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COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. LAW 11-75

**"Interference with Medical Facilities and Health Professionals and
Re-establishment of Health Services Planning and Certificate
of Need Program Temporary Act of 1995".**

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 11-374 on first and second readings, July 11, 1995 and July 29, 1995 respectively. Following the signature of the Mayor on August 11, 1995, pursuant to Section 404(e) of "the Act", and was assigned Act No. 11-136 and published in the August 25, 1995, edition of the D.C. Register (Vol. 42 page 4691) and transmitted to Congress on July 6, 1995 for a 60-day review, in accordance with Section 602(c)(2) of the Act.

The Council of the District of Columbia hereby gives notice ~~that~~ the 60-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 11-75, effective December 15, 1995.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 60-day Congressional Review Period:

Sept. 6,7,8,11,12,13,14,15,18,19,20,21,22,25,26,27,28,29
Oct. 10,11,12,13,17,18,19,20,23,24,25,26,27,30
Nov. 1,2,3,6,7,8,9,10,13,14,15,16,17,20,27,28,29,30
Dec. 1,4,5,6,7,8,11,12,13,14

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AN ACT
D.C. ACT 11-136

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 11, 1995

*Codification
District of
Columbia
Code
1996 Supp.*

To prohibit, on a temporary basis, a person from interfering with the free access to or egress from a medical facility or the home of a health professional and 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 "Interference with Medical Facilities and Health Professionals and Re-establishment of Health Services Planning and Certificate of Need Program Temporary Act of 1995".

TITLE I - INTERFERENCE WITH MEDICAL FACILITIES OR HOMES

Sec. 101. Definitions.

*Note, Section
22-1122*

For the purposes of this title, the term:

- (1) "Act" shall not include speech.
- (2) "Health professional" means a person licensed to practice a health occupation in the District pursuant to section 101 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Code § 2-3301.1).
- (3) "Medical facility" means a facility, agency, or organizational entity, as defined in section 2 of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code § 32-1301), licensed or otherwise authorized to provide health care services in the District.
- (4) "Person" means:
 - (A) The chief medical officer of a medical facility or the chief medical officer's designee;
 - (B) The chief executive officer of a medical facility or the chief executive officer's designee;
 - (C) An agent of a medical facility; or

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(D) A law enforcement officer in the performance of the enforcement officer's official duty.

Sec. 102. Interference with entering and leaving a medical facility or home.

(a) A person shall not act alone or in concert with others with the intent to prevent another person from entering or leaving a medical facility. A person shall not detain a person or obstruct, impede, or hinder a person's free passage.

(b) A person shall not act alone or in concert with others with the intent to prevent a medical provider or a member of the medical provider's family from entering or leaving the medical provider's home.

(c) Subsections (a) and (b) of this section shall not be construed to prohibit any lawful picketing or assembly.

(d) Any person who violates either subsection (a) or (b) of this section, upon conviction, shall be fined not more than \$1,000, imprisoned for not more than 6 months, or both.

TITLE II - HEALTH SERVICES PLANNING

Sec. 201. Definitions.

Note, Section
32-321

For the purposes of this act, the term:

(1) "Annual Implementation Plan" ("AIP") means the plan prepared annually by the Mayor and the Health Advisory Committee ("HAC") to specify actions which will achieve the goals and objectives of the Health Systems Plan ("HSP").

(2) "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 Mayor 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;

(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

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capital expenditure under subparagraph (A) of this paragraph if the acquisition or intended acquisition had been by purchase at a fair market value.

(3) "Commissioner of Mental Health" means the Commissioner of the District of Columbia Commission on Mental Health Services established by 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.

(4) "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).

(5) "Department of Human Services" means the District of Columbia Department of Human Services established pursuant to Reorganization Plan No. 2 of 1979, effective February 21, 1980 (D.C. Code, Vol. 1), and Reorganization Plan No. 3 of 1986, effective March 31, 1983 (D.C. Code, Vol. 1).

