



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER: 43

NJSA:26:2H-6.1 et al
"Certificate of Need -- reform"

BILL NO:S1181 (Substituted for A2178)

SPONSOR(S): Sinagra and Vitale

DATE INTRODUCED: June 4, 1998

COMMITTEE:

ASSEMBLY: ~~~~

SENATE:Health; Budget and Appropriations

AMENDED DURING PASSAGE:Yes

DATE OF PASSAGE:

ASSEMBLY:June 29, 1998

SENATE: June 29, 1998

DATE OF APPROVAL: June 30, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 2nd reprint
(Amendments during passage denoted by superscript numbers)

S1181

SPONSORS STATEMENT: *Yes* (Begins on page 22 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY:*No*

SENATE: *Yes*

[6-11-98](#)

[6-25-98](#)

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

A2178

SPONSORS STATEMENT: *Yes* (Begins on page 22 of original bill)
(Bill and Sponsors Statement identical to S1181)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

6-15-98(Identical to Senate Statement of 6-11-98 for S1181)

6-25-98(Identical to Senate Statement of 6-25-98 for S1181)

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

(Identical to Legislative Fiscal Estimate for S1181)

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING:*No*

THE FOLLOWING WERE PRINTED:

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NEWSPAPER ARTICLES: *No*

[Second Reprint]

SENATE, No. 1181

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JUNE 4, 1998

Sponsored by:

Senator JACK SINAGRA

District 18 (Middlesex)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

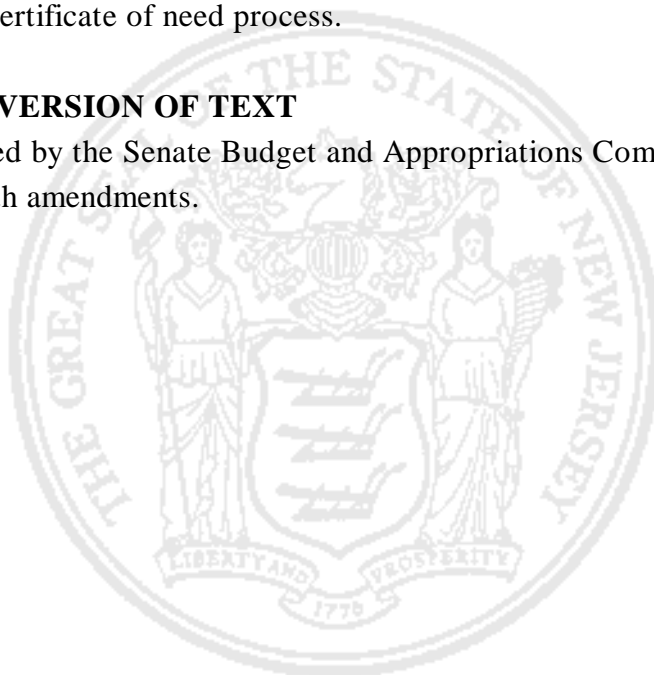
**Senators Kyrillos, Singer, Bucco, Connors, Matheussen, Littell, Palaia,
Bark, Robertson, Ciesla, Bennett, Cafiero, Kosco, Assemblywomen
Vandervalk and Quigley**

SYNOPSIS

Reforms certificate of need process.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 25, 1998, with amendments.



(Sponsorship Updated As Of: 6/30/1998)

1 AN ACT concerning certificate of need and revising parts of statutory
2 law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) The Legislature finds and declares that:

8 a. The regulatory structure for the State's health care delivery
9 system put in place in the 1970's was an outgrowth of federal
10 legislation predicated on the idea that the most satisfactory means of
11 controlling health care costs was the allocation of health care
12 resources by government through a highly centralized health planning
13 mechanism;

14 b. For two decades, the State established strong controls over the
15 health care delivery system by such means as the setting of hospital
16 rates and through the certificate of need program, which allocated the
17 provision of services among providers, regulated hospital expansion,
18 and regulated the purchase of equipment and the use of medical
19 technology;

20 c. The evolution of market-based means of controlling costs, most
21 notably the growth of managed care, and the rapid development of
22 new medical techniques and innovations in medical technology
23 exposed the inefficiencies inherent in centralized health care planning,
24 which was unable to respond quickly to the changing needs of the
25 health care system;

26 d. In 1992, the Legislature began to dismantle the existing
27 regulatory structure, responding to the needs of the health care system
28 in New Jersey by eliminating hospital rate setting, leaving hospital
29 charges to be established through negotiation between hospitals and
30 those who paid for health care services and, by providing access to
31 health insurance to all citizens of the State, without regard to health
32 status or preexisting condition, contributed to the significant changes
33 taking place in the underlying economics of the health care delivery
34 system by helping to create a more competitive health care
35 environment;

36 e. The certificate of need program is the last remaining vestige of
37 the highly regulated environment, and its original purpose, which was
38 to control costs by limiting the proliferation of health care services
39 through State control of those services, has been undermined by the
40 significant changes in the economics of the health care system that
41 have taken place since its inception.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted June 11, 1998.

² Senate SBA committee amendments adopted June 25, 1998.

1 f. Decisions as to health care services, the acquisition of medical
2 technology, and the expansion of facilities can best be made by the
3 health care provider based on his own expertise in delivering health
4 care services to the community he serves;

5 g. The appropriate role of the State with respect to services no
6 longer subject to certificate of need is that of licensure of facilities and
7 services, to ensure the quality of care;

8 h. For reasons of maintaining the quality of certain health care
9 services, a limitation of the proliferation of such services may continue
10 to be essential to protect the viability of the services as well as the
11 providers now rendering them, to protect the role of such institutions
12 as urban hospitals, whose importance to the Statewide health care
13 system is indisputable, and to guard against the closing of important
14 facilities and the transfer of services from facilities in a manner which
15 is harmful to the public interest; and

16 i. Therefore, it is essential, in order to promote greater efficiency
17 in the State's health care delivery system, to eliminate the certificate of
18 need requirement for many services immediately, to eliminate the
19 requirement for other services over a more extended period, and to
20 create a commission to consider whether certain remaining health care
21 services should continue to be subject to a certificate of need
22 requirement in the interest of the well-being of the public and to
23 ensure the maintenance of quality health care throughout the State.

24
25 2. Section 2 of P.L.1971, c.136 (C.26:2H-2) is amended to read as
26 follows:

27 2. The following words or phrases, as used in this act, shall have
28 the following meanings, unless the context otherwise requires:

29 a. "Health care facility" means the facility or institution whether
30 public or private, engaged principally in providing services for health
31 maintenance organizations, diagnosis of treatment of human disease,
32 pain, injury, deformity or physical condition, including, but not limited
33 to, a general hospital, special hospital, mental hospital, public health
34 center, diagnostic center, treatment center, rehabilitation center,
35 extended care facility, skilled nursing home, nursing home,
36 intermediate care facility, tuberculosis hospital, chronic disease
37 hospital, maternity hospital, outpatient clinic, dispensary, home health
38 care agency, residential health care facility and bioanalytical laboratory
39 (except as specifically excluded hereunder) or central services facility
40 serving one or more such institutions but excluding institutions that
41 provide healing solely by prayer and excluding such bioanalytical
42 laboratories as are independently owned and operated, and are not
43 owned, operated, managed or controlled, in whole or in part, directly
44 or indirectly by any one or more health care facilities, and the
45 predominant source of business of which is not by contract with health
46 care facilities within the State of New Jersey and which solicit or

1 accept specimens and operate predominantly in interstate commerce.

2 b. "Health care service" means the preadmission, outpatient,
3 inpatient and postdischarge care provided in or by a health care
4 facility, and such other items or services as are necessary for such
5 care, which are provided by or under the supervision of a physician for
6 the purpose of health maintenance organizations, diagnosis or
7 treatment of human disease, pain, injury, disability, deformity or
8 physical condition, including, but not limited to, nursing service, home
9 care nursing and other paramedical service, ambulance service, service
10 provided by an intern, resident in training or physician whose
11 compensation is provided through agreement with a health care
12 facility, laboratory service, medical social service, drugs, biologicals,
13 supplies, appliances, equipment, bed and board, but excluding services
14 provided by a physician in his private practice, except as provided in
15 section 7 of P.L.1971, c.136 (C.26:2H-7), or by practitioners of
16 healing solely by prayer, and services provided first aid, rescue and
17 ambulance squads as defined in the "New Jersey Highway Safety Act
18 of 1971," P.L.1971, c.351 (C.27:5F-1 et seq.).

19 c. "Construction" means the erection, building, or substantial
20 acquisition, alteration, reconstruction, improvement, renovation,
21 extension or modification of a health care facility, including its
22 equipment, the inspection and supervision thereof; and the studies,
23 surveys, designs, plans, working drawings, specifications, procedures,
24 and other actions necessary thereto.

25 d. "Board" means the Health Care Administration Board
26 established pursuant to this act.

27 e. ["Commission" means the Hospital Rate Setting Commission
28 established pursuant to this act.](Deleted by amendment, P.L. , c.)

29 f. "Government agency" means a department, board, bureau,
30 division, office, agency, public benefit or other corporation, or any
31 other unit, however described, of the State or political subdivision
32 thereof.

33 g. (Deleted by amendment, P.L.1991, c.187).

34 h. (Deleted by amendment, P.L.1991, c.187).

35 i. "Department" means the State Department of Health and Senior
36 Services.

37 j. "Commissioner" means the State Commissioner of Health and
38 Senior Services.

39 k. "Preliminary cost base" means that proportion of a hospital's
40 current cost which may reasonably be required to be reimbursed to a
41 properly utilized hospital for the efficient and effective delivery of
42 appropriate and necessary health care services of high quality required
43 by such hospital's mix of patients. The preliminary cost base initially
44 may include costs identified by the commissioner and approved or
45 adjusted by the commission as being in excess of that proportion of a
46 hospital's current costs identified above, which excess costs shall be

1 eliminated in a timely and reasonable manner prior to certification of
2 the revenue base. The preliminary cost base shall be established in
3 accordance with regulations proposed by the commissioner and
4 approved by the board.

5 l. (Deleted by amendment, P.L.1992, c.160).

6 m. "Provider of health care" means an individual (1) who is a direct
7 provider of health care service in that the individual's primary activity
8 is the provision of health care services to individuals or the
9 administration of health care facilities in which such care is provided
10 and, when required by State law, the individual has received
11 professional training in the provision of such services or in such
12 administration and is licensed or certified for such provision or
13 administration; or (2) who is an indirect provider of health care in that
14 the individual (a) holds a fiduciary position with, or has a fiduciary
15 interest in, any entity described in subparagraph b(ii) or subparagraph
16 b(iv); provided, however, that a member of the governing body of a
17 county or any elected official shall not be deemed to be a provider of
18 health care unless he is a member of the board of trustees of a health
19 care facility or a member of a board, committee or body with authority
20 similar to that of a board of trustees, or unless he participates in the
21 direct administration of a health care facility; or (b) received, either
22 directly or through his spouse, more than one-tenth of his gross annual
23 income for any one or more of the following:

24 (i) Fees or other compensation for research into or instruction in
25 the provision of health care services;

26 (ii) Entities engaged in the provision of health care services or in
27 research or instruction in the provision of health care services;

28 (iii) Producing or supplying drugs or other articles for individuals
29 or entities for use in the provision of or in research into or instruction
30 in the provision of health care services;

31 (iv) Entities engaged in producing drugs or such other articles.

32 n. "Private long-term health care facility" means a nursing home,
33 skilled nursing home or intermediate care facility presently in operation
34 and licensed as such prior to the adoption of the 1967 Life Safety
35 Code by the State Department of Health and Senior Services in 1972
36 and which has a maximum 50-bed capacity and which does not
37 accommodate Medicare or Medicaid patients.

38 o. **["Local advisory board" means an independent, private**
39 **nonprofit corporation which is not a health care facility, a subsidiary**
40 **thereof or an affiliated corporation of a health care facility, that is**
41 **designated by the Commissioner of Health to serve as the regional**
42 **health planning agency for a designated region in the State.] (Deleted**
43 **by amendment, P.L. , c.)**

44 p. "State Health Planning Board" means the board established
45 pursuant to section 33 of P.L.1991, c.187 (C.26:2H-5.7) **【to prepare**
46 **and review the State Health Plan and】 to conduct certificate of need**

1 review activities.

2 (cf: P.L.1992, c.160, s.22)

3

4 3. Section 5 of P.L.1971, c.136 (C.26:2H-5) is amended to read as
5 follows:

6 5. a. The commissioner, to effectuate the provisions and purposes
7 of this act, shall have the power to inquire into health care services
8 and the operation of health care facilities and to conduct periodic
9 inspections of such facilities with respect to the fitness and adequacy
10 of the premises, equipment, personnel, rules and bylaws and the
11 adequacy of financial resources and sources of future revenues.

12 b. The commissioner, with the approval of the board, shall adopt
13 and amend rules and regulations in accordance with the
14 Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.)
15 to effectuate the provisions and purposes of this act, including but not
16 limited to: (1) the establishment of requirements for a uniform
17 Statewide system of reports and audit relating to the quality of health
18 care provided, health care facility utilization and costs; (2)
19 certification by the department of schedules of rates, payments,
20 reimbursement, grants and other charges for health care services as
21 provided in section 18; and (3) standards and procedures relating to
22 the licensing of health care facilities and the institution of certain
23 additional health care services.

24 c. The commissioner may enter into contracts with any government
25 agency, institution of higher learning, voluntary nonprofit agency, or
26 appropriate planning agency or council; and such entities are
27 authorized to enter into contracts with the commissioner to effectuate
28 the provisions and purposes of this **[art]** act.

29 d. The commissioner may provide consultation and assistance to
30 health care facilities in operational techniques, including but not
31 limited to, planning, principles of management, and standards of
32 health care services.

33 e. At the request of the commissioner, health care facilities shall
34 furnish to the Department of Health and Senior Services such reports
35 and information as it may require to effectuate the provisions and
36 purposes of this act, excluding confidential communications from
37 patients.

38 f. The commissioner may institute or cause to be instituted in a
39 court of competent jurisdiction proceedings to compel compliance
40 with the provisions of this act or the determinations, rules, regulations
41 and orders of the commissioner.

42 g. Notwithstanding any rules and regulations governing private
43 long-term health care facilities and enforcing the 1967 Life Safety
44 Code, as amended and supplemented, the commissioner shall permit
45 third floor occupancy of such facilities by owners, members of their
46 immediate families, and licensed professionals employed at such

1 facilities.

2 (cf: P.L.1977, c.251, s.2)

3

4 4. Section 33 of P.L.1991, c.187 (C.26:2H-5.7) is amended to read
5 as follows:

6 33. There is established in the Department of Health and Senior
7 Services a State Health Planning Board. The members of the board
8 shall include: the Commissioners of Health and Senior Services and
9 Human Services, or their designees, who shall serve as ex officio,
10 nonvoting members; the chairmen of the Health Care Administration
11 Board[, the Hospital Rate Setting Commission] and the Public Health
12 Council, or their designees, who shall serve as ex officio members;
13 [one representative from each of the local advisory boards;] and
14 [five] nine public members appointed by the Governor with the advice
15 and consent of the Senate, [three] five of whom are consumers of
16 health care services who are neither providers of health care services
17 or persons with a fiduciary interest in a health care service.

18 Of the additional public members first appointed pursuant to P.L. ,
19 c. (pending before the Legislature as this bill), two shall serve for a
20 term of two years[,] and two shall serve for a term of three years [and
21 one shall serve for a term of four years]. Following the expiration of
22 the original terms, the public members shall serve for a term of four
23 years and are eligible for reappointment. Public members serving on
24 the board on the effective date of P.L. , c. (pending before the
25 Legislature as this bill) shall continue to serve for the term of their
26 appointment. Any vacancy shall be filled in the same manner as the
27 original appointment, for the unexpired term. Public members shall
28 continue to serve until their successors are appointed. The public
29 members shall serve without compensation but may be reimbursed for
30 reasonable expenses incurred in the performance of their duties, within
31 the limits of funds available to the board.

32 a. A member or employee of the State Health Planning Board shall
33 not, by reason of his performance of any duty, function or activity
34 required of, or authorized to be undertaken by the board, be held
35 civilly or criminally liable if that person acted within the scope of his
36 duty, function or activity as a member or employee of the board,
37 without gross negligence or malice toward any person affected
38 thereby.

39 b. A member of the State Health Planning Board shall not vote on
40 any matter before the board concerning an individual or entity with
41 which the member has, or within the last 12 months has had, any
42 substantial ownership, employment, medical staff, fiduciary,
43 contractual, creditor or consultative relationship. A member who has
44 or has had such a relationship with an individual or entity involved in
45 any matter before the board shall make a written disclosure of the
46 relationship before any action is taken by the board with respect to the

1 matter and shall make the relationship public in any meeting in which
2 action on the matter is to be taken.

3 (cf: P.L.1991, c.187, s.33)

4

5 5. Section 34 of P.L.1991, c.187 (C.26:2H-5.8) is amended to read
6 as follows:

7 34. a. **【**The State Health Planning Board shall prepare and revise
8 annually, a State Health Plan. The State Health Plan shall identify the
9 unmet health care needs in an area by service and location and it shall
10 serve as an advisory document which may be considered when
11 certificate of need applications are reviewed for approval. Upon
12 completion of the entire State Health Plan, the State Health Planning
13 Board shall submit the plan to the commissioner and the board for
14 their use on an advisory basis.

15 Effective May 15, 1992, notwithstanding any other provision of law
16 to the contrary, neither the Health Care Administration Board or the
17 Department of Health shall adopt any regulation which implements any
18 goals, objectives or any other health planning recommendations that
19 have been included in the State Health Plan prepared by the State
20 Health Planning Board.

21 The State Health Planning Board shall consider the
22 recommendations of the local advisory boards in preparing and
23 revising the plan to incorporate specific regional and geographic
24 considerations of access to, and delivery of, health care services at a
25 reasonable cost. The State Health Planning Board shall incorporate
26 the recommendations of the local advisory boards into the plan unless
27 the recommendations are in conflict with the best interests of
28 Statewide health planning. If any recommendations of the local
29 advisory boards are not incorporated into the plan, the State Health
30 Planning Board shall identify those recommendations, which shall be
31 listed separately for each local health planning region, in an addendum
32 to the plan and shall state the specific reason that each
33 recommendation is in conflict with the best interests of Statewide
34 health planning.

35 For each unmet health care service identified in the plan, the plan
36 shall specify the period of time for which a certificate of need for that
37 service shall be valid. **】** (Deleted by amendment, P.L. ., c.)

38 b. The State Health Planning Board shall review applications for
39 certificates of need and make recommendations to the Commissioner
40 of Health**【**, for which purpose it may consider the State Health Plan on
41 an advisory basis**】** and Senior Services.

42 c. In the case of an application for a certificate of need to ²transfer
43 ownership of an existing general acute care hospital or to² close or
44 eliminate a health care facility or service that is subject to review by
45 the State Health Planning Board, the State Health Planning Board shall
46 hold at least one public hearing in the service area of the health care

1 facility or service²; except that, in the event the Attorney General or
2 the Department of Health and Senior Services is required by State law
3 to hold a public hearing on the transfer of ownership of the hospital,
4 the State Health Planning Board shall not be required to hold a public
5 hearing on the application for a certificate of need to transfer
6 ownership of the hospital². The public hearing shall be held no later
7 than 30 days after ²[receipt of]² an application ²[that]² is deemed
8 complete by the Commissioner of Health and Senior Services. Public
9 notice of the hearing shall be provided at least two weeks in advance
10 of the date of the hearing.

11 Notwithstanding the provisions of this subsection to the contrary,
12 in the event that the commissioner determines that a proposed closure
13 or elimination of a health care facility ¹or service¹ should be
14 considered on an expedited basis in order to preserve the quality of
15 health care provided to the community, the commissioner may reduce
16 the period of time required for public notice of the hearing.

17 (cf: P.L.1992, c.31, s.1)

18

19 6. Section 7 of P.L.1971, c.136 (C.26:2H-7) is amended to read as
20 follows:

21 7. No health care facility shall be constructed or expanded, and no
22 new health care service shall be instituted after the effective date of
23 P.L.1971, c.136 (C.26:2H-1 et seq.) except upon application for and
24 receipt of a certificate of need as provided by P.L.1971, c.136
25 (C.26:2H-1 et seq.). No agency of the State or of any county or
26 municipal government shall approve any grant of funds for, or issue
27 any license to, a health care facility which is constructed or expanded,
28 or which institutes a new health care service, in violation of the
29 provisions of P.L.1971, c.136 (C.26:2H-1 et seq.).

