

ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 9-197

"Health Services Planning Program Act
of 1992".

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. 9-43 on first and second readings, October 6, 1992, and November 4, 1992, respectively. Following the signature of the Mayor on November 25, 1992, this legislation was assigned Act No. 9-322, published in the December 11, 1992, edition of the D.C. Register, (Vol. 39 page 9195) and transmitted to Congress on January 6, 1993 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 9-197, effective March 16, 1993.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 6,20,21,22,25,26,27

February 2,3,4,16,17,18,19,22,23,24,25,26

March 1,2,3,4,5,8,9,10,11,12,15

Codification

AN ACT

District of Columbia Code

D.C. ACT 9-322

1993 Supplement

New Chapter 3A
of Title 32

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 25, 1992

To 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 Act of 1992".

Sec. 2. Definitions.

For the purpose of this act, the term:

New, Section
32-321

(1) "Annual Implementation Plan" ("AIP") means the plan prepared annually by the Office of Health Systems Development ("OHSD") 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 OHSD 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

Enrolled Original

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

(3) "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.

(4) "Commissioner of Public Health" means the Commissioner of the District of Columbia Commission on 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) "Director" means the Director of the Office of Health Systems Development established by section 3.

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

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

(9) "Health Advisory Committee" ("HAC") means the Health Advisory Committee established by section 4 to advise the Office of Health Systems Development on certain health planning functions as specified in this act.

(10) "Health care facility" ("HCF") means any public, including District government facilities, or 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.

(11) "Health Maintenance Organization" ("HMO") means a public or private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO pursuant to rules issued by OHSD 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. The term "health service" shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

Enrolled Original

(13) "Health Systems Plan" ("HSP") means the comprehensive health plan prepared by the OHSD and the HAC 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 OHSD 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. 420; 42 U.S.C. 1395x(s)) or replacement equipment exempted under section 8(b)(4) of this act.

(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.

(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 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.

(B) Any health service offered by or on behalf of a HCF and which was not offered on a regular basis by a 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 OHSD 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) "Office of Health Systems Development" ("OHSD") 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.

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

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

Sec. 3. Office of Health Systems Development; establishment and functions.

New, Section
32-322

(a) There is established, in the Department of Human Services, an Office of Health Systems Development ("OHSD").

(b) The OHSD shall be responsible for health systems development in the District. The OHSD'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;

(4) The authority to promulgate rules to implement the provisions of this act; and

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

(c) The OHSD shall be the successor agency of the State Health Planning and Development Agency ("SHPDA"). The powers, duties, functions, and staff of the SHPDA are transferred to the OHSD. All regulations, rules, and procedures of the SHPDA shall remain in effect until the replacement of those regulations and procedures by the OHSD. All matters pending before the SHPDA on the date of enactment of this act shall be deemed transferred to and pending before the OHSD.

Sec. 4. Health Advisory Committee; establishment and responsibilities.

New, Section
32-323

(a) There is established, within the OHSD, 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 OHSD in developing the HSP;

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

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

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

(1) 4 consumers of health care services in the District who are not affiliated with any health care provider or facility;

(2) 3 public members;

(3) 2 representatives of incorporated associations of health care facilities in the District;

(4) 1 physician representing an incorporated association of professional physicians in the District;

(5) 1 nurse representing an incorporated association of professional nurses in the District;

(6) The Commissioner of Public Health, or his or her designee;

(7) The Commissioner of Mental Health Services, or his or her designee;

(8) The Executive Director of the District of Columbia General Hospital, or his or her designee; and

(9) The Director of the Department of Consumer and Regulatory Affairs, or his or her designee.

(d) Non-government 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.

(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 only serve for the remainder of that term. The completion of 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 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 HAC shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties pursuant to rules issued by the Mayor 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 HAC shall be the successor to the Statewide Health Coordinating Council ("SHCC"). The powers, duties, and functions of the SHCC are transferred to the HAC. By-laws, regulations, and procedures of the SHCC shall continue in force until new by-laws, rules, regulations, or procedures are established by the HAC. All matters to be considered by the SHCC on the date of enactment of this act shall be deemed transferred to the HAC.

