of this article, wherein criteria are established  
216 to exempt from review the addition of certain health  
217 services, not associated with a capital expenditure, that are  
218 projected to entail annual operating costs of less than the  
219 expenditure minimum for annual operating costs. For  
220 purposes of this subsection, "expenditure minimum for  
221 annual operating costs" means two hundred ninety-seven  
222 thousand five hundred dollars for the twelve-month period  
223 beginning the first day of October, one thousand nine  
224 hundred eighty-five, and for each twelve-month period  
225 thereafter, the state agency may, by regulations adopted  
226 pursuant to section eight of this article, adjust the  
227 expenditure minimum for annual operating costs to reflect  
228 the impact of inflation.

**§16-2D-5. Powers and duties of state health planning and development agency.**

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

3 (b) The state agency shall cooperate with the statewide  
4 health coordinating council in developing rules and  
5 regulations for the certificate of need program to the extent  
6 appropriate for the achievement of efficiency in their  
7 reviews and consistency in criteria for such reviews.

8 (c) The state agency may seek advice and assistance of  
9 other persons, organizations, and other state agencies in the  
10 performance of the state agency's responsibilities under  
11 this article.

12 (d) For health services for which competition  
13 appropriately allocates supply consistent with the state  
14 health plan, the state agency shall, in the performance of its  
15 functions under this article, give priority, where  
16 appropriate, to advance the purposes of quality assurance,  
17 cost effectiveness, and access, to actions which would  
18 strengthen the effect of competition on the supply of such  
19 services.

20 (e) For health services for which competition does not or  
21 will not appropriately allocate supply consistent with the  
22 state health plan, the state agency shall, in the exercise of its  
23 functions under this article, take actions, where  
24 appropriate, to advance the purposes of quality assurance,  
25 cost effectiveness, and access and the other purposes of this  
26 article, to allocate the supply of such services.

27 (f) The state agency is hereby empowered to order a  
28 moratorium upon the processing of an application or  
29 applications for the acquisition of major medical  
30 equipment filed pursuant to section three of this article and  
31 considered by the agency to be new medical technology,  
32 when criteria and guidelines for evaluating the need for  
33 such new medical technology have not yet been adopted.  
34 Such moratoriums shall be declared by a written order  
35 which shall detail the circumstances requiring the  
36 moratorium. Upon the adoption of criteria for evaluating  
37 the need for the new medical technology affected by the  
38 moratorium, or ninety days from the declaration of a  
39 moratorium, whichever is less, the moratorium shall be

40 declared to be over and affected applications shall be  
41 processed pursuant to section six of this article.

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

1 (a) Prior to submission of an application for a certificate  
2 of need, the state agency shall require the submission of  
3 long-range plans by health care facilities with respect to the  
4 development of proposals subject to review under this  
5 article. The plans shall be in such form and contain such  
6 information as the state agency shall require.

7 (b) An application for a certificate of need shall be  
8 submitted to the state agency prior to the offering or  
9 development of all new institutional services within this  
10 state. Persons proposing new institutional health services  
11 shall submit letters of intent not less than fifteen days prior  
12 to submitting an application. The letters of intent shall be of  
13 such detail as specified by the state agency.

14 (c) The state agency may adopt regulations pursuant to  
15 section eight of this article for:

16 (1) Provision for applications to be submitted in  
17 accordance with a timetable established by the state  
18 agency;

19 (2) Provision for such reviews to be undertaken in a  
20 timely fashion; and

21 (3) Except for proposed new institutional health  
22 services which meet the requirements for consideration  
23 under subsection (g), section nine of this article with regard  
24 to the elimination or prevention of certain imminent safety  
25 hazards or to comply with certain licensure or accreditation  
26 standards, provision for all completed applications  
27 pertaining to similar types of services, facilities or  
28 equipment to be considered in relation to each other, at  
29 least twice a year.

30 (d) An application for a certificate of need shall specify  
31 the time the applicant will require to make such service or  
32 equipment available or to obligate such expenditure and a  
33 timetable for making such service or equipment available  
34 or obligating such expenditure.

35 (e) The application shall be in such form and contain  
36 such information as the state agency shall establish by rule  
37 or regulation, but requests for information shall be limited

38 to only that information which is necessary for the state  
39 agency to perform the review.

40 (f) Within fifteen days of receipt of application, the state  
41 agency shall determine if the application is complete. The  
42 state agency may request additional information from the  
43 applicant.