30 Except as provided in **[sections]** section 19 [and 20] of P.L.1992,
31 c.160 (C.26:2H-7a [and C.26:2H-7b]) and section 16 of P.L. ., c.
32 (C.)(pending before the Legislature as this bill), the provisions of this
33 section shall apply to:

34 a. The initiation of any health care service as provided in section
35 2 of P.L.1971, c.136 (C.26:2H-2);

36 b. The initiation by any person of a health care service which is the
37 subject of a health planning regulation adopted by the Department of
38 Health and Senior Services;

39 c. The purchase by any person of major moveable equipment
40 whose total cost is over **[\$1]** \$2 million;

41 d. The expenditure by a licensed health care facility of over **[\$1]**
42 \$2 million for **[modernization or renovation of its physical plant, or**
43 **for]** construction of a new health care facility; and

44 e. The **[modernization, renovation or]** construction of a facility by
45 any person, whose total project cost exceeds **[\$1]** \$2 million, if the

1 facility-type is the subject of a health planning regulation adopted by
2 the Department of Health and Senior Services.

3 The commissioner may periodically increase the monetary
4 thresholds established in this section, by regulation, to reflect
5 inflationary increases in the costs of health care equipment or
6 construction.

7 For the purposes of this section, "health care service" shall include
8 any service which is the subject of a health planning regulation
9 adopted by the Department of Health and Senior Services, and
10 "person" shall include a corporation, company, association, society,
11 firm, partnership and joint stock company, as well as an individual.

12 A physician who initiates a health care service which is the subject
13 of a health planning regulation or purchases major moveable
14 equipment pursuant to subsection b. or c. of this section, may apply to
15 the commissioner for a waiver of the certificate of need requirement
16 if: the equipment or health care service is such an essential,
17 fundamental and integral component of the physician's practice
18 specialty, that the physician would be unable to practice his specialty
19 according to the acceptable medical standards of that specialty without
20 the health care service or equipment; the physician bills at least 75%
21 of his total amount of charges in the practice specialty which uses the
22 health care service or equipment; and the health care service or
23 equipment is not otherwise available and accessible to patients,
24 pursuant to standards established by the commissioner, by regulation.
25 The commissioner shall make a determination about whether to grant
26 or deny the waiver, within 120 days from the date the request for the
27 waiver is received by the commissioner and shall so notify the
28 physician who requested the waiver. If the request is denied, the
29 commissioner shall include in that notification the reason for the
30 denial. If the request is denied, the initiation of a health care service or
31 the purchase of major moveable equipment shall be subject to the
32 certificate of need requirements pursuant to this section.

33 A health maintenance organization which furnishes at least basic
34 comprehensive care health services on a prepaid basis to enrollees
35 either through providers employed by the health maintenance
36 organization or through a medical group or groups which contract
37 directly with the health maintenance organization, which initiates a
38 health care service, or **【modernizes, renovates or】** constructs a health
39 care facility pursuant to subsection a., b., d. or e. of this section, may
40 apply to the commissioner for a waiver of the certificate of need
41 requirement if: the initiation of the health care service or the
42 **【modernization, renovation or】** construction is in the best interests of
43 State health planning; and the health maintenance organization is in
44 compliance with the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.)
45 and complies with the provisions of subsection d. of section 3 of
46 P.L.1973, c.337 (C.26:2J-3) regarding notification to the

1 commissioner. The commissioner shall make a determination about
 2 whether to grant or deny the waiver within 45 days from the date the
 3 request for the waiver is received by the commissioner and shall so
 4 notify the health maintenance organization. If the request for a waiver
 5 is denied on the basis that the request would not be in the best
 6 interests of State health planning, the commissioner shall state in that
 7 notification the reason why the request would not be in the best
 8 interests of State health planning. If the request for a waiver is denied,
 9 the health maintenance organization's initiation of a health care service
 10 or [modernization, renovation or] construction project shall be subject
 11 to the certificate of need requirements pursuant to this section.

12 The requirement to obtain a certificate of need for major moveable
 13 equipment pursuant to subsection c. of this section shall not apply if
 14 a contract to purchase that equipment was entered into prior to July
 15 1, 1991.

16 (cf: P.L.1992, c.160, s.24)

17

18 7. Section 19 of P.L.1992, c.160, (C.26:2H-7a) is amended to read
 19 as follows:

20 19. Notwithstanding the provisions of section 7 of P.L.1971, c.136
 21 (C.26:2H-7) to the contrary, the following are exempt from the
 22 certificate of need requirement:

23 Community-based primary care centers;

24 Outpatient drug and alcohol services;

25 Hospital-based medical detoxification for drugs and alcohol;

26 Ambulance and invalid coach services;

27 Mental health services which are non-bed related outpatient
 28 services;

29 **[Changes in residential] Residential** health care facility services;

30 **[Mandatory renovations to existing facilities;**

31 **Mandatory replacement of fixed or moveable equipment;]**

32 Capital improvements and renovations to health care facilities¹ **[,**
 33 including additions];

34 Additions¹ of medical/surgical , adult intensive care and adult
 35 critical care¹ beds in hospitals;

36 Replacement of existing major moveable equipment;

37 Inpatient operating rooms;

38 Alternate family care programs;

39 Hospital-based subacute care;

40 Ambulatory care facilities;

41 Comprehensive outpatient rehabilitation services;

42 Special child health clinics;

43 New technology in accordance with the provisions of section 18 of
 44 P.L. , c. (C.)(pending before the Legislature as this bill;

45 Transfer of ownership interest except in the case of an acute care
 46 hospital], or a long-term care facility in which the owner does not

1 satisfy the Department of Health's review of the owner's prior
2 operating experience as well as any requirements established by the
3 federal government pursuant to Titles XVIII and XIX of the Social
4 Security Act];

5 Change of site for approved certificate of need within the same
6 county;

7 Additions to vehicles or hours of operation of a mobile intensive
8 care unit;

9 Relocation or replacement of a health care facility within the same
10 county, except for an acute care hospital;

11 Continuing care retirement communities authorized pursuant to
12 P.L.1986, c.103 (C.52:27D-330 et seq.);

13 [Acquisition by a hospital of a magnetic resonance imager that is
14 already in operation in the State by another health care provider or
15 entity;]

16 Magnetic resonance imaging;

17 Adult day health care facilities;

18 Pediatric day health care facilities; and

19 Chronic or acute renal dialysis facilities.

20 (cf: P.L.1992, c.160, s.19)

21

22 8. Section 3 of P.L.1996, c.102 (C.26:2H-7.6) is amended to read
23 as follows:

24 3. a. A hospital which proposes to utilize a portion of its licensed
25 bed capacity for the purpose of establishing a subacute care unit shall
26 [apply to the Department of Health for a certificate of need to
27 establish a subacute care unit pursuant to section 7 of P.L.1971, c.136
28 (C.26:2H-7). The application shall qualify for an expedited review as
29 provided by regulation of the department and shall be processed within
30 90 days. In addition, the hospital shall] be subject to the following
31 requirements:

32 (1) the subacute care unit's beds shall be licensed by the
33 Department of Health and Senior Services as long-term care beds and
34 shall meet all applicable State licensing and federal certification
35 requirements, including the physical requirements for skilled nursing
36 beds under the federal Medicare program established pursuant to
37 Pub.L.89-97 (42 U.S.C.s.1395 et seq.), with reasonable waiver
38 provisions as determined by the commissioner or the federal Health
39 Care Financing Administration, as appropriate;

40 (2) the maximum length of stay in the unit shall not exceed eight
41 days;

42 (3) the unit shall be certified to participate in the Medicare
43 program as a skilled nursing facility;

44 (4) the unit shall be comprised of not more than 7% of the
45 hospital's licensed medical-surgical bed capacity or 12 beds, whichever
46 is greater¹ [, based upon the hospital's number of licensed subacute

1 care beds reflected on the hospital's license as of the effective date of
2 P.L. , c. (pending before the Legislature as this bill)]¹;

3 (5) the hospital's licensed medical-surgical bed capacity shall be
4 reduced, by the commissioner, by the number of beds used to establish
5 a subacute care unit under the provisions of this section. Long-term
6 care beds in a hospital's subacute care unit shall not be transferred to,
7 or combined with, a subacute care unit in another hospital. Bed
8 limitations for a hospital shall include both conversions of existing
9 acute care beds and any purchases or other acquisitions or rentals of
10 beds to be used by a hospital for the provision of subacute care under
11 this act;

12 (6) **[notwithstanding the provisions of section 10 of P.L.1971,**
13 **c.136 (C.26:2H-10) to the contrary, the hospital shall be required to**
14 **pay an application fee of \$5,000 for a certificate of need to establish**
15 **a subacute care unit; and]** (Deleted by amendment, P.L. , c.)

16 (7) the hospital shall be subject to the fee for the filing of an
17 application for a license for long-term care beds and any renewal
18 thereof as established by the Department of Health and Senior
19 Services pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12).

20 b. Subacute care shall not be covered by the Medicaid program
21 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.). The
22 long-term care beds in a subacute care unit shall not be included in
23 long-term care bed inventories for certificate of need review purposes.
24 (cf: P.L.1996, c.102, s.3)

25

26 9. Section 9 of P.L.1971, c.136 (C.26:2H-9) is amended to read
27 as follows:

28 9. Certificates of need shall be issued by the commissioner in
29 accordance with the provisions of P.L.1971, c.136 (C.26:2H-1 et seq.)
30 and based upon criteria and standards therefor promulgated by the
31 commissioner. The commissioner may approve or deny an application
32 for a certificate of need. If an application is denied, the applicant may
33 **[appeal the decision to the board]** request a hearing pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.). **[No decision shall be made by the commissioner contrary to the**
36 **recommendations of the State Health Planning Board or the local**
37 **advisory board concerning a certificate of need application or any**
38 **other matter, unless the State Health Planning Board and the applicant**
39 **shall have been granted opportunity for hearing.]** Requests for a **[fair]**
40 hearing shall be made to the Department of Health and Senior Services
41 within 30 days of receipt of notification of the commissioner's action.
42 The department shall arrange within 60 days of a request, for **[fair**
43 **hearings on all such cases]** a hearing and after such hearing the
44 commissioner or his designee shall furnish the **[board, the State Health**
45 **Planning Board and the]** applicant in writing the hearing examiner's

1 recommendations and reasons therefor. The **[board]** commissioner
2 within 30 days of receiving all appropriate hearing records **[or, in the**
3 absence of a request for a hearing within 30 days of receiving the
4 denial recommendations of the commissioner,] shall make **[its]** his
5 determination, which shall be a final agency decision.

6 **[For the three-year period beginning January 1, 1992 through**
7 December 31, 1994, the commissioner shall limit approval of
8 certificates of need for capital construction projects for hospitals that
9 would be financed by the New Jersey Health Care Facilities Financing
10 Authority pursuant to P.L.1972, c.29 (C.26:2I-1 et seq.), to a
11 Statewide total of \$225 million per year for all projects, exclusive of
12 the refinancing of approved projects.

13 For the purposes of this section, capital construction project shall
14 include the purchase of any major moveable equipment as well as any
15 modernization, construction, or renovation project.]

16 (cf: P.L.1992, c.31, s.3)

17

18 10. Section 10 of P.L.1971, c.136 (C.26:2H-10) is amended to
19 read as follows:

20 10. Application for a certificate of need shall be made to the
21 department, and shall be in such form and contain such information as
22 the department may prescribe. The department shall charge a
23 nonreturnable fee for the filing of an application for a certificate of
24 need. The minimum fee for the filing of an application shall be
25 \$5,000. For a project whose total cost is greater than \$1 million, the
26 fee shall be \$5,000 plus 0.15% of the total project cost. Upon
27 **[receipt of an application]** determination that an application is
28 complete, copies thereof shall be referred by the department to **[the**
29 appropriate local advisory board and] the State Health Planning Board
30 for review, when applicable.

31 **[These appropriate boards]** The board shall provide adequate
32 mechanisms for full consideration of each application submitted to
33 **[them]** the board and for developing recommendations thereon. Such
34 recommendations, whether favorable or unfavorable, shall be
35 forwarded to the commissioner within 90 days of the date of referral
36 of the application. A copy of the recommendations made shall be
37 forwarded to the applicant.

38 Recommendations concerning certificates of need shall be governed
39 and based upon the principles and considerations set forth in section
40 8 of P.L.1971, c.136 (C.26:2H-8).

41 No member, officer or employee of **[any planning body]** the State
42 Health Planning Board shall be subject to civil action in any court as
43 the result of any act done or failure to act, or of any statement made
44 or opinion given, while discharging his duties under this act as such
45 member, officer, or employee, provided he acted in good faith with

1 reasonable care and upon proper cause.

2 (cf: P.L.1997, c.392, s.1)

3

4 11. Section 1 of P.L.1982 , c.149 (C.26:2H-11.1) is amended to
5 read as follows:

6 1. In the case of an application for a certificate of need or initial
7 licensure, as applicable, for a narcotic and drug abuse treatment center
8 to be located within 500 feet from any building in this State used for
9 the instruction of children between the ages of five and 18 years, the
10 applicant shall notify the governing body of the municipality within
11 which he proposes to locate the treatment center of his intention to
12 apply for the certificate of need or licensure and the proposed location
13 of the center. Documentation of such notice shall be filed with the
14 certificate of need or license application. The Commissioner of
15 Health and Senior Services is hereby authorized to adopt reasonable
16 rules and regulations, in accordance with the provisions of the
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
18 seq.), to effectuate the purposes of this act. For the purposes of this
19 act, the definition of "narcotic and drug abuse treatment center" shall
20 be identical to the definition in subsection (a) of section 2 of
21 P.L.1970, c.334 (C.26:2G-22(a)). This act shall not apply to any such
22 narcotic and drug abuse treatment center for which an application was
23 filed prior to the effective date of this act.

24 (cf: P.L.1982, c.149, s.1)

25

26 12. Section 12 of P.L.1971 , c.136 (C.26:2H-12) is amended to
27 read as follows:

28 12. a. No health care facility shall be operated unless it shall: (1)
29 possess a valid license issued pursuant to this act, which license shall
30 specify the kind or kinds of health care services the facility is
31 authorized to provide; (2) establish and maintain a uniform system of
32 cost accounting approved by the commissioner; (3) establish and
33 maintain a uniform system of reports and audits meeting the
34 requirements of the commissioner; (4) prepare and review annually a
35 long range plan for the provision of health care services【, which plan
36 shall be compatible with the State Health Plan as related to medical
37 health services, health care services, and health manpower】; and (5)
38 establish and maintain a centralized, coordinated system of discharge
39 planning which assures every patient a planned program of continuing
40 care and which meets the requirements of the commissioner which
41 requirements shall, where feasible, equal or exceed those standards and
42 regulations established by the federal 【Government】 government for
43 all federally-funded health care facilities but shall not require any
44 person who is not in receipt of State or federal assistance to be
45 discharged against his will.

46 b. (1) Application for a license for a health care facility shall be

1 made upon forms prescribed by the department. The department shall
2 charge ~~such~~ a single, nonrefundable ~~fees~~ fee for the filing of an
3 application for and issuance of a license and a single, nonrefundable
4 fee for any renewal thereof, and a single, nonrefundable fee for a
5 '~~biannual~~ biennial' inspection of the facility, as it shall from time to
6 time fix in rules or regulations; provided, however, that no such
7 licensing fee shall exceed ~~[\$2,000.00]~~ \$10,000 in the case of a
8 hospital and \$4,000 in the case of any other health care facility for all
9 services provided by the hospital or other health care facility, and no
10 such inspection fee shall exceed \$5,000 in the case of a hospital and
11 \$2,000 in the case of any other health care facility for all services
12 provided by the hospital or other health care facility. No inspection
13 fee shall be charged for inspections other than '~~biannual~~ biennial'
14 inspections. The application shall contain the name of the health care
15 facility, the kind or kinds of health care service to be provided, the
16 location and physical description of the institution, and such other
17 information as the department may require. (2) A license shall be
18 issued by the department upon its findings that the premises,
19 equipment, personnel, including principals and management, finances,
20 rules and bylaws, and standards of health care service are fit and
21 adequate and there is reasonable assurance the health care facility will
22 be operated in the manner required by this act and rules and
23 regulations thereunder.

24 c. ~~[A license issued before the effective date of this act to a health~~
25 ~~care facility for its operation, upon the first renewal date thereafter,~~
26 ~~may be extended for a one-year period of time, provided the facility~~
27 ~~then meets the requirements for licensure at the time said license was~~
28 ~~issued and submits an acceptable plan to meet current requirements at~~
29 ~~the end of said period of time.] Deleted by amendment P.L. , c.)~~

30 d. The commissioner may amend a facility's license to reduce that
31 facility's licensed bed capacity to reflect actual utilization at the facility
32 if the commissioner determines that 10 or more licensed beds in the
33 health care facility have not been used for at least the last two
34 succeeding years. For the purposes of this subsection, the
35 commissioner may retroactively review utilization at a facility for a
36 two-year period beginning on January 1, 1990.

37 e. If a prospective applicant for licensure for a health care service
38 or facility that is not subject to certificate of need review pursuant to
39 P.L.1971, c.136 (C.26:2H-1 et seq.) so requests, the department shall
40 provide the prospective applicant with a pre-licensure consultation.
41 The purpose of the consultation is to provide the prospective applicant
42 with information and guidance on rules, regulations, standards and
43 procedures appropriate and applicable to the licensure process. The
44 department shall conduct the consultation within 60 days of the
45 request of the prospective applicant.

46 (cf: P.L.1991, c.187, s.38)

1 13. Section 2 of P.L.1986, c.11 (C.26:2H-12.4) is amended to read
2 as follows:

3 2. A hospital applying for permission to establish a hospital respite
4 care program is not required to apply for a certificate of need pursuant
5 to section 7 of P.L.1971, c.136 (C.26:2H-7) and is required to
6 demonstrate only that it has the vacancy rate required by this act and
7 adequate staff to serve the number of senior citizens it proposes to
8 accept. **[However, rates to be charged by the hospital for this service**
9 **are subject to the approval of the Hospital Rate Setting Commission**
10 **pursuant to section 5 of P.L.1978, c.83 (C.26:2H-4.1).]**
11 (cf: P.L.1986, c.11, s.2)
12

13 14. Section 14 of P.L.1971, c.136 (C.26:2H-14) is amended to
14 read as follows:

15 14. Any person, firm, partnership, corporation or association who
16 shall operate or conduct a health care facility without first obtaining
17 the license required by this act, or who shall operate such health care
18 facility after revocation or suspension of license, shall be liable to a
19 penalty of not more than **[\$250.00] \$1,000** as provided for by
20 regulation for **[reach] each** day of operation in violation hereof for the
21 first offense and for any subsequent offense. Any person, firm,
22 partnership, corporation or association who violates any rule or
23 regulation adopted in accordance with this act as the same pertains to
24 the care of patients and physical plant standards shall be subject to a
25 penalty of not more than **[\$1,000.00] \$2,500** as provided for by
26 regulation for each day that he is in violation of such rule or
27 regulation. Upon notification to the facility of such violations as
28 pertain to the care of patients or to the hazardous or unsafe condition
29 existing in or upon the structure in which the licensed facility is
30 maintained, the commissioner shall allow the facility 72 hours in which
31 to correct any such violation and if at the end of such period the
32 violation is not corrected and it poses an imminent threat to the health,
33 safety or welfare of the public or of the residents of the facility, he
34 may, in his discretion, summarily suspend the license of the facility
35 without a hearing and may order immediate correction of such
36 violation as a prerequisite of reinstatement of licensure. If a licensee
37 that is subject to summary suspension shall deny that a violation exists
38 or has occurred, he shall have the right to apply to the commissioner
39 for a hearing. Such hearing shall be held and a decision rendered
40 within 48 hours of receipt of said request. If the commissioner shall
41 rule against the licensee, the licensee shall have the right to apply for
42 injunctive relief against the commissioner's order. Jurisdiction of such
43 injunctive relief shall be in the Superior Court of New Jersey. Nothing
44 herein shall be construed to prevent the commissioner from thereafter
45 suspending or revoking the license in accordance with the procedure
46 set forth in section 13. If, within one year after such violation such

1 person, firm, partnership, corporation or association is found guilty of
2 the same violation such penalties as hereinbefore set forth shall be
3 doubled, and if there be a third violation within such time, such
4 penalties shall be tripled. In addition thereto the department may, in
5 its discretion, suspend the license for such time as it may deem proper
6 or revoke said license.

7 Any person, firm, partnership, corporation or association who shall,
8 except in cases of an emergency, maintain more patients in his
9 premises than he is licensed so to do, shall be subject to a penalty, in
10 accordance with the procedure set forth in section 13, in an amount
11 equal to the daily charge collected from such patient or patients plus
12 \$25.00 for each day each extra patient is so maintained.