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

(a) The OHSD, 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 21. 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;

New, Section
32-324

Enrolled Original

(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 OHSD 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 OHSD 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 3 years.

Sec. 6. Reporting, analysis and publication of utilization, financial and other health-related data; regulations, reporting periods, format and forms. New, Section 32-325

(a) The OHSD shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, the OHSD 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 OHSD shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats. The OHSD may require HCFs to submit data in the absence of rules or in addition to submissions required by regulation upon the determination by the OHSD that the data are reasonably necessary to enable the OHSD to carry out its mission. 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 OHSD and shall utilize forms which may be prescribed by the OHSD.

(d) The OHSD shall cooperate 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 OHSD 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
32-326

(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 OHSD a certificate of need for that 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) A HCF, or any part of it, or medical equipment may not be sold or leased and a controlling interest in such a facility or equipment may not be acquired, unless the OHSD issues a certificate of need approving the sale, acquisition, or use.

(d) Any person proposing to close permanently or to terminate operation of a HCF or health service shall notify the OHSD 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 OHSD 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 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 a closure of a HCF or health service is approved, the OHSD 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
32-327

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the OHSD a letter of notice in accordance with OHSD regulations.

(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) Non-patient 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 a HCF from seeking reasonable reimbursement for health care services provided under this exemption.

(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.

Sec. 9. Adoption of procedures and criteria for review by the OHSD governing application and review.

New, Section
32-328

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

(b) Existing OHSD 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 21, the OHSD 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 OHSD may 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 OHSD determines, within 15 days, excluding Saturday, 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 OHSD's receipt of the applicant's response to any such request.

(2) OHSD shall issue its determination on an application for a certificate of need within 90 days after the date 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 OHSD cannot issue its determination within that period, the review period may be extended for 1 additional period of 30 days.

(e) The OHSD 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 OHSD and all other written materials essential to OHSD review contained in OHSD files, except that the OHSD 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 OHSD shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The OHSD 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 OHSD 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 OHSD. The OHSD 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 OHSD who exercises any responsibility respecting the applications after the commencement of a hearing on the applicant's application and before a decision is made with respect to it; 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 OHSD who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the proposal to withdraw the certificate of need and until a decision is made on withdrawal.

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

Sec. 10. 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 a HCF, the OHSD shall, upon review of an application, 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 OHSD regulations. In addition, the OHSD 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

New, Section
32-309

Enrolled Original

(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 Services Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the OHSD 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 21, the OHSD 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 OHSD may adopt identical or separate rules for facilities described in subsection (a) of this section.

(c) In conducting certificate of need review, the OHSD 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 OHSD and adopted by the HAC.

Sec. 11. Duration, modification, sale, or transfer of a certificate of need.

New, Section
32-310

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

(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 OHSD. 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, and the term "current certificate of need" shall mean a certificate of need granted or deemed to have been granted by the OHSD.

(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 OHSD.

Sec. 12. Reconsideration of review decisions.

New, Section
32-311

(a) After a decision on an application for a new or renewal certificate of need is made by the OHSD, the OHSD shall notify the applicant, the HAC, all previously appearing parties and contiguous health planning agencies, of the decision. The OHSD 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 OHSD, which shall be held without charge. If a request demonstrates good cause, the OHSD 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:

- (1) Presentation of significant and relevant information not previously considered by the OHSD;
- (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 OHSD review procedures; or
- (4) Presentation of another basis for a public hearing such as when the OHSD determines that a hearing is in the public interest.

(c) If the OHSD 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 contacts shall be prohibited after the commencement of the reconsideration hearing. A record of the hearing shall be made by the OHSD and be available to the public upon request.