44 (g) The state agency shall provide timely written notice  
45 to the applicant and to all affected persons of the beginning  
46 of the review, and to any person who has asked the state  
47 agency to place the person's name on a mailing list  
48 maintained by the state agency. Notification shall include  
49 the proposed schedule for review, the period within which a  
50 public hearing during the course of the review may be  
51 requested by affected persons, which period may not be less  
52 than thirty days from the date of the written notification of  
53 the beginning of the review required by this section, and the  
54 manner in which notification will be provided of the time  
55 and place of any public hearing so requested. For the  
56 purposes of this subsection, the date of notification is the  
57 date on which the notice is sent or the date on which the  
58 notice appears in a newspaper of general circulation,  
59 whichever is later.

60 (h) Written notification to members of the public and  
61 third-party payers may be provided through newspapers of  
62 general circulation in the applicable health service area and  
63 public information channels; notification to all other  
64 affected persons shall be by mail which may be as part of a  
65 newsletter.

66 (i) If, after a review has begun, the state agency requires  
67 the person subject to the review to submit additional  
68 information respecting the subject of the review, such  
69 person shall be provided at least fifteen days to submit the  
70 information and the state agency shall, at the request of  
71 such person, extend the review period by fifteen days. This  
72 extension applies to all other applications which have been  
73 considered in relation to the application for which  
74 additional information is required.

75 (j) The state agency shall adopt schedules for reviews  
76 which provide that no review may, to the extent  
77 practicable, take longer than ninety days from the date that  
78 notification, as described under subsection (g) of this  
79 section, is sent to the applicant to the date of the final

80 decision of the state agency, and in the case of expedited  
81 applications, may by regulations adopted pursuant to  
82 section eight of this article provide for a shortened review  
83 period.

84 (k) The state agency shall adopt criteria for determining  
85 when it would not be practicable to complete a review  
86 within ninety days.

87 (l) The state agency shall provide a public hearing in the  
88 course of agency review if requested by any affected person  
89 and the state agency may on its own initiate such a public  
90 hearing:

91 (1) The state agency shall, prior to such hearing, provide  
92 notice of such hearing and shall conduct such hearing in  
93 accordance with administrative hearing requirements in  
94 article five, chapter twenty-nine-a of this code, and its  
95 procedure adopted pursuant to this section.

96 (2) In a hearing any person has the right to be  
97 represented by counsel and to present oral or written  
98 arguments and evidence relevant to the matter which is the  
99 subject of the hearing. Any person affected by the matter  
100 which is the subject of the hearing may conduct reasonable  
101 questioning of persons who make factual allegations  
102 relevant to such matter.

103 (3) The state agency shall maintain a verbatim record of  
104 the hearing.

105 (4) After the commencement of a hearing on the  
106 applicant's application and before a decision is made with  
107 respect to it, there may be no ex parte contacts between (a)  
108 the applicant for the certificate of need, any person acting  
109 on behalf of the applicant or holder of a certificate of need,  
110 or any person opposed to the issuance of a certificate for the  
111 applicant and (b) any person in the state agency who  
112 exercises any responsibility respecting the application.

113 (5) The state agency may not impose fees for such a  
114 public hearing.

115 (m) If a public hearing is not conducted during the  
116 review of a new institutional health service, the state  
117 agency may, by regulations adopted pursuant to section  
118 eight of this article, provide for a file closing date during the  
119 review period after which date no other factual information  
120 or evidence may be considered in the determination of the  
121 application for the certificate of need.

122 A detailed itemization of documents in the state agency  
123 file on a proposed new institutional health service shall, on  
124 request, be made available by the state agency at any time  
125 before the file closing date.

126 (n) The extent of additional information received by the  
127 state agency from the applicant for a certificate of need  
128 after a review has begun on the applicant's proposed new  
129 institutional health service, with respect to the impact on  
130 such new institutional health service and additional  
131 information which is received by the state agency from the  
132 applicant, may be cause for the state agency to determine  
133 the application to be a new proposal, subject to a new  
134 review cycle.

135 (o) The state agency shall in timely fashion notify, upon  
136 request, providers of health services and other persons  
137 subject to review under this article of the status of the state  
138 agency review of new institutional health services subject  
139 to review, findings made in the course of such review, and  
140 other appropriate information respecting such review.

141 (p) The state agency shall prepare and publish, at least  
142 annually, reports of reviews completed and being  
143 conducted, with general statements about the status of each  
144 review still in progress and the findings and rationale for  
145 each completed review since the publication of the last  
146 report.

147 (q) The state agency shall provide for access by the  
148 general public to all applications reviewed by the state  
149 agency and to all other pertinent written materials essential  
150 to agency review.