13 (cf: P.L.1986, c.96, s.1)

14

15 15. Section 12 of P.L.1992, c.160 (C.26:2H-18.62) is amended to
16 read as follows:

17 12. a. The monies in the hospital and other health care initiatives
18 account are appropriated for the establishment of a program which will
19 assist hospitals and other health care facilities in the underwriting of
20 innovative and necessary health care services and provide funding for
21 public or private health care programs, which may include any
22 program funded pursuant to section 25 of P.L.1991, c.187
23 (C.26:2H-18.47), managed care regulation and oversight pursuant to
24 P.L.1997, c.192 (C.26:2S-1 et al.), administration and enforcement of
25 health care facility licensing requirements pursuant to P.L.1971, c.136
26 (C.26:2H-1 et seq.), and for such other programs that the
27 commissioner deems necessary or appropriate to carry out the
28 provisions of section 5 of P.L.1992, c.160 (C.26:2H-18.55).

29 The commissioner shall develop equitable regulations regarding
30 eligibility for and access to the financial assistance, within six months
31 of the effective date of this act.

32 b. Such funds as may be necessary shall be transferred by the
33 department from the fund to the Division of Medical Assistance and
34 Health Services in the Department of Human Services for payment to
35 disproportionate share hospitals.

36 c. Notwithstanding any law to the contrary, each hospital whose
37 revenue cap was established by the Hospital Rate Setting Commission
38 in 1993 pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.) shall pay
39 .53% of its total operating revenue to the department for deposit in the
40 Health Care Subsidy Fund, except that the amount to be paid by a
41 hospital in a given year shall be prorated by the department so as not
42 to exceed the \$40 million limit set forth in this subsection. The
43 hospital shall make monthly payments to the department beginning
44 July 1, 1993, except that the total amount paid into the Health Care
45 Subsidy Fund plus interest shall not exceed \$40 million per year. The
46 commissioner shall determine the manner in which the payments shall

1 be made.

2 For the purposes of this subsection, "total operating revenue" shall
3 be defined by the department in accordance with financial reporting
4 requirements established pursuant to N.J.A.C.8:31B-3.3.

5 d. The monies paid by the hospitals shall be credited to the hospital
6 and other health care initiatives account.

7 (cf: P.L.1997, c.192, s.30)

8

9 16. (New section) a. Notwithstanding the provisions of section 7
10 of P.L.1971, c.136 (C.26:2H-7) to the contrary, 20 months after the
11 effective date of P.L. , c. (pending before the Legislature as this bill)
12 the following shall be exempt from the certificate of need requirement:

13 Extracorporeal shock wave lithotripter;

14 Hyperbaric chamber;

15 Positron emission tomography;

16 Residential drug and alcohol services;

17 Ambulatory surgical facilities;

18 Basic obstetric and pediatric services and birth centers¹, including
19 additions of basic obstetric and pediatric beds in hospitals¹; and

20 Linear accelerator, including Cobalt 60 unit.

21 b. Notwithstanding the provisions of subsection a. of this section
22 to the contrary, if the Commissioner of Health and Senior Services
23 determines that Department of Health and Senior Services licensing
24 standards for a health care service or facility listed in subsection a. of
25 this section have been adopted by regulation of the department
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.), the commissioner may exempt the health care
28 service or facility from the provisions of section 7 of P.L.1971, c.136
29 (C.26:2H-7) prior to the 20-month period established in subsection a.
30 of this section.

31 The commissioner shall publish notice of any exemptions
32 established pursuant to this subsection in the New Jersey Register and
33 provide for 45 days public notice prior to the effective date of the
34 exemption.

35 c. In the case of any health care service or facility that is not
36 exempted from the provisions of section 7 of P.L.1971, c.136
37 (C.26:2H-7) pursuant to this section or section 19 of P.L.1992, c.160
38 (C.26:2H-7a) and is not subject to expedited review, the commissioner
39 shall publish a call schedule for the initiation of the services or
40 facilities within 90 days of the date of enactment of this act. In the
41 event that the commissioner determines that there is insufficient need
42 to support the initiation of the service or facility, the commissioner is
43 authorized to cancel the call. The commissioner shall provide public
44 notice of the cancellation at least 45 days prior to the scheduled call
45 date.

1 17. (New section) There is established a 15-member Certificate of
2 Need Study Commission. The members shall include: the
3 Commissioners of Health and Senior Services and Human Services
4 who shall serve ex officio; the Chairman of the Senate Health
5 Committee and the Chairman of the General Assembly Health
6 Committee; and 11 public members. The public members shall be
7 appointed as follows: two persons to be appointed by the President
8 of the Senate, who shall not be of the same political party, ¹ one ¹ of
9 whom is a State licensed health care professional and one ¹ of whom
10 is a representative of a State licensed health care facility¹], to be
11 appointed by the President of the Senate]¹; two persons to be
12 appointed by the Speaker of the General Assembly, who shall not be
13 of the same political party, ¹ one ¹ of whom is a State licensed health
14 care professional and one ¹ of whom is a representative of a State
15 licensed health care facility¹], to be appointed by the Speaker of the
16 General Assembly]¹; and two State licensed health care professionals,
17 three representatives of a State licensed health care facility, one health
18 economist and one consumer of health care services who is
19 knowledgeable about health care financing issues and who is a resident
20 of this State, to be appointed by the Governor. Vacancies in the
21 membership of the commission shall be filled in the same manner
22 provided for the original appointments.

23 a. The Commissioner of Health and Senior Services shall serve as
24 chairman of the commission. The commission shall select a vice-
25 chairman from among the members. The commission shall organize as
26 soon as practicable following the appointment of its members.

27 The commission shall be entitled to call to its assistance and avail
28 itself of the services of the employees of any State, county or
29 municipal department, board, bureau, commission or agency as it may
30 require and as may be available to it for its purposes. The Department
31 of Health and Senior Services shall provide staff support for the
32 commission.

33 b. The commission shall conduct a comprehensive study to examine
34 the impact that elimination of certificate of need requirements would
35 have on each of the following health care services and facilities:
36 nursing homes; home health agencies; assisted living residences and
37 programs; comprehensive personal care homes; psychiatric beds;
38 comprehensive rehabilitation services; trauma services; transfer of
39 ownership of an existing general acute care hospital; new general acute
40 care hospitals; special hospitals; children's hospitals; organ banks;
41 cardiac surgery and cardiac catheterization; mobile intensive care
42 units; organ and bone marrow transplantation, including stem cell;
43 burn centers; specialized perinatal and pediatric services, including
44 maternal and child health consortia, pediatric intensive care and
45 neonatal intermediate and intensive care; and any other health care
46 services and facilities subject to certificate of need that are not

1 scheduled for exemption pursuant to sections 19 of P.L.1992, c.160
2 (C.26:2H-7a) and 16 of P.L. , c. (C.)(pending before the
3 Legislature as this bill). The commission shall assess the impact ¹that¹
4 deregulation of the services or facilities will have on:

- 5 (1) urban hospitals;
- 6 (2) access to care by residents in the State;
- 7 (3) quality of care;
- 8 (4) services that are delivered Statewide or on a regional basis; and
- 9 (5) the State General Fund, including programs such as Medicaid.

10 The commission shall make recommendations about which health
11 care services or facilities, if any, should continue to be subject to
12 certificate of need requirements or another type of State regulation,
13 and which services or facilities should be exempt from such State
14 regulation.

15 c. Within 20 months of the effective date of P.L. c. (pending
16 before the Legislature as this bill), the commission shall report its
17 findings and recommendations to the Governor and the Senate and
18 General Assembly Health Committees.

19 d. The commission shall expire upon the submission of its report.
20

21 18. (New section) Notwithstanding the provisions of P.L.1971,
22 c.136 (C.26:2H-1 et seq.) to the contrary, ¹[a]¹ health care ¹[service
23 or]¹ equipment which involves new technology that is not identified
24 in N.J.A.C.8:33 et seq., shall not be subject to certificate of need
25 requirements and may be initiated in the State in accordance with the
26 requirements of this section.

27 a. The new technology shall be directly related to ¹[, or shall be
28 used in conjunction with,]¹ a health care service ¹[or facility]¹ for
29 which the provider is already licensed and has obtained a certificate of
30 need, when required.

31 b. The provider shall notify the Commissioner of Health and Senior
32 Services about the intent to initiate the new technology at least ¹[30]
33 ~~60~~¹ days prior to the date the provider will begin use of the
34 technology.

35 c. The new technology shall have pre-market approval from the
36 federal Food and Drug Administration.

37 d. The provider shall use the new technology in accordance with
38 guidelines approved by the Joint Commission on Accreditation of
39 Health Care Organizations until such time as the Department of
40 Health and Senior Services has adopted licensing standards for the
41 new technology. The provider shall be required to comply with the
42 department's licensing standards for the new technology upon adoption
43 of the standards.

44 e. The provider shall agree to submit to the department appropriate
45 patient information and other data concerning use of the new
46 technology to assist the department in establishing licensing standards.

1 The provider shall submit the information and other data on a
2 quarterly basis until such time as licensing standards are adopted for
3 the new technology.

4 f. The ¹['department] commissioner¹ may suspend a provider's use
5 of the new technology if he determines that the provider is not in
6 compliance with the requirements of this section.

7

8 19. The following sections are repealed:

9 Section 35 of P.L.1991, c.187 (C.26:2H-5.9);

10 Section 20 of P.L.1992, c.160 (C.26:2H-7b); and

11 Section 37 of P.L.1991, c.187 (C.26:2H-10.1).

12

13 20. This act shall take effect immediately, except that section 7
14 shall take effect 45 days after the date of enactment; but the
15 commissioner may take such anticipatory administrative actions in
16 advance of the effective date of section 7 as shall be necessary for the
17 implementation of this act.

SENATE, No. 1181

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 4, 1998

Sponsored by:

Senator JACK SINAGRA

District 18 (Middlesex)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

**Senators Kyrillos, Singer, Bucco, Connors, Matheussen, Littell, Palaia,
Bark, Robertson, Ciesla, Bennett, Cafiero and Kosco**

SYNOPSIS

Reforms certificate of need process.

CURRENT VERSION OF TEXT

As introduced.



S1181 SINAGRA, VITALE

2

1 AN ACT concerning certificate of need and revising parts of statutory
2 law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) The Legislature finds and declares that:

8 a. The regulatory structure for the State's health care delivery
9 system put in place in the 1970's was an outgrowth of federal
10 legislation predicated on the idea that the most satisfactory means of
11 controlling health care costs was the allocation of health care
12 resources by government through a highly centralized health planning
13 mechanism;

14 b. For two decades, the State established strong controls over the
15 health care delivery system by such means as the setting of hospital
16 rates and through the certificate of need program, which allocated the
17 provision of services among providers, regulated hospital expansion,
18 and regulated the purchase of equipment and the use of medical
19 technology;

20 c. The evolution of market-based means of controlling costs, most
21 notably the growth of managed care, and the rapid development of
22 new medical techniques and innovations in medical technology
23 exposed the inefficiencies inherent in centralized health care planning,
24 which was unable to respond quickly to the changing needs of the
25 health care system;

26 d. In 1992, the Legislature began to dismantle the existing
27 regulatory structure, responding to the needs of the health care system
28 in New Jersey by eliminating hospital rate setting, leaving hospital
29 charges to be established through negotiation between hospitals and
30 those who paid for health care services and, by providing access to
31 health insurance to all citizens of the State, without regard to health
32 status or preexisting condition, contributed to the significant changes
33 taking place in the underlying economics of the health care delivery
34 system by helping to create a more competitive health care
35 environment;

36 e. The certificate of need program is the last remaining vestige of
37 the highly regulated environment, and its original purpose, which was
38 to control costs by limiting the proliferation of health care services
39 through State control of those services, has been undermined by the
40 significant changes in the economics of the health care system that
41 have taken place since its inception.

42 f. Decisions as to health care services, the acquisition of medical
43 technology, and the expansion of facilities can best be made by the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 health care provider based on his own expertise in delivering health
2 care services to the community he serves;

3 g. The appropriate role of the State with respect to services no
4 longer subject to certificate of need is that of licensure of facilities and
5 services, to ensure the quality of care;

6 h. For reasons of maintaining the quality of certain health care
7 services, a limitation of the proliferation of such services may continue
8 to be essential to protect the viability of the services as well as the
9 providers now rendering them, to protect the role of such institutions
10 as urban hospitals, whose importance to the Statewide health care
11 system is indisputable, and to guard against the closing of important
12 facilities and the transfer of services from facilities in a manner which
13 is harmful to the public interest; and

14 i. Therefore, it is essential, in order to promote greater efficiency
15 in the State's health care delivery system, to eliminate the certificate of
16 need requirement for many services immediately, to eliminate the
17 requirement for other services over a more extended period, and to
18 create a commission to consider whether certain remaining health care
19 services should continue to be subject to a certificate of need
20 requirement in the interest of the well-being of the public and to
21 ensure the maintenance of quality health care throughout the State.

22

23 2. Section 2 of P.L.1971, c.136 (C.26:2H-2) is amended to read as
24 follows:

25 2. The following words or phrases, as used in this act, shall have
26 the following meanings, unless the context otherwise requires:

27 a. "Health care facility" means the facility or institution whether
28 public or private, engaged principally in providing services for health
29 maintenance organizations, diagnosis of treatment of human disease,
30 pain, injury, deformity or physical condition, including, but not limited
31 to, a general hospital, special hospital, mental hospital, public health
32 center, diagnostic center, treatment center, rehabilitation center,
33 extended care facility, skilled nursing home, nursing home,
34 intermediate care facility, tuberculosis hospital, chronic disease
35 hospital, maternity hospital, outpatient clinic, dispensary, home health
36 care agency, residential health care facility and bioanalytical laboratory
37 (except as specifically excluded hereunder) or central services facility
38 serving one or more such institutions but excluding institutions that
39 provide healing solely by prayer and excluding such bioanalytical
40 laboratories as are independently owned and operated, and are not
41 owned, operated, managed or controlled, in whole or in part, directly
42 or indirectly by any one or more health care facilities, and the
43 predominant source of business of which is not by contract with health
44 care facilities within the State of New Jersey and which solicit or
45 accept specimens and operate predominantly in interstate commerce.

46 b. "Health care service" means the preadmission, outpatient,

1 inpatient and postdischarge care provided in or by a health care
2 facility, and such other items or services as are necessary for such
3 care, which are provided by or under the supervision of a physician for
4 the purpose of health maintenance organizations, diagnosis or
5 treatment of human disease, pain, injury, disability, deformity or
6 physical condition, including, but not limited to, nursing service, home
7 care nursing and other paramedical service, ambulance service, service
8 provided by an intern, resident in training or physician whose
9 compensation is provided through agreement with a health care
10 facility, laboratory service, medical social service, drugs, biologicals,
11 supplies, appliances, equipment, bed and board, but excluding services
12 provided by a physician in his private practice, except as provided in
13 section 7 of P.L.1971, c.136 (C.26:2H-7), or by practitioners of
14 healing solely by prayer, and services provided first aid, rescue and
15 ambulance squads as defined in the "New Jersey Highway Safety Act
16 of 1971," P.L.1971, c.351 (C.27:5F-1 et seq.).

17 c. "Construction" means the erection, building, or substantial
18 acquisition, alteration, reconstruction, improvement, renovation,
19 extension or modification of a health care facility, including its
20 equipment, the inspection and supervision thereof; and the studies,
21 surveys, designs, plans, working drawings, specifications, procedures,
22 and other actions necessary thereto.

23 d. "Board" means the Health Care Administration Board
24 established pursuant to this act.

25 e. ["Commission" means the Hospital Rate Setting Commission
26 established pursuant to this act.](Deleted by amendment, P.L. , c.)

27 f. "Government agency" means a department, board, bureau,
28 division, office, agency, public benefit or other corporation, or any
29 other unit, however described, of the State or political subdivision
30 thereof.

31 g. (Deleted by amendment, P.L.1991, c.187).

32 h. (Deleted by amendment, P.L.1991, c.187).

33 i. "Department" means the State Department of Health and Senior
34 Services.

35 j. "Commissioner" means the State Commissioner of Health and
36 Senior Services.

37 k. "Preliminary cost base" means that proportion of a hospital's
38 current cost which may reasonably be required to be reimbursed to a
39 properly utilized hospital for the efficient and effective delivery of
40 appropriate and necessary health care services of high quality required
41 by such hospital's mix of patients. The preliminary cost base initially
42 may include costs identified by the commissioner and approved or
43 adjusted by the commission as being in excess of that proportion of a
44 hospital's current costs identified above, which excess costs shall be
45 eliminated in a timely and reasonable manner prior to certification of
46 the revenue base. The preliminary cost base shall be established in

1 accordance with regulations proposed by the commissioner and
2 approved by the board.

3 l. (Deleted by amendment, P.L.1992, c.160).

4 m. "Provider of health care" means an individual (1) who is a
5 direct provider of health care service in that the individual's primary
6 activity is the provision of health care services to individuals or the
7 administration of health care facilities in which such care is provided
8 and, when required by State law, the individual has received
9 professional training in the provision of such services or in such
10 administration and is licensed or certified for such provision or
11 administration; or (2) who is an indirect provider of health care in that
12 the individual (a) holds a fiduciary position with, or has a fiduciary
13 interest in, any entity described in subparagraph b(ii) or subparagraph
14 b(iv); provided, however, that a member of the governing body of a
15 county or any elected official shall not be deemed to be a provider of
16 health care unless he is a member of the board of trustees of a health
17 care facility or a member of a board, committee or body with authority
18 similar to that of a board of trustees, or unless he participates in the
19 direct administration of a health care facility; or (b) received, either
20 directly or through his spouse, more than one-tenth of his gross annual
21 income for any one or more of the following:

22 (i) Fees or other compensation for research into or instruction in
23 the provision of health care services;

24 (ii) Entities engaged in the provision of health care services or in
25 research or instruction in the provision of health care services;

26 (iii) Producing or supplying drugs or other articles for individuals
27 or entities for use in the provision of or in research into or instruction
28 in the provision of health care services;

29 (iv) Entities engaged in producing drugs or such other articles.

30 n. "Private long-term health care facility" means a nursing home,
31 skilled nursing home or intermediate care facility presently in operation
32 and licensed as such prior to the adoption of the 1967 Life Safety
33 Code by the State Department of Health and Senior Services in 1972
34 and which has a maximum 50-bed capacity and which does not
35 accommodate Medicare or Medicaid patients.

36 o. ["Local advisory board" means an independent, private nonprofit
37 corporation which is not a health care facility, a subsidiary thereof or
38 an affiliated corporation of a health care facility, that is designated by
39 the Commissioner of Health to serve as the regional health planning
40 agency for a designated region in the State.] (Deleted by amendment,
41 P.L. , c.)

42 p. "State Health Planning Board" means the board established
43 pursuant to section 33 of P.L.1991, c.187 (C.26:2H-5.7) **【**to prepare
44 and review the State Health Plan and**】** to conduct certificate of need
45 review activities.

46 (cf: 1992, c.160, s.22)

1 3. Section 5 of P.L.1971, c.136 (C.26:2H-5) is amended to read as
2 follows:

3 5. a. The commissioner, to effectuate the provisions and purposes
4 of this act, shall have the power to inquire into health care services
5 and the operation of health care facilities and to conduct periodic
6 inspections of such facilities with respect to the fitness and adequacy
7 of the premises, equipment, personnel, rules and bylaws and the
8 adequacy of financial resources and sources of future revenues.

9 b. The commissioner, with the approval of the board, shall adopt
10 and amend rules and regulations in accordance with the
11 Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.)
12 to effectuate the provisions and purposes of this act, including but not
13 limited to: (1) the establishment of requirements for a uniform
14 Statewide system of reports and audit relating to the quality of health
15 care provided, health care facility utilization and costs; (2)
16 certification by the department of schedules of rates, payments,
17 reimbursement, grants and other charges for health care services as
18 provided in section 18; and (3) standards and procedures relating to
19 the licensing of health care facilities and the institution of certain
20 additional health care services.

21 c. The commissioner may enter into contracts with any government
22 agency, institution of higher learning, voluntary nonprofit agency, or
23 appropriate planning agency or council; and such entities are
24 authorized to enter into contracts with the commissioner to effectuate
25 the provisions and purposes of this **[art]** act.

26 d. The commissioner may provide consultation and assistance to
27 health care facilities in operational techniques, including but not
28 limited to, planning, principles of management, and standards of
29 health care services.

30 e. At the request of the commissioner, health care facilities shall
31 furnish to the Department of Health and Senior Services such reports
32 and information as it may require to effectuate the provisions and
33 purposes of this act, excluding confidential communications from
34 patients.

35 f. The commissioner may institute or cause to be instituted in a
36 court of competent jurisdiction proceedings to compel compliance
37 with the provisions of this act or the determinations, rules, regulations
38 and orders of the commissioner.

39 g. Notwithstanding any rules and regulations governing private
40 long-term health care facilities and enforcing the 1967 Life Safety
41 Code, as amended and supplemented, the commissioner shall permit
42 third floor occupancy of such facilities by owners, members of their
43 immediate families, and licensed professionals employed at such
44 facilities.

