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AN ACT
D.C. ACT 11-347

*Codification
District of
Columbia
Code
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JULY 22, 1996

To re-establish a health services planning and certificate of need regulatory program in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Services Planning Program Re-establishment Act of 1996".

*New
Chapter 3b,
Title 32*

Sec. 2. Definitions.

For the purposes of this act, the term:

*New Section
32-351*

(1) "Acquiring of effective control" means:

(A) Any transfer, assignment or other disposition of 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity which is a HCF or is the operator or owner of a HCF;

(B) Any transaction which results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of such a corporation or other entity;
or

(C) Any transaction which results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of such a corporation.

(2) "Annual Implementation Plan" means the plan prepared annually by the State Health Planning and Development Agency and the Statewide Health Coordinating Council to specify actions which will achieve the goals and objectives of the Health Systems Plan.

(3) "Capital expenditure" means:

(A) Any expenditure by or on behalf of a health care facility, or by or on behalf of a person, which is, under generally accepted accounting principles, not properly chargeable as an expense of operation or maintenance and which exceeds \$2,000,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Hospital Construction Cost Index issued by the U.S. Department of Commerce;

ENROLLED ORIGINAL

(B) Any acquisition under a lease or comparable arrangement, or through any other type of transfer, which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been made at fair market value;

(C) Any acquisition under a lease or comparable arrangement, or through donation or through any other type of transfer by 2 or more persons acting in concert in which the aggregate cost of such acquisition would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been by purchase at fair market value, notwithstanding that the cost or value to each participating person of the acquisition would not, alone, otherwise constitute a capital expenditure under subparagraph (A) of this paragraph; and

(D) Any action or combination of related actions by a person or by 2 or more persons acting in concert which is taken for the purpose of acquiring, or otherwise results in the acquiring of effective control of a health care facility or any other corporation, partnership, or other entity which holds a certificate of need, and which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition or intended acquisition had been by purchase at a fair market value.

(4) "Commissioner of Health Care Finance" means the Commissioner of Health Care Finance established by Department of Human Services Organization Order No. 216 dated September 24, 1992.

(5) "Commissioner of Mental Health" means the Commissioner of the District of Columbia Commission on Mental Health Services established by Mayor's Reorganization Plan No. 3 of 1986, effective January 3, 1987 (D.C. Code, Vol. 1), and Mayor's Order No. 88-168, effective July 13, 1988.

(6) "Commissioner of Public Health" means the Commissioner for the District of Columbia Commission of Public Health established by Reorganization Plan No. 2 of 1979, effective February 21, 1980 (D.C. Code, Vol. 1).

(7) "Director" means the director of the SHPDA established by section 3.

(8) "District government" means the government of the District of Columbia.

(9) "Ex parte contact" means an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

(10) "Health care facility" ("HCF") means any private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility home health agency, hospice, or other comparable health care facility which has an annual operating budget of at least \$500,000. "Health facility" shall not include Christian Science sanitariums operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional, or a health care facility licensed or to be licensed as a community residence facility.

(11) "Health Maintenance Organization" ("HMO") means a private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO

ENROLLED ORIGINAL

pursuant to rules issued by the SHPDA in accordance with this act.

(12) "Health service" means any medical or clinical related service, including services that are diagnostic, curative or rehabilitative, as well as those related to alcohol abuse, drug abuse, mental health, home health care, hospice care, medically supervised day care, and renal dialysis. "Health service" shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

(13) "Health Systems Plan" ("HSP") means the comprehensive health plan prepared by the SHPDA and the SHCC in accordance with this act.

(14)(A) "Major medical equipment" means equipment which is used for the provision of medical or other health services, which is acquired by or on behalf of a health care facility or by or on behalf of physicians, dentists, or other providers in individual or group practice and which has a fair market value in excess of \$1,300,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor. "Major medical equipment" shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and it meets the requirements of section 1861 (s)(10) and (11) under the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)), or replacement equipment exempted under section 8(b)(4).

(B) In determining whether medical equipment has a fair market value in excess of the amount specified in subparagraph (A) of this paragraph, the cost of studies, surveys, designs, plans, working drawings, specifications, site preparation, construction, related equipment, and other activities essential to the acquisition of the equipment shall be included.

(15) "New institutional health service" means:

(A) The construction, development, or other establishment of:

(i) A health care facility;

(ii) A home health or home nursing service;

(iii) Any new health service; or

(iv) A change in the licensed bed capacity of a facility by 10 beds or 10%, whichever is less, within a 2-year period.