(d) Upon reconsideration, the OHSD shall issue findings giving the basis for its decision. The OHSD may affirm, modify, or reverse its original decision. The OHSD 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. 13. Administrative appeal.

New, Section
32-312

(a) Following reconsideration by the OHSD, or if the OHSD denies a request for reconsideration, or has not granted a request for reconsideration pursuant to section 12(a) within 30 days after the request for reconsideration, the final decision of the OHSD 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 Organization Order 112, dated August 11, 1955 (C.O. 55-1500; D.C. Code, title 1 appendix). This appeal must be made within 30 days of the date of the final OHSD decision on reconsideration issued under section 12(d) or, if the OHSD 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 OHSD, 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 OHSD, 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 OHSD.

Sec. 14. Judicial review of certificate of need decisions.

New, Section
32-313

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 title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1510).

Sec. 15. Certificate of need mandatory condition precedent.

New, Section
32-314

The issuance of a certificate of need, if required under this act, shall be a condition precedent to the issuance of any license, permit, or 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. 16. Violations and penalties for non-compliance.

New, Section
32-315

(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 the 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 principle 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 OHSD may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person which the OHSD 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-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.*).

(g) The Mayor 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. 17. Immunity from civil liability.

No member of the HAC or employee of the OHSD 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.

New, Section
32-316

Sec. 18. Moratorium on applications.

The OHSD 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 OHSD 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 OHSD 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.

New, Section
32-317

Sec. 19. Annual report.

The OHSD 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 the OHSD since the last report, a general statement of the findings and decisions made in the course of reviews, and the status of pending reviews.

New, Section
32-318

Sec. 20. Rules.

Within 60 days of the effective date of this act, 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 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 holiday, 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.

New, Section
32-319

Sec. 21. Severability.

If any provision of this act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

Note,
Section
32-321

Sec. 22. Repealer.

The District of Columbia Certificate of Need Act of 1980, approved September 16, 1980 (D.C. Law 3-99; D.C. Code § 32-301 *et seq.*), is repealed.

Note, Section 32-321

Sec. 23. Effective date.

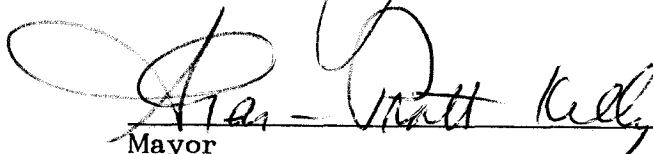
(a) This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1), and publication in 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 10 years from the date of its having taken effect.

Note, Section 32-321



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: November 25, 1992



COUNCIL OF THE DISTRICT OF COLUMBIA

Council Period Nine

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: Bill 9-43

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 10-6-92

VOICE VOTE: Approved

Recorded vote on request

Absent: all present

ROLL CALL VOTE: — RESULT _____ (___ / ___ / ___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. WILSON					JARVIS					ROLARK				
BRAZIL					LIGHTFOOT					SMITH, JR.				
CRAWFORD					MASON					THOMAS, SR.				
CROPP					NATHANSON									
EVANS					RAY									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Charles Lind
Secretary to the Council

November 16, 1992
Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 11-4-92

VOICE VOTE: Approved

Recorded vote on request

Absent: Evans

ROLL CALL VOTE: — RESULT _____ (___ / ___ / ___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. WILSON					JARVIS					ROLARK				
BRAZIL					LIGHTFOOT					SMITH, JR.				
CRAWFORD					MASON					THOMAS, SR.				
CROPP					NATHANSON									
EVANS					RAY									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Charles Lind
Secretary to the Council

November 16, 1992
Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT _____ (___ / ___ / ___)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. WILSON					JARVIS					ROLARK				
BRAZIL					LIGHTFOOT					SMITH, JR.				
CRAWFORD					MASON					THOMAS, SR.				
CROPP					NATHANSON									
EVANS					RAY									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date