45 (cf: P.L.1977, c.251, s.2)

1 4. Section 33 of P.L.1991, c.187 (C.26:2H-5.7) is amended to read
2 as follows:

3 33. There is established in the Department of Health and Senior
4 Services a State Health Planning Board. The members of the board
5 shall include: the Commissioners of Health and Senior Services and
6 Human Services, or their designees, who shall serve as ex officio,
7 nonvoting members; the chairmen of the Health Care Administration
8 Board[, the Hospital Rate Setting Commission] and the Public Health
9 Council, or their designees, who shall serve as ex officio members;
10 [one representative from each of the local advisory boards;] and
11 [five] nine public members appointed by the Governor with the advice
12 and consent of the Senate, [three] five of whom are consumers of
13 health care services who are neither providers of health care services
14 or persons with a fiduciary interest in a health care service.

15 Of the additional public members first appointed pursuant to P.L. ,
16 c. (pending before the Legislature as this bill), two shall serve for a
17 term of two years[,] and two shall serve for a term of three years [and
18 one shall serve for a term of four years]. Following the expiration of
19 the original terms, the public members shall serve for a term of four
20 years and are eligible for reappointment. Public members serving on
21 the board on the effective date of P.L. , c. (pending before the
22 Legislature as this bill) shall continue to serve for the term of their
23 appointment. Any vacancy shall be filled in the same manner as the
24 original appointment, for the unexpired term. Public members shall
25 continue to serve until their successors are appointed. The public
26 members shall serve without compensation but may be reimbursed for
27 reasonable expenses incurred in the performance of their duties, within
28 the limits of funds available to the board.

29 a. A member or employee of the State Health Planning Board shall
30 not, by reason of his performance of any duty, function or activity
31 required of, or authorized to be undertaken by the board, be held
32 civilly or criminally liable if that person acted within the scope of his
33 duty, function or activity as a member or employee of the board,
34 without gross negligence or malice toward any person affected
35 thereby.

36 b. A member of the State Health Planning Board shall not vote on
37 any matter before the board concerning an individual or entity with
38 which the member has, or within the last 12 months has had, any
39 substantial ownership, employment, medical staff, fiduciary,
40 contractual, creditor or consultative relationship. A member who has
41 or has had such a relationship with an individual or entity involved in
42 any matter before the board shall make a written disclosure of the
43 relationship before any action is taken by the board with respect to the
44 matter and shall make the relationship public in any meeting in which
45 action on the matter is to be taken.

46 (cf: P.L.1991, c.187, s.33)

1 5. Section 34 of P.L.1991, c.187 (C.26:2H-5.8) is amended to read
2 as follows:

3 34. a. **【**The State Health Planning Board shall prepare and revise
4 annually, a State Health Plan. The State Health Plan shall identify the
5 unmet health care needs in an area by service and location and it shall
6 serve as an advisory document which may be considered when
7 certificate of need applications are reviewed for approval. Upon
8 completion of the entire State Health Plan, the State Health Planning
9 Board shall submit the plan to the commissioner and the board for
10 their use on an advisory basis.

11 Effective May 15, 1992, notwithstanding any other provision of law
12 to the contrary, neither the Health Care Administration Board or the
13 Department of Health shall adopt any regulation which implements any
14 goals, objectives or any other health planning recommendations that
15 have been included in the State Health Plan prepared by the State
16 Health Planning Board.

17 The State Health Planning Board shall consider the
18 recommendations of the local advisory boards in preparing and
19 revising the plan to incorporate specific regional and geographic
20 considerations of access to, and delivery of, health care services at a
21 reasonable cost. The State Health Planning Board shall incorporate
22 the recommendations of the local advisory boards into the plan unless
23 the recommendations are in conflict with the best interests of
24 Statewide health planning. If any recommendations of the local
25 advisory boards are not incorporated into the plan, the State Health
26 Planning Board shall identify those recommendations, which shall be
27 listed separately for each local health planning region, in an addendum
28 to the plan and shall state the specific reason that each
29 recommendation is in conflict with the best interests of Statewide
30 health planning.

31 For each unmet health care service identified in the plan, the plan
32 shall specify the period of time for which a certificate of need for that
33 service shall be valid.】 (Deleted by amendment, P.L. , c.)

34 b. The State Health Planning Board shall review applications for
35 certificates of need and make recommendations to the Commissioner
36 of Health【, for which purpose it may consider the State Health Plan on
37 an advisory basis】 and Senior Services.

38 c. In the case of an application for a certificate of need to close or
39 eliminate a health care facility or service that is subject to review by
40 the State Health Planning Board, the State Health Planning Board shall
41 hold at least one public hearing in the service area of the health care
42 facility or service. The public hearing shall be held no later than 30
43 days after receipt of an application that is deemed complete by the
44 Commissioner of Health and Senior Services. Public notice of the
45 hearing shall be provided at least two weeks in advance of the date of
46 the hearing.

1 Notwithstanding the provisions of this subsection to the contrary,
2 in the event that the commissioner determines that a proposed closure
3 or elimination of a health care facility should be considered on an
4 expedited basis in order to preserve the quality of health care provided
5 to the community, the commissioner may reduce the period of time
6 required for public notice of the hearing.

7 (cf: P.L.1992, c.31, s.1)

8
9 6. Section 7 of P.L.1971, c.136 (C.26:2H-7) is amended to read as
10 follows:

11 7. No health care facility shall be constructed or expanded, and no
12 new health care service shall be instituted after the effective date of
13 P.L.1971, c.136 (C.26:2H-1 et seq.) except upon application for and
14 receipt of a certificate of need as provided by P.L.1971, c.136
15 (C.26:2H-1 et seq.). No agency of the State or of any county or
16 municipal government shall approve any grant of funds for, or issue
17 any license to, a health care facility which is constructed or expanded,
18 or which institutes a new health care service, in violation of the
19 provisions of P.L.1971, c.136 (C.26:2H-1 et seq.).

20 Except as provided in [sections] section 19 [and 20] of P.L.1992,
21 c.160 (C.26:2H-7a [and C.26:2H-7b]) and section 16 of P.L. , c.
22 (C.)(pending before the Legislature as this bill), the provisions of this
23 section shall apply to:

24 a. The initiation of any health care service as provided in section
25 2 of P.L.1971, c.136 (C.26:2H-2);

26 b. The initiation by any person of a health care service which is the
27 subject of a health planning regulation adopted by the Department of
28 Health and Senior Services;

29 c. The purchase by any person of major moveable equipment whose
30 total cost is over [\$1] \$2 million;

31 d. The expenditure by a licensed health care facility of over [\$1] \$2
32 million for [modernization or renovation of its physical plant, or for]
33 construction of a new health care facility; and

34 e. The [modernization, renovation or] construction of a facility by
35 any person, whose total project cost exceeds [\$1] \$2 million, if the
36 facility-type is the subject of a health planning regulation adopted by
37 the Department of Health and Senior Services.

38 The commissioner may periodically increase the monetary
39 thresholds established in this section, by regulation, to reflect
40 inflationary increases in the costs of health care equipment or
41 construction.

42 For the purposes of this section, "health care service" shall include
43 any service which is the subject of a health planning regulation
44 adopted by the Department of Health and Senior Services, and
45 "person" shall include a corporation, company, association, society,
46 firm, partnership and joint stock company, as well as an individual.

1 A physician who initiates a health care service which is the subject
2 of a health planning regulation or purchases major moveable
3 equipment pursuant to subsection b. or c. of this section, may apply to
4 the commissioner for a waiver of the certificate of need requirement
5 if: the equipment or health care service is such an essential,
6 fundamental and integral component of the physician's practice
7 specialty, that the physician would be unable to practice his specialty
8 according to the acceptable medical standards of that specialty without
9 the health care service or equipment; the physician bills at least 75%
10 of his total amount of charges in the practice specialty which uses the
11 health care service or equipment; and the health care service or
12 equipment is not otherwise available and accessible to patients,
13 pursuant to standards established by the commissioner, by regulation.
14 The commissioner shall make a determination about whether to grant
15 or deny the waiver, within 120 days from the date the request for the
16 waiver is received by the commissioner and shall so notify the
17 physician who requested the waiver. If the request is denied, the
18 commissioner shall include in that notification the reason for the
19 denial. If the request is denied, the initiation of a health care service or
20 the purchase of major moveable equipment shall be subject to the
21 certificate of need requirements pursuant to this section.

22 A health maintenance organization which furnishes at least basic
23 comprehensive care health services on a prepaid basis to enrollees
24 either through providers employed by the health maintenance
25 organization or through a medical group or groups which contract
26 directly with the health maintenance organization, which initiates a
27 health care service, or **[modernizes, renovates or]** constructs a health
28 care facility pursuant to subsection a., b., d. or e. of this section, may
29 apply to the commissioner for a waiver of the certificate of need
30 requirement if: the initiation of the health care service or the
31 **[modernization, renovation or]** construction is in the best interests of
32 State health planning; and the health maintenance organization is in
33 compliance with the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.)
34 and complies with the provisions of subsection d. of section 3 of
35 P.L.1973, c.337 (C.26:2J-3) regarding notification to the
36 commissioner. The commissioner shall make a determination about
37 whether to grant or deny the waiver within 45 days from the date the
38 request for the waiver is received by the commissioner and shall so
39 notify the health maintenance organization. If the request for a waiver
40 is denied on the basis that the request would not be in the best
41 interests of State health planning, the commissioner shall state in that
42 notification the reason why the request would not be in the best
43 interests of State health planning. If the request for a waiver is denied,
44 the health maintenance organization's initiation of a health care service
45 or **[modernization, renovation or]** construction project shall be subject
46 to the certificate of need requirements pursuant to this section.

1 The requirement to obtain a certificate of need for major moveable
2 equipment pursuant to subsection c. of this section shall not apply if
3 a contract to purchase that equipment was entered into prior to July
4 1, 1991.

5 (cf: P.L.1992, c.160, s.24)

6

7 7. Section 19 of P.L.1992, c.160, (C.26:2H-7a) is amended to read
8 as follows:

9 19. Notwithstanding the provisions of section 7 of P.L.1971, c.136
10 (C.26:2H-7) to the contrary, the following are exempt from the
11 certificate of need requirement:

12 Community-based primary care centers;

13 Outpatient drug and alcohol services;

14 Hospital-based medical detoxification for drugs and alcohol;

15 Ambulance and invalid coach services;

16 Mental health services which are non-bed related outpatient
17 services;

18 **【Changes in residential】** Residential health care facility services;

19 **【Mandatory renovations to existing facilities;**

20 **Mandatory replacement of fixed or moveable equipment;】**

21 Capital improvements and renovations to health care facilities,
22 including additions of medical/surgical beds in hospitals;

23 Replacement of existing major moveable equipment;

24 Inpatient operating rooms;

25 Alternate family care programs;

26 Hospital-based subacute care;

27 Ambulatory care facilities;

28 Comprehensive outpatient rehabilitation services;

29 Special child health clinics;

30 New technology in accordance with the provisions of section 18 of
31 P.L. , c. (C.)(pending before the Legislature as this bill;

32 Transfer of ownership interest except in the case of an acute care
33 hospital**【**, or a long-term care facility in which the owner does not
34 satisfy the Department of Health's review of the owner's prior
35 operating experience as well as any requirements established by the
36 federal government pursuant to Titles XVIII and XIX of the Social
37 Security Act**】**;

38 Change of site for approved certificate of need within the same
39 county;

40 Additions to vehicles or hours of operation of a mobile intensive
41 care unit;

42 Relocation or replacement of a health care facility within the same
43 county, except for an acute care hospital;

44 Continuing care retirement communities authorized pursuant to
45 P.L.1986, c.103 (C.52:27D-330 et seq.);

46 **【Acquisition by a hospital of a magnetic resonance imager that is**

1 already in operation in the State by another health care provider or
2 entity;】

3 Magnetic resonance imaging;
4 Adult day health care facilities;
5 Pediatric day health care facilities; and
6 Chronic or acute renal dialysis facilities.
7 (cf: P.L.1992, c.160, s.19)

8
9 8. Section 3 of P.L.1996, c.102 (C.26:2H-7.6) is amended to read
10 as follows:

11 3. a. A hospital which proposes to utilize a portion of its licensed
12 bed capacity for the purpose of establishing a subacute care unit shall
13 【apply to the Department of Health for a certificate of need to
14 establish a subacute care unit pursuant to section 7 of P.L.1971, c.136
15 (C.26:2H-7). The application shall qualify for an expedited review as
16 provided by regulation of the department and shall be processed within
17 90 days. In addition, the hospital shall】 be subject to the following
18 requirements:

19 (1) the subacute care unit's beds shall be licensed by the
20 Department of Health and Senior Services as long-term care beds and
21 shall meet all applicable State licensing and federal certification
22 requirements, including the physical requirements for skilled nursing
23 beds under the federal Medicare program established pursuant to
24 Pub.L.89-97 (42 U.S.C.s.1395 et seq.), with reasonable waiver
25 provisions as determined by the commissioner or the federal Health
26 Care Financing Administration, as appropriate;

27 (2) the maximum length of stay in the unit shall not exceed eight
28 days;

29 (3) the unit shall be certified to participate in the Medicare
30 program as a skilled nursing facility;

31 (4) the unit shall be comprised of not more than 7% of the
32 hospital's licensed medical-surgical bed capacity or 12 beds, whichever
33 is greater, based upon the hospital's number of licensed subacute care
34 beds reflected on the hospital's license as of the effective date of P.L. .
35 c. (pending before the Legislature as this bill);

36 (5) the hospital's licensed medical-surgical bed capacity shall be
37 reduced, by the commissioner, by the number of beds used to establish
38 a subacute care unit under the provisions of this section. Long-term
39 care beds in a hospital's subacute care unit shall not be transferred to,
40 or combined with, a subacute care unit in another hospital. Bed
41 limitations for a hospital shall include both conversions of existing
42 acute care beds and any purchases or other acquisitions or rentals of
43 beds to be used by a hospital for the provision of subacute care under
44 this act;

45 (6) 【notwithstanding the provisions of section 10 of P.L.1971,
46 c.136 (C.26:2H-10) to the contrary, the hospital shall be required to

1 pay an application fee of \$5,000 for a certificate of need to establish
2 a subacute care unit; and ~~] (Deleted by amendment, P.L. . c.)~~

3 (7) the hospital shall be subject to the fee for the filing of an
4 application for a license for long-term care beds and any renewal
5 thereof as established by the Department of Health and Senior
6 Services pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12).

7 b. Subacute care shall not be covered by the Medicaid program
8 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.). The
9 long-term care beds in a subacute care unit shall not be included in
10 long-term care bed inventories for certificate of need review purposes.
11 (cf: P.L.1996, c.102, s.3)

12

13 9. Section 9 of P.L.1971, c.136 (C.26:2H-9) is amended to read
14 as follows:

15 9. Certificates of need shall be issued by the commissioner in
16 accordance with the provisions of P.L.1971, c.136 (C.26:2H-1 et seq.)
17 and based upon criteria and standards therefor promulgated by the
18 commissioner. The commissioner may approve or deny an application
19 for a certificate of need. If an application is denied, the applicant may
20 ~~[appeal the decision to the board]~~ request a hearing pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.). ~~[No decision shall be made by the commissioner contrary to the~~
23 ~~recommendations of the State Health Planning Board or the local~~
24 ~~advisory board concerning a certificate of need application or any~~
25 ~~other matter, unless the State Health Planning Board and the applicant~~
26 ~~shall have been granted opportunity for hearing.]~~ Requests for a ~~[fair]~~
27 hearing shall be made to the Department of Health and Senior Services
28 within 30 days of receipt of notification of the commissioner's action.
29 The department shall arrange within 60 days of a request, for [fair
30 hearings on all such cases] a hearing and after such hearing the
31 commissioner or his designee shall furnish the [board, the State Health
32 Planning Board and the] applicant in writing the hearing examiner's
33 recommendations and reasons therefor. The [board] commissioner
34 within 30 days of receiving all appropriate hearing records [or, in the
35 absence of a request for a hearing within 30 days of receiving the
36 denial recommendations of the commissioner,] shall make [its] his
37 determination, which shall be a final agency decision.

38 ~~[For the three-year period beginning January 1, 1992 through~~
39 ~~December 31, 1994, the commissioner shall limit approval of~~
40 ~~certificates of need for capital construction projects for hospitals that~~
41 ~~would be financed by the New Jersey Health Care Facilities Financing~~
42 ~~Authority pursuant to P.L.1972, c.29 (C.26:2I-1 et seq.), to a~~
43 ~~Statewide total of \$225 million per year for all projects, exclusive of~~
44 ~~the refinancing of approved projects.~~

45 For the purposes of this section, capital construction project shall

1 include the purchase of any major moveable equipment as well as any
2 modernization, construction, or renovation project.】

3 (cf: P.L.1992, c.31, s.3)

4

5 10. Section 10 of P.L.1971, c.136 (C.26:2H-10) is amended to
6 read as follows:

7 10. Application for a certificate of need shall be made to the
8 department, and shall be in such form and contain such information as
9 the department may prescribe. The department shall charge a
10 nonreturnable fee for the filing of an application for a certificate of
11 need. The minimum fee for the filing of an application shall be
12 \$5,000. For a project whose total cost is greater than \$1 million, the
13 fee shall be \$5,000 plus 0.15% of the total project cost. Upon
14 【receipt of an application】 determination that an application is
15 complete, copies thereof shall be referred by the department to 【the
16 appropriate local advisory board and】 the State Health Planning Board
17 for review, when applicable.

18 【These appropriate boards】 The board shall provide adequate
19 mechanisms for full consideration of each application submitted to
20 【them】 the board and for developing recommendations thereon. Such
21 recommendations, whether favorable or unfavorable, shall be
22 forwarded to the commissioner within 90 days of the date of referral
23 of the application. A copy of the recommendations made shall be
24 forwarded to the applicant.

25 Recommendations concerning certificates of need shall be governed
26 and based upon the principles and considerations set forth in section
27 8 of P.L.1971, c.136 (C.26:2H-8).

28 No member, officer or employee of 【any planning body】 the State
29 Health Planning Board shall be subject to civil action in any court as
30 the result of any act done or failure to act, or of any statement made
31 or opinion given, while discharging his duties under this act as such
32 member, officer, or employee, provided he acted in good faith with
33 reasonable care and upon proper cause.

34 (cf: P.L.1997, c.392, s.1)

35

36 11. Section 1 of P.L.1982 , c.149 (C.26:2H-11.1) is amended to
37 read as follows:

38 1. In the case of an application for a certificate of need or initial
39 licensure, as applicable, for a narcotic and drug abuse treatment center
40 to be located within 500 feet from any building in this State used for
41 the instruction of children between the ages of five and 18 years, the
42 applicant shall notify the governing body of the municipality within
43 which he proposes to locate the treatment center of his intention to
44 apply for the certificate of need or licensure and the proposed location
45 of the center. Documentation of such notice shall be filed with the
46 certificate of need or license application. The Commissioner of

1 Health and Senior Services is hereby authorized to adopt reasonable
2 rules and regulations, in accordance with the provisions of the
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.), to effectuate the purposes of this act. For the purposes of this
5 act, the definition of "narcotic and drug abuse treatment center" shall
6 be identical to the definition in subsection (a) of section 2 of
7 P.L.1970, c.334 (C.26:2G-22(a)). This act shall not apply to any such
8 narcotic and drug abuse treatment center for which an application was
9 filed prior to the effective date of this act.

10 (cf: P.L.1982, c.149, s.1)

11

12 12. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to
13 read as follows:

14 12. a. No health care facility shall be operated unless it shall: (1)
15 possess a valid license issued pursuant to this act, which license shall
16 specify the kind or kinds of health care services the facility is
17 authorized to provide; (2) establish and maintain a uniform system of
18 cost accounting approved by the commissioner; (3) establish and
19 maintain a uniform system of reports and audits meeting the
20 requirements of the commissioner; (4) prepare and review annually a
21 long range plan for the provision of health care services[, which plan
22 shall be compatible with the State Health Plan as related to medical
23 health services, health care services, and health manpower]; and (5)
24 establish and maintain a centralized, coordinated system of discharge
25 planning which assures every patient a planned program of continuing
26 care and which meets the requirements of the commissioner which
27 requirements shall, where feasible, equal or exceed those standards and
28 regulations established by the federal **Government** government for
29 all federally-funded health care facilities but shall not require any
30 person who is not in receipt of State or federal assistance to be
31 discharged against his will.