(B) Any health service offered by or on behalf of a HCF and which was not offered on a regular basis by the HCF within the 12-month period prior to the time the service would be offered or which involves an operating budget of at least \$600,000 in direct costs for the first year of operation, except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the medical care component of the Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, or which results in a capital expenditure in any amount.

(16) "Person" means an individual, a trust, or estate, a partnership, or a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency, subdivision, or instrumentality of the District government.

ENROLLED ORIGINAL

(17) "Social Security Act" means the Social Security Act, approved August 14, 1935, as amended (49 Stat. 520; 42 U.S.C. 301 *et seq.*)

(18) "Statewide Health Coordinating Council" ("SHCC") means the Statewide Health Coordinating Council established by section 4 to advise the State Health Planning and Development Agency on certain health planning functions as specified in this act.

(19) "State Health Planning and Development Agency" ("SHPDA") means the agency for the District of Columbia within the Commission of Public Health responsible for carrying out the District government's health planning and development program established by section 3.

Sec. 3. State Health Planning and Development Agency; establishment and responsibilities.

New Section
32-352

(a) There is established, in the Commission on Public Health, a State Health Planning and Development Agency ("SHPDA").

(b) The SHPDA shall be responsible for health systems development in the District. The SHPDA's responsibilities for health systems development shall include:

(1) The establishment and administration of a health systems plan development and implementation program in accordance with section 5;

(2) The establishment of a health data and information program in accordance with section 6;

(3) The administration, operation, and enforcement of the certificate of need program in accordance with this act; and

(4) The monitoring of compliance by health care facilities with the requirements of this act.

(c) All regulations, rules, and procedures of the predecessor Office of Health System Development shall remain in effect until the adoption of superseding replacement of those regulations, rules and procedures.

Sec. 4. Statewide Health Coordinating Council; establishment and responsibilities.

New Section
32-353

(a) The SHPDA shall establish a Statewide Health Coordinating Council ("SHCC"), which shall consist of 15 members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia.

(b) The SHCC shall:

(1) Assist the SHPDA in the development of the HSP;

(2) Review and make recommendations to the SHPDA on the HSP; and

(3) Make recommendations to the SHPDA on an application for a certificate of need.

(c) The members appointed to the SHCC shall include:

(1) Four consumers of health care services in the District who are not affiliated with any health care provider or facility;

ENROLLED ORIGINAL

- (2) Three public members;
- (3) Two representatives of incorporated associations of health care facilities in the District;
- (4) One physician representing an incorporated association of professional physicians in the District;
- (5) One nurse representing an incorporated association of professional nurses in the District;
- (6) One representative of an incorporated association of the health care insurance industry in the District;
- (7) The Commissioner of Public Health, or his or her designee;
- (8) The Commissioner of Health Care Finance, or his or her designee; and
- (9) The Commissioner of Mental Health Services, or his or her designee.

(d) Nongovernment members of the SHCC shall serve for a term of 3 years, except that of the nongovernment members initially appointed, 4 shall be appointed for a term of 3 years, 4 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 1 year from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. Government representatives shall serve for the duration of their service in the positions stated in subsection (c)(6) and (7) of this section.

(e) A member of the SHCC may be reappointed, except that a member of the SHCC who is reappointed shall not serve more than 2 consecutive terms. A person may be reappointed to the SHCC following an absence of 1 year.

(f) Whenever a vacancy occurs as a result of a resignation, disability, death, more than 3 consecutive absences from regularly scheduled meetings, or for other reasons in an unexpired term on the SHCC, the Mayor shall appoint a replacement to fill that unexpired term in the same manner specified in subsections (a), (b), and (c) of this section. A member appointed to fill an unexpired term shall only serve for the remainder of that term. The completion of the unexpired term shall not constitute a full term for the purposes of subsection (e) of this section.

(g) Every 2 years, the SHCC shall elect 1 of its members to serve as chairman, and may elect any other officers it requires. The SHCC may adopt rules of organization and procedure which it deems necessary and are not inconsistent with this act, in accordance with title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).

(h) Members of the SHCC shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties in accordance with section 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D. C. Code § 1-612.8).