151 (r) (1) Any person may request in writing a public  
152 hearing for purposes of reconsideration of a state agency  
153 decision. No fees may be imposed by the state agency for the  
154 hearing. For purposes of this section, a request for a public  
155 hearing for purposes of reconsideration shall be deemed to  
156 have shown good cause if, in a detailed statement, it:

157 (A) Presents significant, relevant information not  
158 previously considered by the state agency, and  
159 demonstrates that with reasonable diligence the  
160 information could not have been presented before the state  
161 agency made its decision;

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

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

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

170 (2) To be effective, a request for such a hearing shall be  
171 received within thirty days after the date upon which all  
172 parties received notice of the state agency decision, and the  
173 hearing shall commence within thirty days of receipt of the  
174 request.

175 (3) Notification of such public hearing shall be sent,  
176 prior to the date of the hearing, to the person requesting the  
177 hearing, the person proposing the new institutional health  
178 service, and shall be sent to others upon request.

179 (4) The state agency shall hold public reconsideration  
180 hearings in accordance with the provisions for  
181 administrative hearings contained in:

182 (A) Its adopted procedures;

183 (B) Ex parte contact provisions of subdivision (4),  
184 subsection (1) of this section; and

185 (C) The administrative procedures for contested cases  
186 contained in article five, chapter twenty-nine-a of this  
187 code.

188 (5) The state agency shall make written findings which  
189 state the basis for its decision within forty-five days after  
190 the conclusion of such hearing.

191 (6) A decision of the state agency following a  
192 reconsideration hearing shall be considered a decision of  
193 the state agency for purposes of sections nine and ten of this  
194 article and for purposes of the notification of the status of  
195 review, findings and annual report provisions of  
196 subsections (o) and (p) of this section.

197 (s) The state agency may adopt regulations pursuant to  
198 section eight of this article for reviews and such regulations  
199 may vary according to the purpose for which a particular  
200 review is being conducted or the type of health services  
201 being reviewed.

202 (t) Notwithstanding other provisions of this article, the  
203 state agency shall adopt rules and regulations for  
204 determining when there is an application which warrants  
205 expedited review. If procedures adopted by the state agency  
206 to handle expedited applications do not conform to the

207 provisions of this article, such procedures shall be approved  
208 by the federal secretary of health and human services and  
209 shall be adopted as regulations pursuant to section eight of  
210 this article.

**§16-2D-9. Agency to render final decision; issue certificate of  
need; write findings; specify capital expenditure  
maximum.**

1 (a) Only the state agency, or the appropriate  
2 administrative or judicial review body, may issue, deny or  
3 withdraw certificates of need, grant exemptions from  
4 certificate of need reviews, or determine that certificate of  
5 need reviews are not required.

6 (b) Except as provided in subsection (f) of this section, a  
7 certificate of need may only be issued if the proposed new  
8 institutional health service is:

9 (1) Found to be needed; and

10 (2) Except in emergency circumstances that pose a  
11 threat to public health, consistent with the state health  
12 plan: *Provided*, That if a health care facility which is  
13 controlled, directly or indirectly, by a health maintenance  
14 organization applies for a certificate of need for a proposed  
15 new institutional health service, the state agency may not  
16 disapprove the application solely because such an  
17 institutional health service is not discussed in the state  
18 health plan or annual implementation plan.

19 (c) The state agency shall render a final decision on  
20 every application for a certificate of need or application for  
21 exemption in the form of an approval, a denial, or an  
22 approval with conditions. Any decision of the state agency  
23 with respect to a certificate of need, or exemption, shall be  
24 based solely on:

25 (1) The review of the state agency conducted in  
26 accordance with procedures and criteria in this article and  
27 in regulations adopted pursuant to section eight of this  
28 article; and

29 (2) The record established in administrative  
30 proceedings held with respect to the certificate of need or  
31 exemption.

32 (d) Approval with conditions does not give the state  
33 agency authority to mandate new institutional health  
34 services not proposed by the health care facility or health



35 maintenance organization. Issuance of a certificate of need  
36 or exemption may not be made subject to any condition  
37 unless the condition directly relates to criteria in this article  
38 or in rules and regulations adopted pursuant to section  
39 eight of this article. Conditions may be imposed upon the  
40 operations of the health care facility or health maintenance  
41 organization for no longer than a three-year period.  
42 Compliance with such conditions may be enforced through  
43 the mechanisms detailed in section thirteen of this article.