32 b. (1) Application for a license for a health care facility shall be
33 made upon forms prescribed by the department. The department shall
34 charge **such** a single, nonrefundable **fees** fee for the filing of an
35 application for and issuance of a license and a single, nonrefundable
36 fee for any renewal thereof, and a single, nonrefundable fee for a
37 biannual inspection of the facility, as it shall from time to time fix in
38 rules or regulations; provided, however, that no such licensing fee
39 shall exceed **such** \$10,000 in the case of a hospital and \$4,000
40 in the case of any other health care facility for all services provided by
41 the hospital or other health care facility, and no such inspection fee
42 shall exceed \$5,000 in the case of a hospital and \$2,000 in the case of
43 any other health care facility for all services provided by the hospital
44 or other health care facility. No inspection fee shall be charged for
45 inspections other than biannual inspections. The application shall
46 contain the name of the health care facility, the kind or kinds of health

1 care service to be provided, the location and physical description of
2 the institution, and such other information as the department may
3 require. (2) A license shall be issued by the department upon its
4 findings that the premises, equipment, personnel, including principals
5 and management, finances, rules and bylaws, and standards of health
6 care service are fit and adequate and there is reasonable assurance the
7 health care facility will be operated in the manner required by this act
8 and rules and regulations thereunder.

9 c. ~~【A license issued before the effective date of this act to a health
10 care facility for its operation, upon the first renewal date thereafter,
11 may be extended for a one-year period of time, provided the facility
12 then meets the requirements for licensure at the time said license was
13 issued and submits an acceptable plan to meet current requirements at
14 the end of said period of time.】 Deleted by amendment P.L. , c.)~~

15 d. The commissioner may amend a facility's license to reduce that
16 facility's licensed bed capacity to reflect actual utilization at the facility
17 if the commissioner determines that 10 or more licensed beds in the
18 health care facility have not been used for at least the last two
19 succeeding years. For the purposes of this subsection, the
20 commissioner may retroactively review utilization at a facility for a
21 two-year period beginning on January 1, 1990.

22 e. If a prospective applicant for licensure for a health care service
23 or facility that is not subject to certificate of need review pursuant to
24 P.L.1971, c.136 (C.26:2H-1 et seq.) so requests, the department shall
25 provide the prospective applicant with a pre-licensure consultation.
26 The purpose of the consultation is to provide the prospective applicant
27 with information and guidance on rules, regulations, standards and
28 procedures appropriate and applicable to the licensure process. The
29 department shall conduct the consultation within 60 days of the
30 request of the prospective applicant.

31 (cf: P.L.1991, c.187, s.38)

32
33 13. Section 2 of P.L.1986, c.11 (C.26:2H-12.4) is amended to read
34 as follows:

35 2. A hospital applying for permission to establish a hospital respite
36 care program is not required to apply for a certificate of need pursuant
37 to section 7 of P.L.1971, c.136 (C.26:2H-7) and is required to
38 demonstrate only that it has the vacancy rate required by this act and
39 adequate staff to serve the number of senior citizens it proposes to
40 accept. **【However, rates to be charged by the hospital for this service
41 are subject to the approval of the Hospital Rate Setting Commission
42 pursuant to section 5 of P.L.1978, c.83 (C.26:2H-4.1).】**

43 (cf: P.L.1986, c.11, s.2)

44
45 14. Section 14 of P.L.1971, c.136 (C.26:2H-14) is amended to
46 read as follows:

1 14. Any person, firm, partnership, corporation or association who
2 shall operate or conduct a health care facility without first obtaining
3 the license required by this act, or who shall operate such health care
4 facility after revocation or suspension of license, shall be liable to a
5 penalty of not more than ~~[\$250.00]~~ \$1,000 as provided for by
6 regulation for ~~[reach]~~ each day of operation in violation hereof for the
7 first offense and for any subsequent offense. Any person, firm,
8 partnership, corporation or association who violates any rule or
9 regulation adopted in accordance with this act as the same pertains to
10 the care of patients and physical plant standards shall be subject to a
11 penalty of not more than ~~[\$1,000.00]~~ \$2,500 as provided for by
12 regulation for each day that he is in violation of such rule or
13 regulation. Upon notification to the facility of such violations as
14 pertain to the care of patients or to the hazardous or unsafe condition
15 existing in or upon the structure in which the licensed facility is
16 maintained, the commissioner shall allow the facility 72 hours in which
17 to correct any such violation and if at the end of such period the
18 violation is not corrected and it poses an imminent threat to the health,
19 safety or welfare of the public or of the residents of the facility, he
20 may, in his discretion, summarily suspend the license of the facility
21 without a hearing and may order immediate correction of such
22 violation as a prerequisite of reinstatement of licensure. If a licensee
23 that is subject to summary suspension shall deny that a violation exists
24 or has occurred, he shall have the right to apply to the commissioner
25 for a hearing. Such hearing shall be held and a decision rendered
26 within 48 hours of receipt of said request. If the commissioner shall
27 rule against the licensee, the licensee shall have the right to apply for
28 injunctive relief against the commissioner's order. Jurisdiction of such
29 injunctive relief shall be in the Superior Court of New Jersey. Nothing
30 herein shall be construed to prevent the commissioner from thereafter
31 suspending or revoking the license in accordance with the procedure
32 set forth in section 13. If, within one year after such violation such
33 person, firm, partnership, corporation or association is found guilty of
34 the same violation such penalties as hereinbefore set forth shall be
35 doubled, and if there be a third violation within such time, such
36 penalties shall be tripled. In addition thereto the department may, in
37 its discretion, suspend the license for such time as it may deem proper
38 or revoke said license.

39 Any person, firm, partnership, corporation or association who shall,
40 except in cases of an emergency, maintain more patients in his
41 premises than he is licensed so to do, shall be subject to a penalty, in
42 accordance with the procedure set forth in section 13, in an amount
43 equal to the daily charge collected from such patient or patients plus
44 \$25.00 for each day each extra patient is so maintained.
45 (cf: P.L.1986, c.96, s.1)

1 15. Section 12 of P.L.1992, c.160 (C.26:2H-18.62) is amended to
2 read as follows:

3 12. a. The monies in the hospital and other health care initiatives
4 account are appropriated for the establishment of a program which will
5 assist hospitals and other health care facilities in the underwriting of
6 innovative and necessary health care services and provide funding for
7 public or private health care programs, which may include any
8 program funded pursuant to section 25 of P.L.1991, c.187
9 (C.26:2H-18.47), managed care regulation and oversight pursuant to
10 P.L.1997, c.192 (C.26:2S-1 et al.), administration and enforcement of
11 health care facility licensing requirements pursuant to P.L.1971, c.136
12 (C.26:2H-1 et seq.), and for such other programs that the
13 commissioner deems necessary or appropriate to carry out the
14 provisions of section 5 of P.L.1992, c.160 (C.26:2H-18.55).

15 The commissioner shall develop equitable regulations regarding
16 eligibility for and access to the financial assistance, within six months
17 of the effective date of this act.

18 b. Such funds as may be necessary shall be transferred by the
19 department from the fund to the Division of Medical Assistance and
20 Health Services in the Department of Human Services for payment to
21 disproportionate share hospitals.

22 c. Notwithstanding any law to the contrary, each hospital whose
23 revenue cap was established by the Hospital Rate Setting Commission
24 in 1993 pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.) shall pay
25 .53% of its total operating revenue to the department for deposit in the
26 Health Care Subsidy Fund, except that the amount to be paid by a
27 hospital in a given year shall be prorated by the department so as not
28 to exceed the \$40 million limit set forth in this subsection. The
29 hospital shall make monthly payments to the department beginning
30 July 1, 1993, except that the total amount paid into the Health Care
31 Subsidy Fund plus interest shall not exceed \$40 million per year. The
32 commissioner shall determine the manner in which the payments shall
33 be made.

34 For the purposes of this subsection, "total operating revenue" shall
35 be defined by the department in accordance with financial reporting
36 requirements established pursuant to N.J.A.C.8:31B-3.3.

37 d. The monies paid by the hospitals shall be credited to the hospital
38 and other health care initiatives account.

39 (cf: P.L.1997, c.192, s.30)

40

41 16. (New section) a. Notwithstanding the provisions of section 7
42 of P.L.1971, c.136 (C.26:2H-7) to the contrary, 20 months after the
43 effective date of P.L. , c. (pending before the Legislature as this bill)
44 the following shall be exempt from the certificate of need requirement:

45 Extracorporeal shock wave lithotripter;

46 Hyperbaric chamber;

1 Positron emission tomography;
2 Residential drug and alcohol services;
3 Ambulatory surgical facilities;
4 Basic obstetric and pediatric services and birth centers; and
5 Linear accelerator, including Cobalt 60 unit.

6 b. Notwithstanding the provisions of subsection a. of this section
7 to the contrary, if the Commissioner of Health and Senior Services
8 determines that Department of Health and Senior Services licensing
9 standards for a health care service or facility listed in subsection a. of
10 this section have been adopted by regulation of the department
11 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
12 (C.52:14B-1 et seq.), the commissioner may exempt the health care
13 service or facility from the provisions of section 7 of P.L.1971, c.136
14 (C.26:2H-7) prior to the 20-month period established in subsection a.
15 of this section.

16 The commissioner shall publish notice of any exemptions
17 established pursuant to this subsection in the New Jersey Register and
18 provide for 45 days public notice prior to the effective date of the
19 exemption.

20 c. In the case of any health care service or facility that is not
21 exempted from the provisions of section 7 of P.L.1971, c.136
22 (C.26:2H-7) pursuant to this section or section 19 of P.L.1992, c.160
23 (C.26:2H-7a) and is not subject to expedited review, the commissioner
24 shall publish a call schedule for the initiation of the services or
25 facilities within 90 days of the date of enactment of this act. In the
26 event that the commissioner determines that there is insufficient need
27 to support the initiation of the service or facility, the commissioner is
28 authorized to cancel the call. The commissioner shall provide public
29 notice of the cancellation at least 45 days prior to the scheduled call
30 date.

31
32 17. (New section) There is established a 15-member Certificate of
33 Need Study Commission. The members shall include: the
34 Commissioners of Health and Senior Services and Human Services
35 who shall serve ex officio; the Chairman of the Senate Health
36 Committee and the Chairman of the General Assembly Health
37 Committee; and 11 public members. The public members shall be
38 appointed as follows: one State licensed health care professional and
39 one representative of a State licensed health care facility, to be
40 appointed by the President of the Senate; one State licensed health
41 care professional and one representative of a State licensed health care
42 facility, to be appointed by the Speaker of the General Assembly; and
43 two State licensed health care professionals, three representatives of
44 a State licensed health care facility, one health economist and one
45 consumer of health care services who is knowledgeable about health
46 care financing issues and who is a resident of this State, to be

1 appointed by the Governor. Vacancies in the membership of the
2 commission shall be filled in the same manner provided for the original
3 appointments.

4 a. The Commissioner of Health and Senior Services shall serve as
5 chairman of the commission. The commission shall select a vice-
6 chairman from among the members. The commission shall organize as
7 soon as practicable following the appointment of its members.

8 The commission shall be entitled to call to its assistance and avail
9 itself of the services of the employees of any State, county or
10 municipal department, board, bureau, commission or agency as it may
11 require and as may be available to it for its purposes. The Department
12 of Health and Senior Services shall provide staff support for the
13 commission.

14 b. The commission shall conduct a comprehensive study to examine
15 the impact that elimination of certificate of need requirements would
16 have on each of the following health care services and facilities:
17 nursing homes; home health agencies; assisted living residences and
18 programs; comprehensive personal care homes; psychiatric beds;
19 comprehensive rehabilitation services; trauma services; transfer of
20 ownership of an existing general acute care hospital; new general acute
21 care hospitals; special hospitals; children's hospitals; organ banks;
22 cardiac surgery and cardiac catheterization; mobile intensive care
23 units; organ and bone marrow transplantation, including stem cell;
24 burn centers; specialized perinatal and pediatric services, including
25 maternal and child health consortia, pediatric intensive care and
26 neonatal intermediate and intensive care; and any other health care
27 services and facilities subject to certificate of need that are not
28 scheduled for exemption pursuant to sections 19 of P.L.1992, c.160
29 (C.26:2H-7a) and 16 of P.L. , c. (C.)(pending before the
30 Legislature as this bill). The commission shall assess the impact
31 deregulation of the services or facilities will have on:

- 32 (1) urban hospitals;
33 (2) access to care by residents in the State;
34 (3) quality of care;
35 (4) services that are delivered Statewide or on a regional basis; and
36 (5) the State General Fund, including programs such as Medicaid.

37 The commission shall make recommendations about which health
38 care services or facilities, if any, should continue to be subject to
39 certificate of need requirements or another type of State regulation,
40 and which services or facilities should be exempt from such State
41 regulation.

42 c. Within 20 months of the effective date of P.L. c. (pending
43 before the Legislature as this bill), the commission shall report its
44 findings and recommendations to the Governor and the Senate and
45 General Assembly Health Committees.

46 d. The commission shall expire upon the submission of its report.

1 18. (New section) Notwithstanding the provisions of P.L.1971,
2 c.136 (C.26:2H-1 et seq.) to the contrary, a health care service or
3 equipment which involves new technology that is not identified in
4 N.J.A.C.8:33 et seq., shall not be subject to certificate of need
5 requirements and may be initiated in the State in accordance with the
6 requirements of this section.

7 a. The new technology shall be directly related to, or shall be used
8 in conjunction with, a health care service or facility for which the
9 provider is already licensed and has obtained a certificate of need,
10 when required.

11 b. The provider shall notify the Commissioner of Health and Senior
12 Services about the intent to initiate the new technology at least 30
13 days prior to the date the provider will begin use of the technology.

14 c. The new technology shall have pre-market approval from the
15 federal Food and Drug Administration.

16 d. The provider shall use the new technology in accordance with
17 guidelines approved by the Joint Commission on Accreditation of
18 Health Care Organizations until such time as the Department of
19 Health and Senior Services has adopted licensing standards for the
20 new technology. The provider shall be required to comply with the
21 department's licensing standards for the new technology upon adoption
22 of the standards.

23 e. The provider shall agree to submit to the department appropriate
24 patient information and other data concerning use of the new
25 technology to assist the department in establishing licensing standards.
26 The provider shall submit the information and other data on a
27 quarterly basis until such time as licensing standards are adopted for
28 the new technology.

29 f. The department may suspend a provider's use of the new
30 technology if he determines that the provider is not in compliance with
31 the requirements of this section.

32
33 19. The following sections are repealed:

34 Section 35 of P.L.1991, c.187 (C.26:2H-5.9);

35 Section 20 of P.L.1992, c.160 (C.26:2H-7b); and

36 Section 37 of P.L.1991, c.187 (C.26:2H-10.1).

37
38 20. This act shall take effect immediately, except that section 7
39 shall take effect 45 days after the date of enactment; but the
40 commissioner may take such anticipatory administrative actions in
41 advance of the effective date of section 7 as shall be necessary for the
42 implementation of this act.

1 STATEMENT

2

3 This bill reforms the State's certificate of need program with the
4 goal of phasing out the regulation of health care facilities by certificate
5 of need to the maximum extent possible while insuring the quality of
6 and access to health care for the State's residents.

7 The certificate of need reform will be implemented in three phases.

8 Phase I of the reform provides that 45-days after enactment of the
9 bill, the following services would no longer require a certificate of
10 need, although the services would continue to be subject to licensure
11 by the Department of Health and Senior Services:

12 Hospital-based medical detoxification for drugs and alcohol;

13 Residential health care facility services;

14 Capital improvements and renovations to health care facilities,
15 including additions of medical/surgical beds in hospitals;

16 Replacement of existing major moveable equipment;

17 Inpatient operating rooms;

18 Hospital-based subacute care;

19 Ambulatory care facilities;

20 Alternate family care programs;

21 Comprehensive outpatient rehabilitation services;

22 Special child health clinics;

23 New technology in accordance with the provisions of this bill;

24 Transfer of ownership interest of a long-term care facility;

25 Additions to vehicles or hours of operation of a mobile intensive
26 care unit;

27 Magnetic resonance imaging; and

28 Acute renal dialysis.

29 Phase II of certificate of need reform will occur within the 20-
30 month period following the date of enactment of the bill. The 20-
31 month period is provided in order to insure the department has
32 sufficient time to adopt necessary licensing standards; however, the
33 commissioner is authorized to exempt any of the Phase II services at
34 any time during the 20-month period, upon giving public notice, if he
35 determines that licensing standards have been adopted by the
36 department. The services that will be exempt from certificate of need
37 during Phase II include:

38 Extracorporeal shock wave lithotripter;

39 Hyperbaric chamber;

40 Positron emission tomography;

41 Residential drug and alcohol services;

42 Ambulatory surgical facilities;

43 Basic obstetric and pediatric services and birth centers; and

44 Linear accelerator, including Cobalt 60 unit.

45 The bill also directs the Commissioner of Health and Senior
46 Services to publish a call schedule for the initiation of the services or

1 facilities that are not exempted from certificate of need, within 90 days
2 of the date of enactment of the bill, but provides that in the event that
3 the commissioner determines that there is insufficient need to support
4 the initiation of the service or facility, the commissioner is authorized
5 to cancel the call.

6 Phase III of certificate of need reform will begin immediately upon
7 enactment of the bill and continue through the second year after
8 enactment. Phase III concerns those health care services and facilities
9 that either have a potentially large impact on the State budget or are
10 specialized or Statewide or regional in nature. Prior to considering
11 exemption of any of these services from certificate of need, it is
12 prudent to determine the impact that elimination of certificate of need
13 requirements would have on each of the health care services or
14 facilities. Accordingly, the bill creates a 15-member Certificate of
15 Need Study Commission which will be established upon enactment of
16 the bill. The commission will assess the impact deregulation of the
17 services or facilities will have on:

- 18 (1) urban hospitals;
- 19 (2) access to care by residents in the State;
- 20 (3) quality of care;
- 21 (4) services that are delivered Statewide or on a regional basis; and
- 22 (5) State General Fund, including programs such as Medicaid.

23 The services and facilities the commission will consider include:
24 nursing homes, home health agencies, assisted living residences and
25 programs, comprehensive personal care homes, psychiatric beds,
26 comprehensive rehabilitation services, trauma services, transfer of
27 ownership interest of a general acute care hospital, new general acute
28 care hospitals, new special hospitals, children's hospitals, organ banks,
29 cardiac surgery and cardiac catheterization, mobile intensive care
30 units, organ and bone marrow transplantation (including stem cell),
31 burn centers, specialized perinatal and pediatric services, including
32 maternal and child health consortia, pediatric intensive care and
33 neonatal intermediate and intensive care and any other health care
34 services and facilities subject to certificate of need.

35 The members of the commission will include: the Commissioners of
36 Health and Senior Services and Human Services who shall serve ex
37 officio; the Chairman of the Senate Health Committee and the
38 Chairman of the General Assembly Health Committee and 11 public
39 members including four State licensed health care professionals, five
40 representatives of State licensed health care facilities, one health
41 economist and one consumer of health care services who is
42 knowledgeable about health care financing issues and who is a resident
43 of this State. The President of the Senate and Speaker of the General
44 Assembly shall each appoint a health care professional and health care
45 facility representative and the Governor will appoint the other
46 members. The Commissioner of Health and Senior Services shall serve

1 as chairman of the commission.

2 The commission is directed to report its findings and
3 recommendations to the Governor, the Senate and the General
4 Assembly within 20 months from the date of enactment of the bill.
5 Following receipt and review of the report, the Legislature and
6 Governor will determine which of the remaining certificate of need
7 services should be exempted from regulation under the program or
8 otherwise regulated by the State.

9 In order to address the issue of regulating new technology, the bill
10 provides that a health care service or equipment which involves new
11 technology that is not identified in N.J.A.C.8:33 et seq., (the
12 regulations governing certificate of need) shall not be subject to
13 certificate of need requirements and may be initiated in the State in
14 accordance with the following requirements:

15 a. The new technology shall be directly related to, or will be used
16 in conjunction with, a health care service or facility for which the
17 provider is already licensed and has obtained a certificate of need,
18 when required;

19 b. The provider shall notify the Commissioner of Health and Senior
20 Services about the intent to initiate the new technology at least 30
21 days prior to the date the provider will begin use of the technology;

22 c. The new technology shall have pre-market approval from the
23 federal Food and Drug Administration;

24 d. The provider shall use the new technology in accordance with
25 guidelines approved by the Joint Commission on Accreditation of
26 Health Care Organizations until such time as the Department of
27 Health and Senior Services has adopted licensing standards for the
28 new technology. The provider shall be required to comply with the
29 department's licensing standards for the new technology upon adoption
30 of the standards; and

31 e. The provider shall agree to submit to the department appropriate
32 patient information and other data concerning use of the new
33 technology to assist the department in establishing licensing standards.
34 The provider shall submit the information and other data on a
35 quarterly basis until such time as licensing standards are adopted for
36 the new technology.

37 The bill provides that the department may suspend a provider's use
38 of the new technology if he determines that the provider is not in
39 compliance with the requirements of this bill.