(i) The powers, duties and functions of the predecessor Health Advisory Committee established by section 4 of the Health Services Planning Program Act of 1993, effective March 16, 1993 (D.C. Law 9-197; D.C. Code § 32-323) ("1993 Act"), are transferred to the SHCC established by this act. The by-laws, regulations, and procedures of the predecessor Health

ENROLLED ORIGINAL

Advisory Committee established by section 4 of the 1993 Act shall continue in force until new by-laws, rules, regulations, or procedures are issued by the SHCC established pursuant to this act.

Sec. 5. Health systems plan; development, publication, updating, and implementation.

New Section
32-354

(a) The SHPDA, with the advice and recommendation of the SHCC, shall develop a proposed comprehensive HSP which shall be adopted in accordance with rules issued pursuant to section 22. The HSP shall:

- (1) Articulate the policy of the District with respect to maintaining and improving the health of District residents and the health care delivery system in the District;
- (2) Project current and future health care trends;
- (3) Identify the health needs of District residents and recommend alternatives to address those health needs; and
- (4) Prioritize health issues.

(b) The HSP shall serve as the basis for allocating public and private health resources in the District of Columbia.

(c) In carrying out its duties for the development of the HSP, the SHPDA shall:

- (1) Provide for public involvement in and evaluation of the development and implementation of the HSP, which shall include at least 1 public hearing;
- (2) Develop an Annual Implementation Plan ("AIP") for the implementation of the HSP;
- (3) Conduct informational and educational activities concerning the HSP and the AIP; and
- (4) Coordinate all health planning within the District of Columbia.

(d) Upon completion and promulgation of the final HSP, the SHPDA shall publish a notice of its completion and issuance in the District of Columbia Register and forward a copy of the final HSP to the District of Columbia Public Library.

(e) The HSP shall be reviewed annually, and amended as necessary, except that a new HSP shall be issued every 5 years.

Sec. 6. Reporting, analysis, and publication of utilization, financial, and other health-related data; regulations, reporting periods, format, and forms.

New Section
32-355

(a) The SHPDA shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, the SHPDA shall require health care facilities to submit, in writing or other uniform media, data related to the utilization, management, and financing of health services including data on utilization of health services, costs of services, charges of services, and patient demographic and characteristic information, as necessary for the development of the HSP and AIP.

(b) The SHPDA shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats. The SHPDA may require HCFs to submit data

in the absence of rules or in addition to submissions required by regulation upon the determination by the SHPDA that the data are reasonably necessary to enable the SHPDA to carry out the mission of this act. HCFs shall be given written notice of the data requirements. The notice shall include the basis upon which the requirements have been established.

(c) Submission of data by HCFs shall be in the form and format prescribed by the SHPDA and shall utilize forms which may be prescribed by the SHPDA.

(d) The SHPDA shall coordinate with public and private entities that collect data of the type described in this section in order to maximize the use of existing data sources and to minimize the duplication of data collection efforts.

(e) The SHPDA shall analyze data submitted and acquired and may publish data, analyses, and findings which identify major health policy issues.

(f) No application for a certificate of need shall be complete and no certificate of need shall be issued if the applicant has not submitted data as required.

Sec. 7. Certificate of need requirements.

New Section
32-356

(a) Except as provided in section 8, all persons proposing to offer or develop in the District a new institutional health service, or to obligate a capital expenditure to obtain an asset to be located in the District shall, prior to proceeding with that offering, development, or obligation, obtain from the SHPDA a certificate of need that demonstrates a public need for the new service or expenditure. Only those institutional health services or capital expenditures that are granted a certificate of need shall be offered, developed, or obligated within the District.

(b) Before there is a capital expenditure to acquire, either by purchase or under a lease or comparable arrangement, of an existing HCF or part of a HCF ("Transaction"), the person or persons acquiring control ("Proposed Owner") shall obtain a certificate of need from SHPDA. Subject to the provisions of paragraphs (5), (6), (7) and (8) of this subsection, SHPDA shall waive the procedures and review criteria set forth under section 10 of this act and shall grant a certificate of need if all of the following conditions are met:

(1) The Proposed Owner shall provide written notification to SHPDA at least 60 days before the Transaction. The notification shall include the following:

(A) The names of the current owner(s) of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(B) The names of the Proposed Owner of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(C) The location(s) of the corporate office(s) of the Proposed Owner;

(D) The proposed governance structure and, if investor-owned, a description of the mechanism for ensuring community involvement in policy matters;

(E) A summary of the agreement setting forth the terms of the proposed Transaction, including the cost and means of financing the Transaction and a reasonably estimated projection of the impact of the transaction cost on charges for services to be provided;

ENROLLED ORIGINAL

(F) A description of any capital expenditures contemplated as a part of the Transaction;

(G) A reasonable projection of utilization and financial results for the HCF to include any expected material changes in the number of beds or services, inpatient admissions, and outpatient visits, total facility revenues, and expenses for the two-year period following the Transaction; and

(H) A reasonably estimated projection of uncompensated care (bad debt and charity) and the nature of any proposed changes to admission policies and hours of operations over the two-year period following the Transaction.