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

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

(8) "Health Advisory Committee" ("HAC") means the Health Advisory Committee established by section 203 to advise the Office of Health Systems Development on certain health planning functions as specified in this title.

(9) "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. The term does 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; or the District of Columbia General Hospital, or any facility owned or operated by the District government.

(10) "Health Maintenance Organization" ("HMO") means a private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO pursuant to rules issued by the Mayor in accordance with this title.

(11) "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. The term "health service" shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice or by the District government directly or through a contractor.

(12) "Health Systems Plan" ("HSP") means the comprehensive health plan prepared by the Mayor and the HAC in accordance with this title.

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(13)(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 Mayor may, by rule, adjust this threshold annually to reflect the change in the Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor. The term "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. 620; 42 U.S.C. 1395x(s)) or replacement equipment exempted under section 207(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 such equipment shall be included.

(14) "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 services; 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; or

(B) Any health service offered by or on behalf of an HCF and which was not offered on a regular basis by an 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 Mayor 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.

(15) "Person" means an individual, a trust or estate, a partnership, or a corporation (including associations, joint stock companies and insurance companies) but does not include the District government.

(16) "Social Security Act" means the Social Security Act, approved August 14, 1935, as amended (49 Stat. 620; 42 U.S.C. 301 *et seq.*).

Sec. 202. (a) The Mayor shall be responsible for health systems development in the District. The Mayor'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 204;

(2) The establishment of a health data and information program in accordance

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with section 205;

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

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

(b) All regulations, rules, and procedures of the Office of Health Systems Development shall remain in effect until the adoption of a superseding replacement of those regulations, rules, and procedures.

Sec. 203. Health Advisory Committee; establishment and responsibilities.

(a) The Mayor shall establish a Health Advisory Committee ("HAC"), 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 HAC shall:

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

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

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

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

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

(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) The Commissioner of Public Health, or that person's designee;

(7) The Commissioner of Mental Health Services, or that person's designee;

(8) The Executive Director of the District of Columbia General Hospital, or that person's designee; and

(9) The Director of the Department of Consumer and Regulatory Affairs, or that person's designee.

(d) Nongovernment members of the HAC shall serve for a term of 3 years, except that of the non-government 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),(7),(8), and (9) of this section.

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(e) A member of the HAC may be reappointed, except that a member of the HAC who is reappointed shall not serve more than 2 consecutive terms. A person may be reappointed to the HAC 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 HAC, 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 serve only 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 HAC shall elect 1 of its members to serve as Chairman, and may elect any other officers it requires. The HAC may adopt rules of organization and procedure which it deems necessary and are not inconsistent with this title, 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 HAC 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).

Sec. 204. Health systems plan; development, publication, updating, and implementation.

(a) The Mayor, with the advice and recommendation of the HAC, shall develop a proposed comprehensive HSP which shall be adopted in accordance with rules issued pursuant to section 220. 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 Mayor 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 Mayor shall publish a

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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 3 years.

Sec. 205. Reporting, analysis and publication of utilization, financial, and other health-related data; regulations, reporting periods, format and forms.

(a) The Mayor shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, the Mayor 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, but not limited to, 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 Mayor shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats. The Mayor may require HCFs to submit data in the absence of rules or in addition to submissions required by regulation upon the determination by the Mayor that the data are reasonably necessary to enable the Mayor to carry out the mission of this title. 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 Mayor and shall utilize forms which may be prescribed by the Mayor.

(d) The Mayor 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 Mayor 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. 206. Certificate of need requirements.

(a) Except as provided in section 207, 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 Mayor 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) A certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing HCF or part of it.

(c) An HCF, or any part of it, or medical equipment may not be sold or leased and a

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controlling interest in such a facility or equipment may not be acquired, unless the Mayor issues a certificate of need approving the sale, acquisition, or use.