40 The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold for
41 health care facility construction projects and major moveable
42 equipment that are subject to certificate of need, from \$1 million to \$2
43 million.

44 The bill also simplifies the current certificate of need process by
45 eliminating the local advisory boards (LABs) established in 1991 so
46 that all applications will be reviewed only at the State level by the

1 State Health Planning Board and the commissioner, in the case of
2 applications subject to full review and by the commissioner, in the case
3 of applications subject to expedited review. To ensure community
4 input when a health care facility or service subject to certificate of
5 need may be closed or eliminated, however, the bill requires the State
6 Health Planning Board to conduct at least one public hearing in the
7 area served by the facility or service within 30 days of receipt of the
8 application for approval to close or eliminate the facility or service.
9 The bill also eliminates references to the State Health Plan, as this
10 document is no longer used as the basis for approving certificate of
11 need applications.

12 The membership of the State Health Planning Board is also changed
13 to reflect the elimination of the LABs (which were members of the
14 board), to include nine public members, five of whom are consumers
15 of health care services. Currently, the board has five public members,
16 three of whom are consumers.

17 The bill amends current law regarding appeals of denials of
18 certificates of need to provide that an applicant whose application was
19 denied by the commissioner, may request a hearing through the Office
20 of Administrative Law, rather than appeal the decision to the Health
21 Care Administration Board.

22 The bill redirects the funding for the local advisory boards (which
23 comes from the .53% assessment on hospitals) to the department's
24 enhanced health care services and facilities' licensing enforcement
25 activities required in the bill. Also, N.J.S.A.26:2H-12 is amended to
26 revise the \$2,000 limit on health care facility licensure fees. The bill
27 establishes a new fee structure for licensure and inspection activities,
28 which will help support the department's enhanced activities in these
29 areas. The bill provides that annual licensure fees shall not exceed
30 \$10,000 in the case of a hospital and \$4,000 in the case of any other
31 health care facility, and inspection fees shall not exceed \$5,000 in the
32 case of a hospital and \$3,000 in the case of any other health care
33 facility. No inspection fee shall be charged for inspections other than
34 biannual inspections. Also, the bill raises the limit on penalties for
35 violations of the "Health Care Facilities Planning Act," P.L.1971,
36 c.136, to up to \$1,000 per day for operating a health care facility
37 without a license and to up to \$2,500 per day for a violation
38 concerning patient care or physical plant standards. The current limits
39 on violations are \$250 and \$1,000, respectively.

40 The bill eliminates the so-called "25% rule" under which a
41 certificate of need applicant could proceed to the next level of review
42 even if the recommendation was to disapprove the application, if the
43 applicant had received a favorable vote on the application by at least
44 25% of the planning board's membership.

45 Finally, the bill repeals section 35 of P.L.1991, c.187 (C.26:2H-
46 5.9) which established the local advisory boards, and section 20 of

S1181 SINAGRA, VITALE

26

1 P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to
2 hospitals for certain construction projects. This provision is no longer
3 needed because the bill exempts all capital improvements and
4 renovations from certificate of need requirements. Also, the bill
5 repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the
6 "25% rule" for decisions made by the local advisory boards and the
7 State Health Planning Board.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE, No. 1181

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 1998

The Senate Health Committee reports favorably and with committee amendments Senate Bill No. 1181.

As amended by committee, this bill reforms the State's certificate of need program with the goal of phasing out the regulation of health care facilities by certificate of need to the maximum extent possible while insuring the quality of and access to health care for the State's residents.

The certificate of need reform will be implemented in three phases.

Phase I of the reform provides that 45-days after enactment of the bill, the following services would no longer require a certificate of need, although the services would continue to be subject to licensure by the Department of Health and Senior Services:

- Hospital-based medical detoxification for drugs and alcohol;
- Residential health care facility services;
- Capital improvements and renovations to health care facilities;
- Additions of medical/surgical, adult intensive care and adult critical care beds in hospitals;
- Replacement of existing major moveable equipment;
- Inpatient operating rooms;
- Hospital-based subacute care;
- Ambulatory care facilities;
- Alternate family care programs;
- Comprehensive outpatient rehabilitation services;
- Special child health clinics;
- New technology in accordance with the provisions of this bill;
- Transfer of ownership interest of a long-term care facility;
- Additions to vehicles or hours of operation of a mobile intensive care unit;
- Magnetic resonance imaging; and
- Acute renal dialysis.

Phase II of certificate of need reform will occur within the 20-month period following the date of enactment of the bill. The 20-month period is provided in order to insure the department has sufficient time to adopt necessary licensing standards; however, the

commissioner is authorized to exempt any of the Phase II services at any time during the 20-month period, upon giving public notice, if he determines that licensing standards have been adopted by the department. The services that will be exempt from certificate of need during Phase II include:

Extracorporeal shock wave lithotripter;

Hyperbaric chamber;

Positron emission tomography;

Residential drug and alcohol services;

Ambulatory surgical facilities;

Basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and

Linear accelerator, including Cobalt 60 unit.

The bill also directs the Commissioner of Health and Senior Services to publish a call schedule for the initiation of the services or facilities that are not exempted from certificate of need, within 90 days of the date of enactment of the bill, but provides that in the event that the commissioner determines that there is insufficient need to support the initiation of the service or facility, the commissioner is authorized to cancel the call.

Phase III of certificate of need reform will begin immediately upon enactment of the bill and continue through the second year after enactment. Phase III concerns those health care services and facilities that either have a potentially large impact on the State budget or are specialized or Statewide or regional in nature. Prior to considering exemption of any of these services from certificate of need, it is prudent to determine the impact that elimination of certificate of need requirements would have on each of the health care services or facilities. Accordingly, the bill creates a 15-member Certificate of Need Study Commission which will be established upon enactment of the bill. The commission will assess the impact that deregulation of the services or facilities will have on:

(1) urban hospitals;

(2) access to care by residents in the State;

(3) quality of care;

(4) services that are delivered Statewide or on a regional basis; and

(5) State General Fund, including programs such as Medicaid.

The services and facilities the commission will consider include: nursing homes, home health agencies, assisted living residences and programs, comprehensive personal care homes, psychiatric beds, comprehensive rehabilitation services, trauma services, transfer of ownership interest of a general acute care hospital, new general acute care hospitals, new special hospitals, children's hospitals, organ banks, cardiac surgery and cardiac catheterization, mobile intensive care units, organ and bone marrow transplantation (including stem cell), burn centers, specialized perinatal and pediatric services, including maternal and child health consortia, pediatric intensive care and neonatal intermediate and intensive care and any other health care

services and facilities subject to certificate of need.

The members of the commission will include: the Commissioners of Health and Senior Services and Human Services who shall serve ex officio; the Chairman of the Senate Health Committee and the Chairman of the General Assembly Health Committee and 11 public members including four State licensed health care professionals, five representatives of State licensed health care facilities, one health economist and one consumer of health care services who is knowledgeable about health care financing issues and who is a resident of this State. The President of the Senate and Speaker of the General Assembly shall each appoint a health care professional and health care facility representative, not more than one of whom in each case is from the same political party, and the Governor will appoint the other members. The Commissioner of Health and Senior Services shall serve as chairman of the commission.

The commission is directed to report its findings and recommendations to the Governor, the Senate and the General Assembly within 20 months from the date of enactment of the bill. Following receipt and review of the report, the Legislature and Governor will determine which of the remaining certificate of need services should be exempted from regulation under the program or otherwise regulated by the State.

In order to address the issue of regulating new technology, the bill provides that health care equipment which involves new technology that is not identified in N.J.A.C.8:33 et seq., (the regulations governing certificate of need) shall not be subject to certificate of need requirements and may be initiated in the State in accordance with the following requirements:

a. The new technology shall be directly related to a health care service for which the provider is already licensed and has obtained a certificate of need, when required;

b. The provider shall notify the Commissioner of Health and Senior Services about the intent to initiate the new technology at least 60 days prior to the date the provider will begin use of the technology;

c. The new technology shall have pre-market approval from the federal Food and Drug Administration;

d. The provider shall use the new technology in accordance with guidelines approved by the Joint Commission on Accreditation of Health Care Organizations until such time as the Department of Health and Senior Services has adopted licensing standards for the new technology. The provider shall be required to comply with the department's licensing standards for the new technology upon adoption of the standards; and

e. The provider shall agree to submit to the department appropriate patient information and other data concerning use of the new technology to assist the department in establishing licensing standards. The provider shall submit the information and other data on a quarterly basis until such time as licensing standards are adopted

for the new technology.

The bill provides that the commissioner may suspend a provider's use of the new technology if he determines that the provider is not in compliance with the requirements of this bill.

The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold for health care facility construction projects and major moveable equipment that are subject to certificate of need, from \$1 million to \$2 million.

The bill also simplifies the current certificate of need process by eliminating the local advisory boards (LABs) established in 1991 so that all applications will be reviewed only at the State level by the State Health Planning Board and the commissioner, in the case of applications subject to full review and by the commissioner, in the case of applications subject to expedited review. To ensure community input when a health care facility or service subject to certificate of need may be closed or eliminated, however, the bill requires the State Health Planning Board to conduct at least one public hearing in the area served by the facility or service within 30 days of receipt of the application for approval to close or eliminate the facility or service. The bill also eliminates references to the State Health Plan, as this document is no longer used as the basis for approving certificate of need applications.

The membership of the State Health Planning Board is also changed to reflect the elimination of the LABs (which were members of the board), to include nine public members, five of whom are consumers of health care services. Currently, the board has five public members, three of whom are consumers.

The bill amends current law regarding appeals of denials of certificates of need to provide that an applicant whose application was denied by the commissioner, may request a hearing through the Office of Administrative Law, rather than appeal the decision to the Health Care Administration Board.

The bill redirects the funding for the local advisory boards (which comes from the .53% assessment on hospitals) to the department's enhanced health care services and facilities' licensing enforcement activities required in the bill. Also, N.J.S.A.26:2H-12 is amended to revise the \$2,000 limit on health care facility licensure fees. The bill establishes a new fee structure for licensure and inspection activities, which will help support the department's enhanced activities in these areas. The bill provides that annual licensure fees shall not exceed \$10,000 in the case of a hospital and \$4,000 in the case of any other health care facility, and biennial inspection fees shall not exceed \$5,000 in the case of a hospital and \$3,000 in the case of any other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. Also, the bill raises the limit on penalties for violations of the "Health Care Facilities Planning Act," P.L.1971, c.136, to up to \$1,000 per day for operating a health care facility without a license and to up to \$2,500 per day for a violation

concerning patient care or physical plant standards. The current limits on violations are \$250 and \$1,000, respectively.

The bill eliminates the so-called "25% rule" under which a certificate of need applicant could proceed to the next level of review even if the recommendation was to disapprove the application, if the applicant had received a favorable vote on the application by at least 25% of the planning board's membership.

Finally, the bill repeals section 35 of P.L.1991, c.187 (C.26:2H-5.9) which established the local advisory boards, and section 20 of P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to hospitals for certain construction projects. This provision is no longer needed because the bill exempts all capital improvements and renovations from certificate of need requirements. Also, the bill repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the "25% rule" for decisions made by the local advisory boards and the State Health Planning Board.

The committee amended the bill to:

- Add to the list of Phase I exempt services, additions to adult intensive care and adult critical care beds in hospitals, as well as medical/surgical beds in hospitals;
- Add to the list of Phase II exempt services, additions to basic obstetric and pediatric beds in hospitals;
- Correct language in the bill to clarify that inspections of health care facilities shall be conducted on a biennial (two-year) basis and that the inspection fee will be assessed on a biennial basis;
- Restore the language in P.L.1996, c.102 concerning subacute care bed limits to that which is currently in effect;
- Require that a health care provider give the commissioner 60 days notice, rather than 30 days, prior to the date the provider will begin use of new technology equipment;
- Specify that of the President of the Senate's and Speaker of the General Assembly's appointments of members to the Certificate of Need Study Commission, not more than one of the two appointments in each case, shall be of the same political party; and
- Make various technical changes to insure consistency in the terminology used in the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1181

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 1998

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1181 (1R).

The certificate of need (CN) program is part of the regulatory structure for the State's health care delivery system put in place in the 1970's that attempted to control health care costs by allocating health care resources through a centralized health planning mechanism. Significant changes in the economics of the health care system have since taken place. This bill phases out regulation by CN to the maximum extent possible while ensuring the quality of, and access to, health care.

The CN reform will be implemented in three phases.

Phase I of CN reform. The bill provides that 45 days after its enactment, the following services will no longer require a CN, although the services will continue to be subject to licensure by the Department of Health and Senior Services (DHSS):

- Hospital-based medical detoxification for drugs and alcohol;
- Residential health care facility services;
- Capital improvements and renovations to health care facilities;
- Additions of medical/surgical, adult intensive care and adult critical care beds in hospitals;
- Replacement of existing major moveable equipment;
- Inpatient operating rooms;
- Hospital-based subacute care;
- Ambulatory care facilities;
- Alternate family care programs;
- Comprehensive outpatient rehabilitation services;
- Special child health clinics;
- New technology in accordance with the provisions of this bill;
- Transfer of ownership interest of a long-term care facility;
- Additions to vehicles or hours of operation of a mobile intensive care unit;
- Magnetic resonance imaging; and
- Acute renal dialysis.

Phase II of CN reform. The bill provides that Phase II will occur within a 20-month period following its enactment. The 20-month period will ensure that DHSS has sufficient time to adopt necessary licensing standards; however, the commissioner is authorized to exempt any of the Phase II services at any time during the 20-month period, upon giving public notice, if the commissioner determines that licensing standards have been adopted by DHSS. The services that will be exempted from CN requirements during Phase II include:

Extracorporeal shock wave lithotripter;

Hyperbaric chamber;

Positron emission tomography;

Residential drug and alcohol services;

Ambulatory surgical facilities;

Basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and

Linear accelerator, including Cobalt 60 unit.

The bill also directs the Commissioner of DHSS to publish a call schedule for the initiation of the services or facilities that are not exempted from CN requirements, within 90 days of the date of enactment of the bill, but provides that if the commissioner determines that there is insufficient need to support the initiation of the service or facility, the commissioner is authorized to cancel the call.

Phase III of CN reform. The bill begins Phase III immediately upon its enactment and continues it through the second year after enactment. Phase III concerns those health care services and facilities that either have a potentially large impact on the State budget, or are specialized, or Statewide or regional in nature.

Prior to considering exemption of any of these services from CN requirements, it is prudent to determine the impact that elimination of CN requirements would have on each of the health care services or facilities. Accordingly, the bill creates a 15-member Certificate of Need Study Commission which will be established upon enactment of the bill. The commission will assess the impact that deregulation of the services or facilities will have on:

(1) urban hospitals;

(2) access to care by residents in the State;

(3) quality of care;

(4) services that are delivered Statewide or on a regional basis; and

(5) the State General Fund, including programs such as Medicaid.

The services and facilities the commission will consider include: nursing homes, home health agencies, assisted living residences and programs, comprehensive personal care homes, psychiatric beds, comprehensive rehabilitation services, trauma services, transfer of ownership interest of a general acute care hospital, new general acute care hospitals, new special hospitals, children's hospitals, organ banks, cardiac surgery and cardiac catheterization, mobile intensive care units, organ and bone marrow transplantation (including stem cell), burn centers, specialized perinatal and pediatric services, including

maternal and child health consortia, pediatric intensive care and neonatal intermediate and intensive care and any other health care services and facilities subject to CN requirements.

The members of the commission will include: the Commissioners of Health and Senior Services and Human Services who shall serve ex officio; the Chairman of the Senate Health Committee and the Chairman of the General Assembly Health Committee and 11 public members including four State licensed health care professionals, five representatives of State licensed health care facilities, one health economist and one consumer of health care services who is knowledgeable about health care financing issues and who is a resident of this State. The President of the Senate and Speaker of the General Assembly shall each appoint a health care professional and health care facility representative, not more than one of whom in each case is from the same political party, and the Governor will appoint the other members. The Commissioner of Health and Senior Services shall serve as chairman of the commission.

The commission is directed to report its findings and recommendations to the Governor, the Senate and the General Assembly within 20 months from the date of enactment of the bill. Following receipt and review of the report, the Legislature and Governor will determine which of the remaining CN services should be exempted from regulation under the program or otherwise regulated by the State.

To address the issue of regulating new technology, the bill provides that health care equipment which involves new technology that is not identified in N.J.A.C.8:33 et seq., (the regulations governing CN requirements) shall not be subject to CN requirements and may be initiated in the State in accordance with the following requirements:

- The new technology shall be directly related to a health care service for which the provider is already licensed and has obtained a CN, when required;

- The provider shall notify the Commissioner of Health and Senior Services about the intent to initiate the new technology at least 60 days prior to the date the provider will begin use of the technology;

- The new technology shall have pre-market approval from the federal Food and Drug Administration;

- The provider shall use the new technology in accordance with guidelines approved by the Joint Commission on Accreditation of Health Care Organizations until such time as DHSS has adopted licensing standards for the new technology. The provider shall be required to comply with DHSS licensing standards for the new technology upon adoption of the standards; and

- The provider shall agree to submit to DHSS appropriate patient information and other data concerning use of the new technology to assist DHSS in establishing licensing standards. The provider shall submit the information and other data on a quarterly basis until such

time as licensing standards are adopted for the new technology.

The bill provides that the commissioner may suspend a provider's use of the new technology if he determines that the provider is not in compliance with the requirements of this bill.

The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold at which health care facility construction projects and major moveable equipment become subject to CN requirements, from \$1 million to \$2 million.

The bill also simplifies the current CN process by eliminating the local advisory boards (LAB's) established in 1991. Under the bill all applications will be reviewed only at the State level by the State Health Planning Board and the commissioner, in the case of applications subject to full review and by the commissioner, in the case of applications subject to expedited review. To ensure community input when ownership of an acute care hospital is to be transferred or a health care facility or service which is subject to CN requirements may be closed or eliminated, however, the bill requires the State Health Planning Board to conduct at least one public hearing in the area served by the facility or service within 30 days of receipt of the application for approval to close or eliminate the facility or service. The bill also eliminates references to the State Health Plan, as this document is no longer used as the basis for approving CN applications.

The membership of the State Health Planning Board is also changed to reflect the elimination of the LAB's (which were members of the board), to include nine public members, five of whom are consumers of health care services. Currently, the board has five public members, three of whom are consumers.

The bill amends current law regarding appeals of CN denials of to provide that an applicant whose application was denied by the commissioner, may request a hearing through the Office of Administrative Law, rather than appeal the decision to the Health Care Administration Board.

The bill redirects the funding for the LAB's (which comes from the .53% assessment on hospitals) to the enhanced health care services and facilities' licensing enforcement activities by DHSS which are required in the bill. Also, N.J.S.A.26:2H-12 is amended to revise the \$2,000 limit on health care facility licensure fees. The bill establishes a new fee structure for licensure and inspection activities, which will help support enhanced activities by DHSS in these areas. The bill provides that annual licensure fees shall not exceed \$10,000 in the case of a hospital and \$4,000 in the case of any other health care facility, and biennial inspection fees shall not exceed \$5,000 in the case of a hospital and \$3,000 in the case of any other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. Also, the bill raises the limit on penalties for violations of the "Health Care Facilities Planning Act," P.L.1971, c.136, from \$250 per day to up to \$1,000 per day for operating a health care facility

without a license and from \$1,00 per day to up to \$2,500 per day for a violation concerning patient care or physical plant standards.

The bill eliminates the so-called "25% rule" under which a CN applicant could proceed to the next level of review even if the recommendation was to disapprove the application, if the applicant had received a favorable vote on the application by at least 25% of the planning board's membership.

The bill repeals section 35 of P.L.1991, c.187 (C.26:2H-5.9) which established the LAB's, and section 20 of P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to hospitals for certain construction projects. This provision is no longer needed because the bill exempts all capital improvements and renovations from CN requirements. The bill repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the "25% rule" for decisions made by the LAB's and the State Health Planning Board.

As amended, this bill is identical to Assembly Bill No. 2178 with Assembly committee amendments.

FISCAL IMPACT:

While the bill increases the upper limits of the fee ranges, it does not set actual fee amounts; DHSS has not provided information about fee levels or total revenue expectations from fees and fines.