(2) The Proposed Owner shall certify in writing, as part of the notification required in subsection (b)(1), that:

(A) For the two-year period following the Transaction, the percentage of uncompensated care (charity and bad debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the two fiscal years immediately preceding the acquisition;

(B) The Proposed Owner agrees to abide by all applicable conditions contained in certificates of need issued to the HCF, for such time and to such extent as those conditions would be applicable to the current owners in the absence of the Transaction; and

(C) All existing financial and admission policies affecting access to the HCF based upon a patient's ability to pay for services or treatment will be maintained for 2 years following transaction and will be consistent with existing law.

(3) If SHPDA determines that the notification is incomplete with respect to the information required under subsection (b)(1) and (2) of this section, SHPDA shall have 10 days from the filing of the notification to inform the Proposed Owner that the notification is incomplete, otherwise the information shall be deemed complete on the 11th day. The Proposed Owner must file the additional information within 15 days of such notification from SHPDA, provided that the initial filing date shall be deemed the filing date of the notification for all purposes of computation of time under this section.

(4) SHPDA shall call an information hearing, which shall be completed within 50 days following the filing of the notification provided under subsection (b)(1) of this section and after the Proposed Owner files additional information pursuant to subsection (b)(3) of this section. The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to subsection (b)(2) of this section, and receipt of testimony from affected persons.

(5) Except as otherwise provided in this subsection, SHPDA shall issue a certificate of need for the change in effective control no later than 60 days after the date of the initial filing with SHPDA of the notification required under subsection (b)(1) of this section by the Proposed Owner unless SHPDA finds, based upon clear and convincing evidence, the following:

ENROLLED ORIGINAL

(A) The Proposed Owner has not filed the notification described in subsection (b)(1) and (2) of this section;

(B) The Proposed Owner has not participated in the hearing required by subsection (b)(3) of this section;

(C) The notification is not reasonably consistent with the most current state health plan adopted in final form by SHPDA after the effective date of this act or with any annual implementation plan for such state health plan;

(D) The notification is not reasonably consistent with the record of review;

(E) In the case of an investor-owner Proposed Owner, the mechanisms for local input in policy matters are not reasonable, except that such mechanisms shall not be required to be greater than those imposed upon comparable HCFs subject to CON review;

(F) The Proposed Owner is not financially sound or does not have the financial and management capability to operate the HCF being acquired; or

(G) The acquisition costs and projected operational costs would substantially and negatively impact the Proposed Owner's ability to comply with the certifications required under subsection (b)(2) of this section.

(6) SHPDA shall notify the Proposed Owner of any deficiency in the notification or of any proposed negative finding. If, by the 60th day, the Proposed Owner has not provided the required notification or addressed SHPDA's proposed negative findings, SHPDA shall, upon request by the Proposed Owner, provide the Proposed Owner a reasonable opportunity to provide additional information to SHPDA, to participate in the required hearing, or to complete its required notice in order to cure any negative finding. SHPDA shall act upon such additional submission within 15 days. If the Proposed Owner does not respond to the SHPDA notice of deficiency within 6 months of the notification from SHPDA, SHPDA shall close the proceeding. If, following submission by the Proposed Owner, SHPDA finds by clear and convincing evidence that any one or more of these standards is not met, SHPDA shall require that the Proposed Owner obtain a certificate of need in accordance with the provisions of section 10, except that the letter of intent and public hearing requirements shall be waived. If no action is taken by SHPDA within the initial prescribed 60-day time frame, the certificate of need shall be deemed to be issued and approved on the 61st day following the filing of the notification required in subsection (b)(1) of this section. If no action is taken by SHPDA within the additional 15-day time frame provided following an additional submission by the Proposed Owner under subsection (b)(5) of this section, the certificate of need shall be deemed to be issued and approved on the 16th day following the filing of the additional submission under this subsection (b)(5) of this section.