(d) Any person proposing to close permanently or to terminate operation of an HCF or health service shall notify the Mayor of the intention to close or terminate operation no later than 90 days prior to the proposed closing, and obtain its approval, and shall provide the Mayor with any information that may be requested as established in the rules promulgated to implement the provisions of this title. The information shall include, but not be limited to, the reasons for the closure or termination of operation, the most recent audited financial statement of the facility or service, the number of patients to be affected by the closure, and the provisions being made to provide for their continuing care.

(e) When the closure of an HCF or health service is approved, the Mayor shall provide assistance for an orderly transition of the patient load to the extent possible.

Sec. 207. Activities exempt from certificate of need review.

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the Mayor a letter of notice in accordance with rules promulgated pursuant to section 220.

(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; and

(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 an HCF from seeking reasonable reimbursement for health care services provided under this exemption. This title shall not apply to any 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.

(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

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health service will be individuals enrolled in the HMO or combination of HMOs.

Sec. 208. Adoption of procedures and criteria for review by the Mayor governing application and review.

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

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

(c) In accordance with section 220, the Mayor shall establish, adopt, and publish procedures and criteria for the review of certificate of need applications, for the review of new or renewal applications, and for the review of exemptions from review. The Mayor shall 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%.

(d)(1) An application for a certificate of need shall be considered complete unless the Mayor 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 Mayor's receipt of the applicant's response to any such request.

(2) The Mayor shall issue his or her 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 Mayor cannot issue his or her determination within that period, the review period may be extended for 1 additional period of 30 days.

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

(f) The general public shall have access to all applications reviewed by the Mayor and all other written materials essential to Mayor's review contained in the Mayor's files, except that the Mayor 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 Mayor shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The Mayor 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 Mayor 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 Mayor. The Mayor 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

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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 agent of the Mayor 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 agent of the Mayor 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 HAC 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 Mayor'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 Mayor has conducted a review to determine compliance with the certificate of need requirements. If the Mayor 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 Mayor shall be deemed to have determined compliance.

Sec. 209. Criteria for review and required findings.

(a) In order to grant a certificate of need, except for a certificate of need to decrease the bed capacity of an HCF, the Mayor shall, upon review of an applicant, make a written finding that the proposed HCF, health service, or capital expenditure meets the requirements of this title and any other requirements established by regulations. In addition, the Mayor 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 (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, (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the Mayor 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 220, the Mayor shall adopt

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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 Mayor may adopt identical or separate rules for facilities described in subsection (a) of this section.

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

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

Sec. 210. Duration, modification, sale, or transfer of a certificate of need.

(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 Mayor shall extend the certificate of need for an additional period or periods as necessary for the applicant to complete the project. The Mayor 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 Mayor.

(b) A certificate of need obtained prior to the effective date of this title 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 Mayor. For the purposes of this subsection, the term "effective control" shall mean 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. The term "current certificate of need" shall mean a certificate of need granted or deemed to have been granted by the Mayor.

(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 an 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 Mayor.

Sec. 211. Reconsideration of review decisions.

(a) After a decision on an application for a new or renewal certificate of need is made by the Mayor, the Mayor shall notify the applicant, the HAC, all previously appearing parties and

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contiguous health planning agencies, of the decision. The Mayor 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 Mayor, which shall be held without charge. If a request demonstrates good cause, the Mayor shall conduct a public hearing within 30 days of the request of reconsideration of the decision.

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

(1) Presentation of significant and relevant information not previously considered by the Mayor;

(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 Mayoral review procedures; or

(4) Presentation of another basis for a public hearing such as when the Mayor determines that a hearing is in the public interest.

(c) If the Mayor reconsiders a decision, it shall notify the persons requesting the hearing, the applicant, the HAC, and all contiguous health planning agencies, and shall publish a notice of public hearing in at least 2 newspapers 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 Mayor and made available to the public upon request.

(d) Upon reconsideration, the Mayor shall issue findings giving the basis for his or her decision. The Mayor may affirm, modify, or reverse its original decision. The Mayor shall render his or her 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. 212. Administrative appeal.