COMMITTEE AMENDMENTS:

The amendments clarify that, to ensure community input, a hearing will be held when ownership of an acute care hospital is to be transferred, as well as when a health care facility or service subject to CN requirements may be closed or eliminated; however, the amendments also provide that the State Health Planning Board need not hold a public hearing on the application for a certificate of need to transfer ownership of the hospital if the Attorney General or the DHSS is required by State law to hold a public hearing on the transfer of ownership of the hospital.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1181

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JULY 20, 1998

Bill Summary:

Senate Bill No. 1181 (1R) of 1998 reforms the State's Certificate of Need (CON) program with the goal of phasing out the regulation of health care facilities by CON to the maximum extent possible while insuring the quality of and access to health care for the State's residents. CON reform will be implemented in three phases:

- **Phase I** would be implemented within 45-days of enactment. CONs would no longer be required for the following services: hospital-based medical detoxification for drugs and alcohol; residential health care facilities; capital improvements and renovations to health care facilities; additions of medical/surgical, adult intensive care and adult critical care beds in hospitals; replacement of existing major moveable equipment; inpatient operating rooms; hospital-based acute care; ambulatory care facilities; alternate family care programs; comprehensive outpatient rehabilitation services; special child health clinics; various new technologies; transfer of ownership interest of a long-term care facility; additions to vehicles or hours of operation of a mobile intensive care unit; magnetic resonance imaging; and acute renal dialysis.
- **Phase II** would be implemented over a 20-month period following enactment or sooner if appropriate licensing standards are in place. CONs for the following services would no longer be required: extracorporeal shock wave lithotripter; hyperbaric chamber; positron emission tomography; residential drug and alcohol services; ambulatory surgical facilities; basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and linear accelerator, including Cobalt 60 unit.
- **Phase III** would be implemented immediately upon enactment and continue for two years following enactment. It would affect those health care services and facilities that either have a potentially large impact on the State budget or are specialized or Statewide or regional in nature. As part of Phase III, a 15-member Certificate

of Need Study Commission would be established to assess deregulation's impact on: urban hospitals; access to care; quality of services; services that are delivered Statewide or on a regional basis; and the State's General Fund, including the Medicaid program. The services and facilities to be examined are: nursing homes; home health agencies; assisted living residences and programs; comprehensive personal care homes; psychiatric beds; comprehensive rehabilitation services; trauma services; transfer of ownership interest in a general acute care hospital, new general acute care hospitals; new special hospitals; children's hospitals; organ banks; cardiac surgery and cardiac catheterization; mobile intensive care units; organ and bone marrow transplantation; burn centers; specialized perinatal and pediatric services; pediatric intensive care and neonatal intermediate and intensive care; etc.

Other provisions of the bill would:

- Establish procedures for the use of new technology;
- Raise the dollar threshold for health care facility construction projects and major moveable equipment that would be subject to CON, from \$1 to \$2 million.
- Eliminate the local advisory boards and redirect their funding from the .53% assessment on hospitals to the Department of Health and Senior Services (DHSS) to enhance DHSS' health care services and facilities' licensing enforcement activities.
- Establish a new fee structure for licensure and inspection activities to enhance DHSS' efforts in those areas. Annual licensure fees would be increased to a maximum of \$10,000 for a hospital and \$4,000 for other health care facilities, and biennial inspection fees are established that would not exceed \$5,000 for a hospital and \$3,000 for other health care facilities. Penalties for licensure violations would be increased from the current \$250 to \$1,000 per day (operating a health care facility without a license) and from \$1,000 to \$2,500 per day (violations concerning patient care or physical plant standards).

Agency Comments:

DHSS and the Office of Management and Budget have not provided any fiscal information on the legislation.

Office of Legislative Services Comments:

Though costs and savings associated with the legislation cannot be determined, the following is noted:

- The CON process is self supporting through fees charged applicants; the CON program does not depend on General Fund revenues. Thus, proposed changes to the CON process should have no direct impact on the General Fund.

The FY 1999 recommended budget indicates that DHSS would process 156 CON applications of various types which would

generate nearly \$3.5 million in fees. The proposed changes would reduce both the number of CON applications that would be filed and the amount of CON revenues that would be generated.

However, how much less CON revenues would be realized cannot be readily determined.

- The three local advisory boards each receive \$660,000 in revenues generated from a .53% assessment on hospital revenues. This \$2.0 million would now be available to DHSS for enhanced licensing activities.
- The FY 1999 recommended budget anticipates that DHSS would realize over \$2.2 million in various licensing and application fees and fines. The proposed changes will increase the amount of revenues DHSS collects in fines and from its licensing and application processing activities. How much additional revenues DHSS would realize cannot be determined. However, as the bill increases application and licensure fees and fines significantly, it is not unreasonable to expect revenues to double from current levels, though the amount may vary significantly from year to year.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 2178

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 11, 1998

Sponsored by:

Assemblywoman CHARLOTTE VANDERVALK

District 39 (Bergen)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

SYNOPSIS

Reforms certificate of need process.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/12/1998)

1 AN ACT concerning certificate of need and revising parts of statutory
2 law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. (New section) The Legislature finds and declares that:

8 a. The regulatory structure for the State's health care delivery
9 system put in place in the 1970's was an outgrowth of federal
10 legislation predicated on the idea that the most satisfactory means of
11 controlling health care costs was the allocation of health care
12 resources by government through a highly centralized health planning
13 mechanism;

14 b. For two decades, the State established strong controls over the
15 health care delivery system by such means as the setting of hospital
16 rates and through the certificate of need program, which allocated the
17 provision of services among providers, regulated hospital expansion,
18 and regulated the purchase of equipment and the use of medical
19 technology;

20 c. The evolution of market-based means of controlling costs, most
21 notably the growth of managed care, and the rapid development of
22 new medical techniques and innovations in medical technology
23 exposed the inefficiencies inherent in centralized health care planning,
24 which was unable to respond quickly to the changing needs of the
25 health care system;

26 d. In 1992, the Legislature began to dismantle the existing
27 regulatory structure, responding to the needs of the health care system
28 in New Jersey by eliminating hospital rate setting, leaving hospital
29 charges to be established through negotiation between hospitals and
30 those who paid for health care services and, by providing access to
31 health insurance to all citizens of the State, without regard to health
32 status or preexisting condition, contributed to the significant changes
33 taking place in the underlying economics of the health care delivery
34 system by helping to create a more competitive health care
35 environment;

36 e. The certificate of need program is the last remaining vestige of
37 the highly regulated environment, and its original purpose, which was
38 to control costs by limiting the proliferation of health care services
39 through State control of those services, has been undermined by the
40 significant changes in the economics of the health care system that
41 have taken place since its inception.

42 f. Decisions as to health care services, the acquisition of medical
43 technology, and the expansion of facilities can best be made by the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 health care provider based on his own expertise in delivering health
2 care services to the community he serves;

3 g. The appropriate role of the State with respect to services no
4 longer subject to certificate of need is that of licensure of facilities and
5 services, to ensure the quality of care;

6 h. For reasons of maintaining the quality of certain health care
7 services, a limitation of the proliferation of such services may continue
8 to be essential to protect the viability of the services as well as the
9 providers now rendering them, to protect the role of such institutions
10 as urban hospitals, whose importance to the Statewide health care
11 system is indisputable, and to guard against the closing of important
12 facilities and the transfer of services from facilities in a manner which
13 is harmful to the public interest; and

14 i. Therefore, it is essential, in order to promote greater efficiency
15 in the State's health care delivery system, to eliminate the certificate of
16 need requirement for many services immediately, to eliminate the
17 requirement for other services over a more extended period, and to
18 create a commission to consider whether certain remaining health care
19 services should continue to be subject to a certificate of need
20 requirement in the interest of the well-being of the public and to
21 ensure the maintenance of quality health care throughout the State.

22

23 2. Section 2 of P.L.1971, c.136 (C.26:2H-2) is amended to read as
24 follows:

25 2. The following words or phrases, as used in this act, shall have
26 the following meanings, unless the context otherwise requires:

27 a. "Health care facility" means the facility or institution whether
28 public or private, engaged principally in providing services for health
29 maintenance organizations, diagnosis of treatment of human disease,
30 pain, injury, deformity or physical condition, including, but not limited
31 to, a general hospital, special hospital, mental hospital, public health
32 center, diagnostic center, treatment center, rehabilitation center,
33 extended care facility, skilled nursing home, nursing home,
34 intermediate care facility, tuberculosis hospital, chronic disease
35 hospital, maternity hospital, outpatient clinic, dispensary, home health
36 care agency, residential health care facility and bioanalytical laboratory
37 (except as specifically excluded hereunder) or central services facility
38 serving one or more such institutions but excluding institutions that
39 provide healing solely by prayer and excluding such bioanalytical
40 laboratories as are independently owned and operated, and are not
41 owned, operated, managed or controlled, in whole or in part, directly
42 or indirectly by any one or more health care facilities, and the
43 predominant source of business of which is not by contract with health
44 care facilities within the State of New Jersey and which solicit or
45 accept specimens and operate predominantly in interstate commerce.

46 b. "Health care service" means the preadmission, outpatient,

1 inpatient and postdischarge care provided in or by a health care
2 facility, and such other items or services as are necessary for such
3 care, which are provided by or under the supervision of a physician for
4 the purpose of health maintenance organizations, diagnosis or
5 treatment of human disease, pain, injury, disability, deformity or
6 physical condition, including, but not limited to, nursing service, home
7 care nursing and other paramedical service, ambulance service, service
8 provided by an intern, resident in training or physician whose
9 compensation is provided through agreement with a health care
10 facility, laboratory service, medical social service, drugs, biologicals,
11 supplies, appliances, equipment, bed and board, but excluding services
12 provided by a physician in his private practice, except as provided in
13 section 7 of P.L.1971, c.136 (C.26:2H-7), or by practitioners of
14 healing solely by prayer, and services provided first aid, rescue and
15 ambulance squads as defined in the "New Jersey Highway Safety Act
16 of 1971," P.L.1971, c.351 (C.27:5F-1 et seq.).

17 c. "Construction" means the erection, building, or substantial
18 acquisition, alteration, reconstruction, improvement, renovation,
19 extension or modification of a health care facility, including its
20 equipment, the inspection and supervision thereof; and the studies,
21 surveys, designs, plans, working drawings, specifications, procedures,
22 and other actions necessary thereto.

23 d. "Board" means the Health Care Administration Board
24 established pursuant to this act.

25 e. ["Commission" means the Hospital Rate Setting Commission
26 established pursuant to this act.](Deleted by amendment, P.L. , c.)

27 f. "Government agency" means a department, board, bureau,
28 division, office, agency, public benefit or other corporation, or any
29 other unit, however described, of the State or political subdivision
30 thereof.

31 g. (Deleted by amendment, P.L.1991, c.187).

32 h. (Deleted by amendment, P.L.1991, c.187).

33 i. "Department" means the State Department of Health and Senior
34 Services.

35 j. "Commissioner" means the State Commissioner of Health and
36 Senior Services.

37 k. "Preliminary cost base" means that proportion of a hospital's
38 current cost which may reasonably be required to be reimbursed to a
39 properly utilized hospital for the efficient and effective delivery of
40 appropriate and necessary health care services of high quality required
41 by such hospital's mix of patients. The preliminary cost base initially
42 may include costs identified by the commissioner and approved or
43 adjusted by the commission as being in excess of that proportion of a
44 hospital's current costs identified above, which excess costs shall be
45 eliminated in a timely and reasonable manner prior to certification of
46 the revenue base. The preliminary cost base shall be established in

1 accordance with regulations proposed by the commissioner and
2 approved by the board.

3 l. (Deleted by amendment, P.L.1992, c.160).

4 m. "Provider of health care" means an individual (1) who is a direct
5 provider of health care service in that the individual's primary activity
6 is the provision of health care services to individuals or the
7 administration of health care facilities in which such care is provided
8 and, when required by State law, the individual has received
9 professional training in the provision of such services or in such
10 administration and is licensed or certified for such provision or
11 administration; or (2) who is an indirect provider of health care in that
12 the individual (a) holds a fiduciary position with, or has a fiduciary
13 interest in, any entity described in subparagraph b(ii) or subparagraph
14 b(iv); provided, however, that a member of the governing body of a
15 county or any elected official shall not be deemed to be a provider of
16 health care unless he is a member of the board of trustees of a health
17 care facility or a member of a board, committee or body with authority
18 similar to that of a board of trustees, or unless he participates in the
19 direct administration of a health care facility; or (b) received, either
20 directly or through his spouse, more than one-tenth of his gross annual
21 income for any one or more of the following:

22 (i) Fees or other compensation for research into or instruction in
23 the provision of health care services;

24 (ii) Entities engaged in the provision of health care services or in
25 research or instruction in the provision of health care services;

26 (iii) Producing or supplying drugs or other articles for individuals
27 or entities for use in the provision of or in research into or instruction
28 in the provision of health care services;

29 (iv) Entities engaged in producing drugs or such other articles.

30 n. "Private long-term health care facility" means a nursing home,
31 skilled nursing home or intermediate care facility presently in operation
32 and licensed as such prior to the adoption of the 1967 Life Safety
33 Code by the State Department of Health and Senior Services in 1972
34 and which has a maximum 50-bed capacity and which does not
35 accommodate Medicare or Medicaid patients.

36 o. ["Local advisory board" means an independent, private nonprofit
37 corporation which is not a health care facility, a subsidiary thereof or
38 an affiliated corporation of a health care facility, that is designated by
39 the Commissioner of Health to serve as the regional health planning
40 agency for a designated region in the State.] (Deleted by amendment,
41 P.L. _____, c. _____)

42 p. "State Health Planning Board" means the board established
43 pursuant to section 33 of P.L.1991, c.187 (C.26:2H-5.7) [to prepare
44 and review the State Health Plan and] to conduct certificate of need
45 review activities.

46 (cf: P.L.1992, c.160, s.22)

1 3. Section 5 of P.L.1971, c.136 (C.26:2H-5) is amended to read as
2 follows:

3 5. a. The commissioner, to effectuate the provisions and purposes
4 of this act, shall have the power to inquire into health care services
5 and the operation of health care facilities and to conduct periodic
6 inspections of such facilities with respect to the fitness and adequacy
7 of the premises, equipment, personnel, rules and bylaws and the
8 adequacy of financial resources and sources of future revenues.

9 b. The commissioner, with the approval of the board, shall adopt
10 and amend rules and regulations in accordance with the Administrative
11 Procedure Act, P.L.1968, c. 410 (C.52:14B-1 et seq.) to effectuate
12 the provisions and purposes of this act, including but not limited to:
13 (1) the establishment of requirements for a uniform Statewide system
14 of reports and audit relating to the quality of health care provided,
15 health care facility utilization and costs; (2) certification by the
16 department of schedules of rates, payments, reimbursement, grants and
17 other charges for health care services as provided in section 18; and
18 (3) standards and procedures relating to the licensing of health care
19 facilities and the institution of certain additional health care services.

20 c. The commissioner may enter into contracts with any government
21 agency, institution of higher learning, voluntary nonprofit agency, or
22 appropriate planning agency or council; and such entities are
23 authorized to enter into contracts with the commissioner to effectuate
24 the provisions and purposes of this **[art]** act.

25 d. The commissioner may provide consultation and assistance to
26 health care facilities in operational techniques, including but not
27 limited to, planning, principles of management, and standards of health
28 care services.

29 e. At the request of the commissioner, health care facilities shall
30 furnish to the Department of Health and Senior Services such reports
31 and information as it may require to effectuate the provisions and
32 purposes of this act, excluding confidential communications from
33 patients.

34 f. The commissioner may institute or cause to be instituted in a
35 court of competent jurisdiction proceedings to compel compliance
36 with the provisions of this act or the determinations, rules, regulations
37 and orders of the commissioner.

38 g. Notwithstanding any rules and regulations governing private
39 long-term health care facilities and enforcing the 1967 Life Safety
40 Code, as amended and supplemented, the commissioner shall permit
41 third floor occupancy of such facilities by owners, members of their
42 immediate families, and licensed professionals employed at such
43 facilities.

44 (cf: P.L.1977, c.251, s.2)

1 4. Section 33 of P.L.1991, c.187 (C.26:2H-5.7) is amended to read
2 as follows:

3 33. There is established in the Department of Health and Senior
4 Services a State Health Planning Board. The members of the board
5 shall include: the Commissioners of Health and Senior Services and
6 Human Services, or their designees, who shall serve as ex officio,
7 nonvoting members; the chairmen of the Health Care Administration
8 Board[, the Hospital Rate Setting Commission] and the Public Health
9 Council, or their designees, who shall serve as ex officio members;
10 [one representative from each of the local advisory boards;] and
11 [five] nine public members appointed by the Governor with the advice
12 and consent of the Senate, [three] five of whom are consumers of
13 health care services who are neither providers of health care services
14 or persons with a fiduciary interest in a health care service.

15 Of the additional public members first appointed pursuant to
16 P.L. , c. (pending before the Legislature as this bill), two shall
17 serve for a term of two years[,] and two shall serve for a term of three
18 years [and one shall serve for a term of four years]. Following the
19 expiration of the original terms, the public members shall serve for a
20 term of four years and are eligible for reappointment. Public members
21 -serving on the board on the effective date of P.L. , c. (pending
22 before the Legislature as this bill) shall continue to serve for the term
23 of their appointment. Any vacancy shall be filled in the same manner
24 as the original appointment, for the unexpired term. Public members
25 shall continue to serve until their successors are appointed. The public
26 members shall serve without compensation but may be reimbursed for
27 reasonable expenses incurred in the performance of their duties, within
28 the limits of funds available to the board.

29 a. A member or employee of the State Health Planning Board shall
30 not, by reason of his performance of any duty, function or activity
31 required of, or authorized to be undertaken by the board, be held
32 civilly or criminally liable if that person acted within the scope of his
33 duty, function or activity as a member or employee of the board,
34 without gross negligence or malice toward any person affected
35 thereby.

36 b. A member of the State Health Planning Board shall not vote on
37 any matter before the board concerning an individual or entity with
38 which the member has, or within the last 12 months has had, any
39 substantial ownership, employment, medical staff, fiduciary,
40 contractual, creditor or consultative relationship. A member who has
41 or has had such a relationship with an individual or entity involved in
42 any matter before the board shall make a written disclosure of the
43 relationship before any action is taken by the board with respect to the
44 matter and shall make the relationship public in any meeting in which
45 action on the matter is to be taken.

46 (cf: P.L.1991, c.187, s.33)

1 5. Section 34 of P.L.1991, c.187 (C.26:2H-5.8) is amended to read
2 as follows:

3 34. a. **【**The State Health Planning Board shall prepare and revise
4 annually, a State Health Plan. The State Health Plan shall identify the
5 unmet health care needs in an area by service and location and it shall
6 serve as an advisory document which may be considered when
7 certificate of need applications are reviewed for approval. Upon
8 completion of the entire State Health Plan, the State Health Planning
9 Board shall submit the plan to the commissioner and the board for
10 their use on an advisory basis.

11 Effective May 15, 1992, notwithstanding any other provision of law
12 to the contrary, neither the Health Care Administration Board or the
13 Department of Health shall adopt any regulation which implements any
14 goals, objectives or any other health planning recommendations that
15 have been included in the State Health Plan prepared by the State
16 Health Planning Board.

17 The State Health Planning Board shall consider the
18 recommendations of the local advisory boards in preparing and
19 revising the plan to incorporate specific regional and geographic
20 considerations of access to, and delivery of, health care services at a
21 reasonable cost. The State Health Planning Board shall incorporate
22 the recommendations of the local advisory boards into the plan unless
23 the recommendations are in conflict with the best interests of
24 Statewide health planning. If any recommendations of the local
25 advisory boards are not incorporated into the plan, the State Health
26 Planning Board shall identify those recommendations, which shall be
27 listed separately for each local health planning region, in an addendum
28 to the plan and shall state the specific reason that each
29 recommendation is in conflict with the best interests of Statewide
30 health planning.

31 For each unmet health care service identified in the plan, the plan
32 shall specify the period of time for which a certificate of need for that
33 service shall be valid.】 (Deleted by amendment, P.L. , c.)

34 b. The State Health Planning Board shall review applications for
35 certificates of need and make recommendations to the Commissioner
36 of Health【, for which purpose it may consider the State Health Plan on
37 an advisory basis】 and Senior Services.

38 c. In the case of an application for a certificate of need to close or
39 eliminate a health care facility or service that is subject to review by
40 the State Health Planning Board, the State Health Planning Board shall
41 hold at least one public hearing in the service area of the health care
42 facility or service. The public hearing shall be held no later than 30
43 days after receipt of an application that is deemed complete by the
44 Commissioner of Health and Senior Services. Public notice of the
45 hearing shall be provided at least two weeks in advance of the date of
46 the hearing.

1 Notwithstanding the provisions of this subsection to the contrary,
2 in the event that the commissioner determines that a proposed closure
3 or elimination of a health care facility should be considered on an
4 expedited basis in order to preserve the quality of health care provided
5 to the community, the commissioner may reduce the period of time
6 required for public notice of the hearing.