(7) In granting a certificate of need under this subsection, SHPDA shall impose no application or process requirements, apply any review criteria, or impose any conditions except as provided in subsection (b) of this section.

(8) The Office of Corporation Counsel may seek injunctive relief from a court of competent jurisdiction if it determines that a person is operating an HCF in violation of the certifications made under this subsection.

(9) The requirements of this subsection shall be effective without adoption by SHPDA of implementing regulations.

(c) Any person proposing to close permanently or to terminate operation of a HCF or health service shall notify the SHPDA of the intention to close or terminate operation no later than 90 days prior to the proposed closing, and obtains its approval, and shall provide the SHPDA with any information that may be requested as established in the rules promulgated to implement the provisions of this act. The information shall include, but not be limited to, the reasons for the closure or termination of operation, the number of patients to be affected by the closure, and the provisions being made to provide for their continuing care. When notice of closure of a HCF or health service is received, the SHPDA shall provide assistance for an orderly transition of the patient load to the extent possible.

Sec. 8. Activities exempt from certificate of need review.

New Section
32-357

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the SHPDA a letter of notice in accordance with rules promulgated pursuant to section 22.

(b) The following projects are exempt from certificate of need review:

- (1) The correction of cited deficiencies that are in violation of federal and District fire, building, and safety codes;
- (2) The correction of deficiencies identified by private national accrediting associations and District government licensing agencies;
- (3) Nonpatient care projects requiring the obligation of a capital expenditure of less than \$5 million and which will not increase patient charges by 1% or more;
- (4) The acquisition of medical equipment to replace the same or similar equipment for which a certificate of need has been granted, if the replacement equipment is removed from service;
- (5) The acquisition of major medical equipment to be used solely for research, new institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research. This provision shall not preclude a HCF from seeking reasonable reimbursement for health care services provided under this exemption;
- (6) This act shall not apply to any existing District of Columbia government-owned property used as a residential treatment and special education facility for not more than 24 emotionally disturbed children, ages 6 to 12 years, and as a treatment and special education facility for not more than 15 emotionally disturbed children, ages 6 to 12, who do not reside at the facility;
- (7) Any proposal to offer or develop a new institutional health service or obligate a capital expenditure which would otherwise be subject to section 8, if the purpose of

ENROLLED ORIGINAL

the service or expenditure is to accommodate a resident to be transferred from D.C. Village; and

(8) The voluntary permanent reduction in the number in licensed bed capacity where a request for exemption is made 60 days before the reduction and the SHPDA finds that the reduction in bed capacity would not be inconsistent with the HSP.

(c) An HMO, or combination of HMOs, shall be exempt from certificate of need requirements if it meets the following requirements:

(1) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(2) At least 75% of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO or combination of HMOs.

(d) The District government is exempt from certificate of need requirements until January 1, 1998.

Sec. 9. Activities subject to expedited administrative certificate of need reviews

**New Section
32-358**

(a) Proposals for major medical equipment and new institutional health services for which there is an explicit finding of need in the HSP shall be eligible for expedited administrative review without referral to the SHCC, in accordance with rules promulgated pursuant to section 22.

(b) Any persons proposing projects subject to expedited administrative review shall file an application with the SHPDA in accordance with rules promulgated pursuant to section 22, provided that the HSP upon which the need is assessed is no more than 3 years old. If the HSP is more than 5 years old, such proposals shall be subject to standard certificate of need review.

(c) Administrative review decisions shall initially be made the SHPDA staff and shall be appealable to the Director of the SHPDA. The decision by the Director is the final decision of the SHPDA and is subject to appeal to the Board of Appeals and review in accordance with section 22.

Sec. 10. Adoption of procedures and criteria for review by the SHPDA governing application and review.

**New Section
32-359**

(a) All applications for a certificate of need shall be reviewed by the SHPDA.

(b) Existing procedures and criteria in effect on the effective date of this act are valid insofar as they are not inconsistent with this act, until new rules of procedures and criteria are adopted.

(c) In accordance with section 22 the SHPDA shall establish, adopt, and publish procedures and criteria for the review of certificate of need applications, for new or renewal applications, or for exemptions from review. The SHPDA develop special review procedures for proposed capital expenditures not directly related to patient care but which will increase the cost of patient care by more than 1%.

ENROLLED ORIGINAL

(d)(1) An application for a certificate of need shall be considered complete unless the SHPDA determines, within 15 days, excluding Saturdays, Sundays, and legal holidays, after receipt of an application, that the application is not complete and requests additional information which is relevant and necessary for the application to be complete. The application shall be considered complete upon the SHPDA's receipt of the applicant's response to any such request.