44 (e) (1) For each proposed new institutional health  
45 service it approves, the state agency shall, in addition to the  
46 written findings required in subsection (e), section six of  
47 this article, make a written finding, which shall take into  
48 account the current accessibility of the facility as a whole,  
49 on the extent to which the new institutional health service  
50 will meet the criteria in subdivisions (4), (14), and (25),  
51 subsection (a), section six of this article, regarding the needs  
52 of medically underserved population, except in the  
53 following cases:

54 (A) Where the proposed new institutional health service  
55 is one described in subsection (g) of this section to eliminate  
56 or prevent certain imminent safety hazards or to comply  
57 with certain licensure or accreditation standards; or

58 (B) Where the new institutional health service is a  
59 proposed capital expenditure not directly related to the  
60 provision of health services or to beds or major medical  
61 equipment; or

62 (C) Where the new institutional health service is  
63 proposed by or on behalf of a health care facility which is  
64 controlled, directly or indirectly, by a health maintenance  
65 organization.

66 (2) If the state agency disapproves a proposed new  
67 institutional health service for failure to meet the needs of  
68 medically underserved populations, it shall so state in a  
69 written finding.

70 (f) (1) Notwithstanding review criteria in subdivision  
71 (12), subsection (a), section six of this article, if a health care  
72 facility which is controlled, directly or indirectly, by a  
73 health maintenance organization applies for a certificate of  
74 need, such application shall be approved by the state  
75 agency if the state agency finds, in accordance with criteria  
76 prescribed by the state agency by regulations adopted  
77 pursuant to section eight of this article, that:

78 (A) Approval of such application is required to meet the  
79 needs of the members of the health maintenance  
80 organization and of the new members which such  
81 organization can reasonably be expected to enroll; and

82 (B) The health maintenance organization is unable to  
83 provide, through services or facilities which can reasonably  
84 be expected to be available to the organization, its  
85 institutional health services in a reasonable and cost-  
86 effective manner which is consistent with the basic method  
87 of operation of the organization and which makes such  
88 services available on a long-term basis through physicians  
89 and other health professionals associated with it.

90 (2) Except as provided in subdivision (1), subsection (b),  
91 section four of this article, a health care facility, or any part  
92 thereof, or medical equipment with respect to which a  
93 certificate of need was issued under this subsection, may  
94 not be sold or leased, and a controlling interest in such  
95 facility or equipment or in a lease of such facility or  
96 equipment may not be acquired unless the state agency  
97 issues a certificate of need approving the sale, acquisition or  
98 lease.

99 (g) (1) Notwithstanding review criteria in section six  
100 of this article, an application for a certificate of need shall  
101 be approved, if the state agency finds that the facility or  
102 service with respect to which such capital expenditure is  
103 proposed to be made is needed and that the obligation of  
104 such capital expenditure is consistent with the state health  
105 plan, for a capital expenditure which is required:

106 (A) To eliminate or prevent imminent safety hazards as  
107 defined by federal, state or local fire, building or life safety  
108 codes or regulations;

109 (B) To comply with state licensure standards; or

110 (C) To comply with accreditation or certification  
111 standards, compliance with which is required to receive  
112 reimbursements under Title XVIII of the Social Security  
113 Act or payments under the state plan for medical assistance  
114 approved under Title XIX of such act.

115 (2) An application for a certificate of need approved  
116 under this subsection shall be approved only to the extent  
117 that the capital expenditure is required to eliminate or  
118 prevent the hazards described in subparagraph (A),  
119 subdivision (1), subsection (g), or to comply with the

120 standards described in either subparagraph (B) or (C) of  
121 subdivision (1), subsection (g) of this section.

122 (h) (1) The state agency shall send its decision along  
123 with written findings to the person proposing the new  
124 institutional health service or exemption and shall make it  
125 available to others upon request.

126 (2) In the case of a new institutional health service  
127 proposed by a health maintenance organization, the state  
128 agency shall send the written findings to the appropriate  
129 regional office of the federal department of health and  
130 human services at the time they are sent to the applicant.

131 (3) In any decision where the state agency finds that a  
132 proposed new institutional health service does not satisfy  
133 the criteria in subdivisions (4), (14), and (25), subsection (a),  
134 section six of this article, regarding the needs of medically  
135 underserved population, it shall so notify in writing the  
136 applicant and the appropriate regional office of the federal  
137 department of health and human services.

138 (i) In the case of a final decision to approve or approve  
139 with conditions a proposal for a new institutional health  
140 service, the state agency shall issue a certificate of need to  
141 the person proposing the new institutional health service.

142 (j) The state agency shall specify in the certificate the  
143 maximum amount of capital expenditures which may be  
144 obligated under such certificate. The state agency shall  
145 prescribe the method used to determine capital expenditure  
146 maximums and shall adopt regulations pursuant to section  
147 eight of this article for the review of approved new  
148 institutional health services for which the capital  
149 expenditure maximum is exceeded or is expected to be  
150 exceeded.