(a) Following reconsideration by the Mayor, or if the Mayor denies a request for consideration, or has not granted a request for reconsideration pursuant to section 211(a) within 30 days after the request for reconsideration, the final decision of the Mayor on the application for a certificate of need may be appealed by the HAC, the applicant, or any previously appearing persons, to the Board of Appeals and Review, established by the Organization Establishment Order, issued August 11, 1955 (C.O. 55-1500) ("Board of Appeals and Review"). This appeal must be made within 30 days of the date of the Mayor's final decision on reconsideration issued under section 211(d) or, if the Mayor does not grant a request for reconsideration, within 30 days of the date the Mayor 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 account of the presumption of official regularity, the experience and specialized competence of the Mayor, and the purposes of this title. 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 Mayor, the person requesting the hearing, and to any other person upon request. The

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decision of the Board of Appeals and Review shall be considered the final decision of the Mayor.

(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.

Sec. 213. Judicial review of certificate of need decisions.

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 title, 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. 1209; D.C. Code § 1-1510).

Sec. 214. Certificate of need mandatory condition precedent.

The issuance of a certificate of need, if required under this title, 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. 215. Violations and penalties for non-compliance.

(a) It shall be unlawful for any person to proceed with any project which under this title 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 an HCF or service in violation of this title.

(c) Any person, including the principal officers or agents of a corporation or association, who violates this title, or the rules issued pursuant to this title, by the willful failure to obtain a certificate of need, deviates from the provisions of a certificate of need, or begins or continues construction or initiates 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 title, or the rules issued pursuant to this title, 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 Mayor may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person whom the Mayor finds has violated any provision of this title, or the rules issued pursuant to this title, regardless of the initiation of any criminal

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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 title or any rules issued under the authority of this title, pursuant to titles I through III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*).

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

Sec. 216. Immunity from civil liability.

No member of the HAC or the Mayor 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 title or the rules issued pursuant to this title.

Sec. 217. Moratorium on applications.

The Mayor 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 Mayor 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 Mayor at the time the moratorium is imposed. A particular institutional health service may not be the subject of a moratorium more than once within any 12-month period.

Sec. 218. Annual report.

The Mayor 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 review completed the Mayor 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. 219. Fees.

The Mayor is authorized to establish a fee schedule for certificate of need applications through promulgation of rules in accordance with the rulemaking provisions of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*). The mayor shall also establish temporary fees for any transaction or project grandfathered in under this title.

Sec. 220. Rules.

The Mayor 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

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proposed rules to implement the provisions of this title. 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. 221. Applicability.

This title shall not apply to transactions or projects which were the subject of concrete negotiations or a letter of intent and for which \$100,000 in planning expenditures had been incurred prior to the effective date of this title.

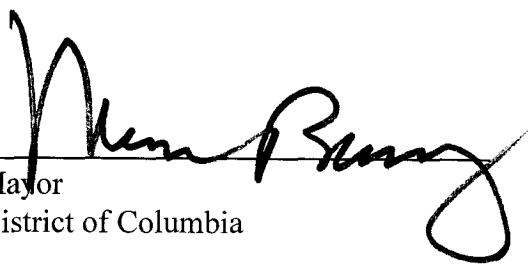
TITLE III - EFFECTIVE DATE

Sec. 301. (a) This act shall take effect after a 60-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: August 11, 1995



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

Docket No. B11-374

ITEM ON CONSENT CALENDAR

ACTION & DATE ADOPTED FIRST READING, 07-11-95

VOICE VOTE APPROVED

RECORDED VOTE ON REQUEST

ABSENT CHAVOUS, EVANS, 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

[Signature]
Secretary to the Council

August 2, 1995
Date

ITEM ON CONSENT CALENDAR

ADOPTED FINAL READING, 07-29-95

ACTION & DATE

APPROVED

VOICE VOTE LIGHTFOOT

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 no

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

[Signature]
Secretary to the Council

August 2, 1995
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