(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the application is deemed complete or is considered complete pursuant to subsection (d)(1) of this section, or, in the case of complete review, 90 days after all applications to be considered during the review period are received. If the SHPDA cannot issue its determination within that period, the review period may be extended for one additional period of 30 days.

(e) The SHPDA shall provide the applicant, the SHCC, and all previously appearing parties with a detailed explanation of any decision which contradicts the recommendation of the SHCC.

(f) The general public shall have access to all applications reviewed by the SHPDA and all other written materials essential to SHPDA's review contained in the SHPDA's files, except that the SHPDA shall establish a procedure to restrict access of the general public from portions of applications or supporting documents which contain detailed descriptions of security systems, medical record systems, controlled storage systems or proprietary financial information.

(g) In issuing a certificate of need, the SHPDA shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The SHPDA shall prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum specified in the certificate of need.

(h) The SHPDA may impose a condition upon the grant of a certificate of need if it is necessary to meet a criterion or standard previously adopted and published by the SHPDA. The SHPDA shall modify or remove a condition upon application at any time by the holder of the certificate of need or other person if the circumstances upon which the condition is premised change and no longer justify the condition, or if the condition, for any other reason, is no longer appropriate.

(i)(1) There shall be no ex parte contacts:

(A) In the case of an application for a certificate of need, between the applicant for a certificate of need, any person in favor of or opposed to the issuance of a certificate of need for the applicant, and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the applicant; or

(B) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any

person in favor of or opposed to the withdrawal and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the application.

(2) In the case where no public hearing on the application has been requested, the period of prohibition of ex parte contacts shall begin upon the adjournment of any meeting convened by the SHCC at which the application is considered. Whether or not a hearing has been held, information presented at such meeting shall not be considered ex parte contacts if the meeting chairperson affords an opportunity for rebuttal. If there is to be no hearing or public meeting, the period of prohibition of ex parte contacts shall begin upon the SHPDA's determination to conduct a type of review for which no public meeting or hearing will be held.

(j) No certificate of need holder shall begin operation of the bed, facility, or health service approved in the certificate of need until the SHPDA has conducted a review to determine compliance with the certificate of need requirements. If the SHPDA does not make a finding of noncompliance within 30 days of receiving notification from the certificate of need holder of its intent to begin operation, the SHPDA shall be deemed to have determined compliance.

Sec. 11. Criteria for review and required findings.

New Section
32-360

(a) In order to grant a certificate of need, except for a certificate of need to decrease the bed capacity of a HCF, the SHPDA shall, upon review of an applicant, make a written finding that the proposed HCF, health service, or capital expenditure meets the requirements of this act and any other requirements established by regulations. In addition, the SHPDA shall make the written finding that:

(1) The applicant is in compliance with all assurances made pursuant to section 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c *et seq.*); and

(2) The applicant, if it operates on a fee-for-service basis and has not given assurances pursuant to section 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the SHPDA and is in compliance with any assurances pursuant to this subsection in a previous certificate of need application.

(b) In adopting rules in accordance with section 22, the SHPDA shall adopt comprehensive, detailed rules to ensure that compliance with the assurances given pursuant to subsection (a) of this section is achieved and maintained by the applicant. The SHPDA may adopt identical or separate rules for facilities described in subsection (a) of this section.

(c) In conducting certificate of need review, the SHPDA shall utilize all appropriate criteria adopted by rules.

(d) The SHCC shall, in the performance of its review functions, follow procedures and apply criteria developed and published by the SHPDA and adopted by the SHCC.

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Sec. 12. Duration, modification, sale, or transfer of a certificate of need.

New Section
32-361

(a) A certificate of need shall be effective for the period that the applicant states is necessary to complete the project for which the certificate of need is granted; except that no certificate of need shall be effective for more than 3 years from the original date of issuance. If the applicant is making good faith efforts to meet the schedule, the SHPDA shall extend the certificate of need for an additional period or periods as necessary for the applicant to complete the project. The SHPDA shall adopt rules to define the schedule of performance, including reporting, criteria for evaluating compliance or noncompliance with the schedule, and criteria for determining and reviewing major modifications after a certificate of need has been issued. Any review of major modifications shall be limited to the modifications and shall not affect the underlying certificate of need granted by the SHPDA.