151 (k) If the state agency fails to make a decision within the  
152 time period specified for the review, the applicant may,  
153 within one year following the expiration of such period,  
154 bring an action, at the election of the applicant, in either the  
155 circuit court of Kanawha County, or with the judge thereof  
156 in vacation, or in the circuit court of the county in which the  
157 applicant or any one of the applicants resides or does  
158 business, or with the judge thereof in vacation to require the  
159 state agency to approve or disapprove the application. An  
160 application for a proposed new institutional health service  
161 or exemption may not be approved or denied by the circuit

162 court solely because the state agency failed to reach a  
163 decision.

**§16-2D-13. Injunctive relief; civil penalty.**

1 (a) In addition to all other remedies, and aside from  
2 various penalties provided by law, if any person acquires,  
3 offers or develops any new institutional health service for  
4 which a certificate of need is required under this article  
5 without first having a certificate of need therefor as herein  
6 provided, or violates any other provision of this article or  
7 any lawful rule or regulation promulgated thereunder,  
8 affected persons, as defined in section two of this article,  
9 and the state agency shall request that the attorney general  
10 maintain a civil action in the circuit court of the county  
11 wherein such violation has occurred, or wherein such  
12 person may be found, to enjoin, restrain or prevent such  
13 violation. No injunction bond shall be required to be filed in  
14 any such proceeding.

15 (b) The state agency may assess a civil penalty for  
16 violation of this article. Upon the state agency determining  
17 that there is probable cause to believe that any person is  
18 knowingly offering, developing, or has acquired any new  
19 institutional health service subject to certificate of need  
20 review without having first obtained a certificate of need  
21 therefor or that any person is otherwise in violation of the  
22 provisions of this article, or any lawful rule or regulation  
23 promulgated thereunder, the state agency shall provide  
24 such person with written notice which shall state the nature  
25 of the alleged violation and the time and place at which such  
26 person shall appear to show good cause why a civil penalty  
27 should not be imposed, at which time and place such person  
28 shall be afforded an opportunity to cross-examine the state  
29 agency's witnesses and afforded an opportunity to present  
30 testimony and other evidence in support of his position. The  
31 hearing shall be conducted in accordance with the  
32 administrative hearing provisions of section four, article  
33 five, chapter twenty-nine-a of this code. If, after reviewing  
34 the record of such hearing, the state agency director  
35 determines that such person is in violation of the certificate  
36 of need law, the state agency shall assess a civil penalty of  
37 not less than five hundred dollars nor more than twenty-  
38 five thousand dollars. In determining the amount of the

39 penalty, the state agency shall consider the degree and  
40 extent of harm caused by the violation and the cost of  
41 rectifying the damage. Any person assessed shall be notified  
42 of the assessment in writing, and the notice shall specify the  
43 reasons for the assessment. If the person assessed fails to  
44 pay the amount of the assessment to the state agency within  
45 thirty days, the attorney general may institute a civil action  
46 in the circuit court of the county wherein such violation has  
47 occurred; or wherein such person may be found to recover  
48 the amount of the assessment. In any such civil action, the  
49 scope of the court's review of the state agency's action,  
50 which shall include a review of the amount of the  
51 assessment, shall be as provided in section four, article five,  
52 chapter twenty-nine-a of this code for the judicial review of  
53 contested administrative cases.

**§16-2D-14. Statute of limitations.**

1 The state agency shall have a period of three years in  
2 which to take actions as provided in this article to correct  
3 violations of the provisions of this article. The three-year  
4 period shall begin to run from the date the state agency  
5 knows or should have known of the violation. Each new act  
6 of a continuing violation shall provide a basis for restarting  
7 the calculation of the limitations period.

**§16-2D-15. Previously approved rules and regulations.**

1 All rules and regulations previously promulgated to  
2 implement this article shall continue in force following the  
3 amendments to this article; except that, where such  
4 previous rules and regulations differ from the requirements  
5 of the amendments to this article, then such part of those  
6 rules and regulations are hereby abrogated and shall have  
7 no further legal effect. The state agency shall commence a  
8 review of such rules and regulations and shall promulgate  
9 revised rules and regulations.

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

*Barry Edwards*  
.....  
Chairman Senate Committee

*Floyd Fuller*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Todd C. Miller*  
.....  
Clerk of the Senate

*Donald L. Fopp*  
.....  
Clerk of the House of Delegates

*Sam Tombari*  
.....  
President of the Senate

*Joseph P. Allright*  
.....  
Speaker House of Delegates

The within *approved* this the *2nd*  
*May* day of ..... 1985.  
*Russa Prange*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/19/85

Time 8:52 p.m.