(b) A certificate of need obtained prior to the effective date of this act shall continue to be valid for the period specified in granting the certificate of need and may be renewed in accordance with subsection (a) of this section.

(c) A current certificate of need may not be sold or transferred. The transfer of effective control over a project for which a current certificate of need has been granted shall cause the certificate of need to be subject to review and approval by the SHPDA. For the purposes of this subsection, the term "effective control" means the ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity which holds a certificate of need, to direct or cause the direction of the management or policies of that corporation, partnership or other entity, and the term "current certificate of need" means a certificate of need granted or deemed to have been granted by the SHPDA.

(d) Any transfer, assignment, or other disposition of 10% of the stock or voting rights thereunder of a corporation or other entity which is the operator of a HCF, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of the corporation which results in the ownership or control of more than 10% of the stock or voting rights thereunder of the corporation, by any person, when that corporation or entity holds a current certificate of need, shall cause the certificate of need to be subject to review and approval by the SHPDA.

Sec. 13. Reconsideration of review decisions.

New Section
32-362

(a) After a decision on an application for a new or renewal certificate of need is made by the SHPDA, the SHPDA shall notify the applicant, the SHCC, all previously appearing parties, and contiguous health planning agencies of the decision. The SHPDA shall give any person, for good cause shown, an opportunity within 30 days of the date of the notice to request reconsideration of a certificate of need decision at a public hearing before the SHPDA, which shall be held without charge. If a request demonstrates good cause, the SHPDA shall conduct a public hearing within 30 days of the request of reconsideration of the decision.

(b) For purposes of this section, the term "good cause" means:

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- (1) Presentation of significant and relevant information not previously considered by the SHPDA;
- (2) Demonstration of a significant change in a factor or circumstance relied upon in reaching the decision;
- (3) Demonstration of a material failure to follow SHPDA review procedures; or
- (4) Presentation of another basis for a public hearing such as when the SHPDA determines that a hearing is in the public interest.

(c) If the SHPDA reconsiders a decision, it shall notify the persons requesting the hearing, the applicant, the SHCC, and all contiguous health planning agencies, and shall publish a notice of public hearing in at least 1 newspaper of general circulation. Any person may submit testimony at the hearing. Ex parte contact shall be prohibited after the commencement of the reconsideration hearing. A record of the hearing shall be made by the SHPDA and be available to the public upon request.

(d) Upon reconsideration, the SHPDA shall issue finding giving the basis for its decision. The SHPDA may affirm, modify, or reverse its original decision. The SHPDA shall render its final decision in writing by issuing or denying a certificate of need within 15 days following the public hearing. The final decision shall not be reconsidered.

Sec. 14. Administrative appeal.

**New Section
32-363**

(a) Following reconsideration by the SHPDA, or if the SHPDA denies a request for consideration, or has not granted a request for reconsideration pursuant to section 13(a) within 30 days after the request for reconsideration, the final decision of the SHPDA on the application for a certificate of need may be appealed by the SHCC, the applicant, or any previously appearing persons to the Board of Appeals and review established by Organization Order 112, dated August 11, 1955 (C.O. 55-1500; D.C. Code, title 1 appendix) ("Board of Appeals and Review"). This appeal must be made within 30 days of the date of the SHPDA's final decision on reconsideration issued under section 13(d) or, if the SHPDA does not grant a request for reconsideration, within 30 days of the date it denies a request for reconsideration.

(b) The Board of Appeals and Review shall review the record and any additional evidence presented on behalf of the parties to the appeal. It shall take due account of the presumption of official regularity, the experience, and specialized competence of the SHPDA, and the purposes of this act. The Board of Appeals and Review must make its written decision within 45 days of the conclusion of its review. The decision must be provided to the applicant, the SHPDA, the person requesting the hearing, and to any other person upon request. The decision of the Board of Appeals and Review shall be considered the final decision of the SHPDA.

(c) Any contested case hearing required by section 10 of title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Code § 1-1509), shall be conducted by the Board of Appeals and Review.

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Sec. 15. Judicial review of certificate of need decisions.

**New Section
32-364**

Any person who contests the final decision on an application for a certificate of need, or for exemption from certificate of need review under this act, after the exhaustion of all administrative remedies, is entitled to judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review pursuant to section 11 of title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1510).

Sec. 16. Certificate of need mandatory condition precedent.

**New Section
32-365**

The issuance of a certificate of need, it required under this act, shall be a condition precedent to the issuance of any license, permit, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project.

Sec. 17. Violations and penalties for noncompliance.

**New Section
32-366**

(a) It shall be unlawful for any person to proceed with any project which under this act would require a certificate of need without applying for and obtaining a certificate of need.

(b) The Office of Corporation Counsel may seek injunctive relief from a court of competent jurisdiction when it determines that a person is offering, developing, or operating a HCF or service in violation of this act.

(c) Any person, including the principal officers or agents of a corporation or association, who violates this act, or the rules issued pursuant to this act, by the willful failure to obtain a certificate of need, deviates from the provisions of a certificate of need, or beginning or continuing construction or initiating a new or expanded service after expiration of a certificate of need shall, upon conviction, be subject to a fine of not less than \$500 and not more than \$2,500. Each day of a continuing violation shall constitute a separate offense.

(d) Any person, including the principal officers or agents of a corporation or association, who knowingly fails to provide, or knowingly withholds, or intentionally provides misleading information required by this act, or the rules issued pursuant to this act, upon conviction, shall be subject to a fine of not less than \$500 and not more than \$2,500, or 10 days imprisonment, or both. Each day of a continuing violation shall constitute a separate offense.

(e) The SHPDA may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person which the SHPDA finds has violated any provision of this act, or the rules issued pursuant to this act, regardless of the initiation of any criminal prosecution, suit for injunctive relief, or imposition of civil fine, penalty, or fee.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act or any rules issued under the authority of this act, pursuant to titles I through III of the Department of Consumer and Regulatory Affairs Civil Infraction Acts of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

ENROLLED ORIGINAL

(g) The SHPDA shall, by rule, list each type of violation of this act which constitutes an infraction as described and shall list the fine, penalty, or fee to be imposed on a person for the first and for each subsequent violation.

Sec. 18. Immunity from civil liability.

**New Section
32-367**

No member of the SHCC or the SHPDA may be held personally liable in any civil action taken in the course of carrying out his or her official duties and responsibilities as set forth in this act or the rules issued pursuant to this act.

Sec. 19. Moratorium on applications.

**New Section
32-368**

The SHPDA may impose a moratorium for up to 120 days on the issuance of certificates of need for any specific type of new institutional health service, if the SHPDA requires additional time to develop and adopt criteria and standards for a new institutional health service. A moratorium may not apply to a certificate of need application which is pending before the SHPDA at the time of the imposition of the moratorium. A particular institutional health services may not be the subject of a moratorium more than once within any 12-month period.

Sec. 20. Annual report.

**New Section
32-369**

The SHPDA shall prepare and publish annually a report on the status of health systems development in the District, including the health plan development and implementation program, the health data and information program, and the certificate of need program. The report shall include a listing of the certificate of need reviews completed by SHPDA since the last report, a general statement of the finding and decisions made in the course of reviews, and the status of pending reviews.

Sec. 21. Fees.

**New Section
32-370**

The SHPDA shall collect application fees from persons that request a certificate of need. The fee required for an application shall be the greater of 1% of the proposed capital expenditure or \$2,000, with a maximum of \$25,000. The SHPDA is authorized to establish a fee schedule for certain data, analyses and reports published by the SHPDA from the HPDS.

Sec. 22. Rules.

**New Section
32-371**

The SHPDA shall, in accordance with title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), issue proposed rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within

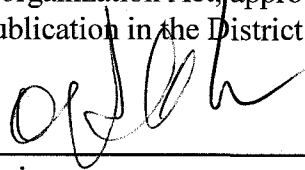
the 45-day period, the proposed rules shall be deemed approved.

Sec. 23. Fiscal impact statement.

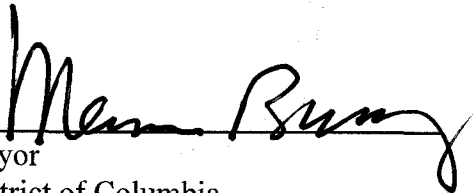
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 24. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: July 22, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-86

Docket No. _____

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 6-4-96

VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

ABSENT _____

CHAVOUS, BRAZIL, JARVIS, LIGHTFOOT AND THOMAS

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Cheryl [Signature]
Secretary to the Council

July 16, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 7-3-96

VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

ABSENT _____

CHAVOUS

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

Cheryl [Signature]
Secretary to the Council

July 16, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE
RECORDED VOTE ON REQUEST

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date