7 (cf: P.L.1992, c.31, s.1)

8

9 6. Section 7 of P.L.1971, c.136 (C.26:2H-7) is amended to read as
10 follows:

11 7. No health care facility shall be constructed or expanded, and no
12 new health care service shall be instituted after the effective date of
13 P.L.1971, c.136 (C.26:2H-1 et seq.) except upon application for and
14 receipt of a certificate of need as provided by P.L.1971, c.136
15 (C.26:2H-1 et seq.). No agency of the State or of any county or
16 municipal government shall approve any grant of funds for, or issue
17 any license to, a health care facility which is constructed or expanded,
18 or which institutes a new health care service, in violation of the
19 provisions of P.L.1971, c.136 (C.26:2H-1 et seq.).

20 Except as provided in [sections] section 19 [and 20] of P.L.1992,
21 c.160 (C.26:2H-7a [and C.26:2H-7b]) and section 16 of P.L. , c.
22 (C.)(pending before the Legislature as this bill), the provisions of
23 this section shall apply to:

24 a. The initiation of any health care service as provided in section
25 2 of P.L.1971, c.136 (C.26:2H-2);

26 b. The initiation by any person of a health care service which is the
27 subject of a health planning regulation adopted by the Department of
28 Health and Senior Services;

29 c. The purchase by any person of major moveable equipment
30 whose total cost is over **[\$1] \$2** million;

31 d. The expenditure by a licensed health care facility of over **[\$1]**
32 **\$2** million for **[modernization or renovation of its physical plant, or**
33 **for]** construction of a new health care facility; and

34 e. The **[modernization, renovation or]** construction of a facility by
35 any person, whose total project cost exceeds **[\$1] \$2** million, if the
36 facility-type is the subject of a health planning regulation adopted by
37 the Department of Health and Senior Services.

38 The commissioner may periodically increase the monetary
39 thresholds established in this section, by regulation, to reflect
40 inflationary increases in the costs of health care equipment or
41 construction.

42 For the purposes of this section, "health care service" shall include
43 any service which is the subject of a health planning regulation
44 adopted by the Department of Health and Senior Services, and
45 "person" shall include a corporation, company, association, society,
46 firm, partnership and joint stock company, as well as an individual.

1 A physician who initiates a health care service which is the subject
2 of a health planning regulation or purchases major moveable
3 equipment pursuant to subsection b. or c. of this section, may apply to
4 the commissioner for a waiver of the certificate of need requirement
5 if: the equipment or health care service is such an essential,
6 fundamental and integral component of the physician's practice
7 specialty, that the physician would be unable to practice his specialty
8 according to the acceptable medical standards of that specialty without
9 the health care service or equipment; the physician bills at least 75%
10 of his total amount of charges in the practice specialty which uses the
11 health care service or equipment; and the health care service or
12 equipment is not otherwise available and accessible to patients,
13 pursuant to standards established by the commissioner, by regulation.
14 The commissioner shall make a determination about whether to grant
15 or deny the waiver, within 120 days from the date the request for the
16 waiver is received by the commissioner and shall so notify the
17 physician who requested the waiver. If the request is denied, the
18 commissioner shall include in that notification the reason for the
19 denial. If the request is denied, the initiation of a health care service or
20 the purchase of major moveable equipment shall be subject to the
21 certificate of need requirements pursuant to this section.

22 A health maintenance organization which furnishes at least basic
23 comprehensive care health services on a prepaid basis to enrollees
24 either through providers employed by the health maintenance
25 organization or through a medical group or groups which contract
26 directly with the health maintenance organization, which initiates a
27 health care service, or [modernizes, renovates or] constructs a health
28 care facility pursuant to subsection a., b., d. or e. of this section, may
29 apply to the commissioner for a waiver of the certificate of need
30 requirement if: the initiation of the health care service or the
31 [modernization, renovation or] construction is in the best interests of
32 State health planning; and the health maintenance organization is in
33 compliance with the provisions of P.L.1973, c.337 (C.26:2J-1 et seq.)
34 and complies with the provisions of subsection d. of section 3 of
35 P.L.1973, c.337 (C.26:2J-3) regarding notification to the
36 commissioner. The commissioner shall make a determination about
37 whether to grant or deny the waiver within 45 days from the date the
38 request for the waiver is received by the commissioner and shall so
39 notify the health maintenance organization. If the request for a waiver
40 is denied on the basis that the request would not be in the best
41 interests of State health planning, the commissioner shall state in that
42 notification the reason why the request would not be in the best
43 interests of State health planning. If the request for a waiver is denied,
44 the health maintenance organization's initiation of a health care service
45 or [modernization, renovation or] construction project shall be subject
46 to the certificate of need requirements pursuant to this section.

1 The requirement to obtain a certificate of need for major moveable
2 equipment pursuant to subsection c. of this section shall not apply if
3 a contract to purchase that equipment was entered into prior to
4 July 1, 1991.

5 (cf: P.L.1992, c.160, s.24)

6

7 7. Section 19 of P.L.1992, c.160, (C.26:2H-7a) is amended to read
8 as follows:

9 19. Notwithstanding the provisions of section 7 of P.L.1971, c.136
10 (C.26:2H-7) to the contrary, the following are exempt from the
11 certificate of need requirement:

12 Community-based primary care centers;

13 Outpatient drug and alcohol services;

14 Hospital-based medical detoxification for drugs and alcohol;

15 Ambulance and invalid coach services;

16 Mental health services which are non-bed related outpatient
17 services;

18 **【Changes in residential】** Residential health care facility services;

19 **【Mandatory renovations to existing facilities;**

20 **Mandatory replacement of fixed or moveable equipment;】**

21 Capital improvements and renovations to health care facilities,
22 including additions of medical/surgical beds in hospitals;

23 Replacement of existing major moveable equipment;

24 Inpatient operating rooms;

25 Alternate family care programs;

26 Hospital-based subacute care;

27 Ambulatory care facilities;

28 Comprehensive outpatient rehabilitation services;

29 Special child health clinics;

30 New technology in accordance with the provisions of section 18 of
31 P.L. _____, c. (C. _____)(pending before the Legislature as this bill;

32 Transfer of ownership interest except in the case of an acute care
33 hospital**【**, or a long-term care facility in which the owner does not
34 satisfy the Department of Health's review of the owner's prior
35 operating experience as well as any requirements established by the
36 federal government pursuant to Titles XVIII and XIX of the Social
37 Security Act**】**;

38 Change of site for approved certificate of need within the same
39 county;

40 Additions to vehicles or hours of operation of a mobile intensive
41 care unit;

42 Relocation or replacement of a health care facility within the same
43 county, except for an acute care hospital;

44 Continuing care retirement communities authorized pursuant to
45 P.L.1986, c.103 (C.52:27D-330 et seq.);

46 **【Acquisition by a hospital of a magnetic resonance imager that is**

1 already in operation in the State by another health care provider or
2 entity;】

3 Magnetic resonance imaging;

4 Adult day health care facilities;

5 Pediatric day health care facilities; and

6 Chronic or acute renal dialysis facilities.

7 (cf: P.L.1992, c.160, s.19)

8

9 8. Section 3 of P.L.1996, c.102 (C.26:2H-7.6) is amended to read
10 as follows:

11 3. a. A hospital which proposes to utilize a portion of its licensed
12 bed capacity for the purpose of establishing a subacute care unit shall
13 【apply to the Department of Health for a certificate of need to
14 establish a subacute care unit pursuant to section 7 of P.L.1971, c.136
15 (C.26:2H-7). The application shall qualify for an expedited review as
16 provided by regulation of the department and shall be processed within
17 90 days. In addition, the hospital shall】 be subject to the following
18 requirements:

19 (1) the subacute care unit's beds shall be licensed by the
20 Department of Health and Senior Services as long-term care beds and
21 shall meet all applicable State licensing and federal certification
22 requirements, including the physical requirements for skilled nursing
23 beds under the federal Medicare program established pursuant to
24 Pub.L.89-97 (42 U.S.C. s.1395 et seq.), with reasonable waiver
25 provisions as determined by the commissioner or the federal Health
26 Care Financing Administration, as appropriate;

27 (2) the maximum length of stay in the unit shall not exceed eight
28 days;

29 (3) the unit shall be certified to participate in the Medicare
30 program as a skilled nursing facility;

31 (4) the unit shall be comprised of not more than 7% of the
32 hospital's licensed medical-surgical bed capacity or 12 beds, whichever
33 is greater, based upon the hospital's number of licensed subacute care
34 beds reflected on the hospital's license as of the effective date of
35 P.L. _____, c. _____ (pending before the Legislature as this bill);

36 (5) the hospital's licensed medical-surgical bed capacity shall be
37 reduced, by the commissioner, by the number of beds used to establish
38 a subacute care unit under the provisions of this section. Long-term
39 care beds in a hospital's subacute care unit shall not be transferred to,
40 or combined with, a subacute care unit in another hospital. Bed
41 limitations for a hospital shall include both conversions of existing
42 acute care beds and any purchases or other acquisitions or rentals of
43 beds to be used by a hospital for the provision of subacute care under
44 this act;

45 (6) 【notwithstanding the provisions of section 10 of P.L.1971,
46 c.136 (C.26:2H-10) to the contrary, the hospital shall be required to

1 pay an application fee of \$5,000 for a certificate of need to establish
2 a subacute care unit; and ~~](Deleted by amendment, P.L. , c.)~~

3 (7) the hospital shall be subject to the fee for the filing of an
4 application for a license for long-term care beds and any renewal
5 thereof as established by the Department of Health and Senior
6 Services pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12).

7 b. Subacute care shall not be covered by the Medicaid program
8 established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.). The
9 long-term care beds in a subacute care unit shall not be included in
10 long-term care bed inventories for certificate of need review purposes.
11 (cf: P.L.1996, c.102, s.3)

12

13 9. Section 9 of P.L.1971, c.136 (C.26:2H-9) is amended to read as
14 follows:

15 9. Certificates of need shall be issued by the commissioner in
16 accordance with the provisions of P.L.1971, c.136 (C.26:2H-1 et seq.)
17 and based upon criteria and standards therefor promulgated by the
18 commissioner. The commissioner may approve or deny an application
19 for a certificate of need. If an application is denied, the applicant may
20 ~~](appeal the decision to the board)~~ request a hearing pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.). ~~](No decision shall be made by the commissioner contrary to the~~
23 ~~](recommendations of the State Health Planning Board or the local~~
24 ~~](advisory board concerning a certificate of need application or any~~
25 ~~](other matter, unless the State Health Planning Board and the applicant~~
26 ~~](shall have been granted opportunity for hearing.)~~ Requests for a ~~](fair~~
27 ~~](hearing shall be made to the Department of Health and Senior Services~~
28 ~~](within 30 days of receipt of notification of the commissioner's action.~~
29 ~~](The department shall arrange within 60 days of a request, for~~ ~~](fair~~
30 ~~](hearings on all such cases)~~ a hearing and after such hearing the
31 commissioner or his designee shall furnish the ~~](board, the State Health~~
32 ~~](Planning Board and the)~~ applicant in writing the hearing examiner's
33 recommendations and reasons therefor. The ~~](board)~~ commissioner
34 within 30 days of receiving all appropriate hearing records ~~](or, in the~~
35 ~~](absence of a request for a hearing within 30 days of receiving the~~
36 ~~](denial recommendations of the commissioner,)~~ shall make ~~](its)~~ his
37 determination, which shall be a final agency decision.

38 ~~](For the three-year period beginning January 1, 1992 through~~
39 ~~](December 31, 1994, the commissioner shall limit approval of~~
40 ~~](certificates of need for capital construction projects for hospitals that~~
41 ~~](would be financed by the New Jersey Health Care Facilities Financing~~
42 ~~](Authority pursuant to P.L.1972, c.29 (C.26:2I-1 et seq.), to a~~
43 ~~](Statewide total of \$225 million per year for all projects, exclusive of~~
44 ~~](the refinancing of approved projects.~~

45 For the purposes of this section, capital construction project shall

1 include the purchase of any major moveable equipment as well as any
2 modernization, construction, or renovation project.】

3 (cf: P.L.1992, c.31, s.3)

4

5 10. Section 10 of P.L.1971, c.136 (C.26:2H-10) is amended to
6 read as follows:

7 10. Application for a certificate of need shall be made to the
8 department, and shall be in such form and contain such information as
9 the department may prescribe. The department shall charge a
10 nonreturnable fee for the filing of an application for a certificate of
11 need. The minimum fee for the filing of an application shall be \$5,000.
12 For a project whose total cost is greater than \$1 million, the fee shall
13 be \$5,000 plus 0.15% of the total project cost. Upon 【receipt of an
14 application】 determination that an application is complete, copies
15 thereof shall be referred by the department to 【the appropriate local
16 advisory board and】 the State Health Planning Board for review, when
17 applicable.

18 【These appropriate boards】 The board shall provide adequate
19 mechanisms for full consideration of each application submitted to
20 【them】 the board and for developing recommendations thereon. Such
21 recommendations, whether favorable or unfavorable, shall be
22 forwarded to the commissioner within 90 days of the date of referral
23 of the application. A copy of the recommendations made shall be
24 forwarded to the applicant.

25 Recommendations concerning certificates of need shall be governed
26 and based upon the principles and considerations set forth in section
27 8 of P.L.1971, c.136 (C.26:2H-8).

28 No member, officer or employee of 【any planning body】 the State
29 Health Planning Board shall be subject to civil action in any court as
30 the result of any act done or failure to act, or of any statement made
31 or opinion given, while discharging his duties under this act as such
32 member, officer, or employee, provided he acted in good faith with
33 reasonable care and upon proper cause.

34 (cf: P.L.1997, c.392, s.1)

35

36 11. Section 1 of P.L.1982, c.149 (C.26:2H-11.1) is amended to
37 read as follows:

38 1. In the case of an application for a certificate of need or initial
39 licensure, as applicable, for a narcotic and drug abuse treatment center
40 to be located within 500 feet from any building in this State used for
41 the instruction of children between the ages of five and 18 years, the
42 applicant shall notify the governing body of the municipality within
43 which he proposes to locate the treatment center of his intention to
44 apply for the certificate of need or licensure and the proposed location
45 of the center. Documentation of such notice shall be filed with the
46 certificate of need or license application. The Commissioner of Health

1 and Senior Services is hereby authorized to adopt reasonable rules and
2 regulations, in accordance with the provisions of the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate
4 the purposes of this act. For the purposes of this act, the definition
5 of "narcotic and drug abuse treatment center" shall be identical to the
6 definition in subsection (a) of section 2 of P.L.1970, c.334
7 (C.26:2G-22(a)). This act shall not apply to any such narcotic and
8 drug abuse treatment center for which an application was filed prior
9 to the effective date of this act.

10 (cf: P.L.1982, c.149, s.1)

11

12 12. Section 12 of P.L.1971, c.136 (C.26:2H-12) is amended to
13 read as follows:

14 12. a. No health care facility shall be operated unless it shall: (1)
15 possess a valid license issued pursuant to this act, which license shall
16 specify the kind or kinds of health care services the facility is
17 authorized to provide; (2) establish and maintain a uniform system of
18 cost accounting approved by the commissioner; (3) establish and
19 maintain a uniform system of reports and audits meeting the
20 requirements of the commissioner; (4) prepare and review annually a
21 long range plan for the provision of health care services[, which plan
22 shall be compatible with the State Health Plan as related to medical
23 health services, health care services, and health manpower]; and (5)
24 establish and maintain a centralized, coordinated system of discharge
25 planning which assures every patient a planned program of continuing
26 care and which meets the requirements of the commissioner which
27 requirements shall, where feasible, equal or exceed those standards and
28 regulations established by the federal **[Government]** government for
29 all federally-funded health care facilities but shall not require any
30 person who is not in receipt of State or federal assistance to be
31 discharged against his will.

32 b. (1) Application for a license for a health care facility shall be
33 made upon forms prescribed by the department. The department shall
34 charge **[such]** a single, nonrefundable [fees] fee for the filing of an
35 application for and issuance of a license and a single, nonrefundable
36 fee for any renewal thereof, and a single, nonrefundable fee for a
37 biannual inspection of the facility, as it shall from time to time fix in
38 rules or regulations; provided, however, that no such licensing fee
39 shall exceed **[\$2,000.00]** \$10,000 in the case of a hospital and \$4,000
40 in the case of any other health care facility for all services provided by
41 the hospital or other health care facility, and no such inspection fee
42 shall exceed \$5,000 in the case of a hospital and \$2,000 in the case of
43 any other health care facility for all services provided by the hospital
44 or other health care facility. No inspection fee shall be charged for
45 inspections other than biannual inspections. The application shall
46 contain the name of the health care facility, the kind or kinds of health

1 care service to be provided, the location and physical description of
2 the institution, and such other information as the department may
3 require. (2) A license shall be issued by the department upon its
4 findings that the premises, equipment, personnel, including principals
5 and management, finances, rules and bylaws, and standards of health
6 care service are fit and adequate and there is reasonable assurance the
7 health care facility will be operated in the manner required by this act
8 and rules and regulations thereunder.

9 c. ~~【A license issued before the effective date of this act to a health
10 care facility for its operation, upon the first renewal date thereafter,
11 may be extended for a one-year period of time, provided the facility
12 then meets the requirements for licensure at the time said license was
13 issued and submits an acceptable plan to meet current requirements at
14 the end of said period of time.】 Deleted by amendment P.L. , c.)~~

15 d. The commissioner may amend a facility's license to reduce that
16 facility's licensed bed capacity to reflect actual utilization at the facility
17 if the commissioner determines that 10 or more licensed beds in the
18 health care facility have not been used for at least the last two
19 succeeding years. For the purposes of this subsection, the
20 commissioner may retroactively review utilization at a facility for a
21 two-year period beginning on January 1, 1990.

22 e. If a prospective applicant for licensure for a health care service
23 or facility that is not subject to certificate of need review pursuant to
24 P.L.1971, c.136 (C.26:2H-1 et seq.) so requests, the department shall
25 provide the prospective applicant with a pre-licensure consultation.
26 The purpose of the consultation is to provide the prospective applicant
27 with information and guidance on rules, regulations, standards and
28 procedures appropriate and applicable to the licensure process. The
29 department shall conduct the consultation within 60 days of the
30 request of the prospective applicant.

31 (cf: P.L.1991, c.187, s.38)

32
33 13. Section 2 of P.L.1986, c.11 (C.26:2H-12.4) is amended to read
34 as follows:

35 2. A hospital applying for permission to establish a hospital respite
36 care program is not required to apply for a certificate of need pursuant
37 to section 7 of P.L.1971, c.136 (C.26:2H-7) and is required to
38 demonstrate only that it has the vacancy rate required by this act and
39 adequate staff to serve the number of senior citizens it proposes to
40 accept. **【However, rates to be charged by the hospital for this service
41 are subject to the approval of the Hospital Rate Setting Commission
42 pursuant to section 5 of P.L.1978, c.83 (C.26:2H-4.1).】**

43 (cf: P.L.1986, c.11, s.2)

44
45 14. Section 14 of P.L.1971, c.136 (C.26:2H-14) is amended to
46 read as follows:

1 14. Any person, firm, partnership, corporation or association who
2 shall operate or conduct a health care facility without first obtaining
3 the license required by this act, or who shall operate such health care
4 facility after revocation or suspension of license, shall be liable to a
5 penalty of not more than ~~[\$250.00]~~ \$1,000 as provided for by
6 regulation for ~~[reach]~~ each day of operation in violation hereof for the
7 first offense and for any subsequent offense. Any person, firm,
8 partnership, corporation or association who violates any rule or
9 regulation adopted in accordance with this act as the same pertains to
10 the care of patients and physical plant standards shall be subject to a
11 penalty of not more than ~~[\$1,000.00]~~ \$2,500 as provided for by
12 regulation for each day that he is in violation of such rule or
13 regulation. Upon notification to the facility of such violations as
14 pertain to the care of patients or to the hazardous or unsafe condition
15 existing in or upon the structure in which the licensed facility is
16 maintained, the commissioner shall allow the facility 72 hours in which
17 to correct any such violation and if at the end of such period the
18 violation is not corrected and it poses an imminent threat to the health,
19 safety or welfare of the public or of the residents of the facility, he
20 may, in his discretion, summarily suspend the license of the facility
21 without a hearing and may order immediate correction of such
22 violation as a prerequisite of reinstatement of licensure. If a licensee
23 that is subject to summary suspension shall deny that a violation exists
24 or has occurred, he shall have the right to apply to the commissioner
25 for a hearing. Such hearing shall be held and a decision rendered
26 within 48 hours of receipt of said request. If the commissioner shall
27 rule against the licensee, the licensee shall have the right to apply for
28 injunctive relief against the commissioner's order. Jurisdiction of such
29 injunctive relief shall be in the Superior Court of New Jersey. Nothing
30 herein shall be construed to prevent the commissioner from thereafter
31 suspending or revoking the license in accordance with the procedure
32 set forth in section 13. If, within one year after such violation such
33 person, firm, partnership, corporation or association is found guilty of
34 the same violation such penalties as hereinbefore set forth shall be
35 doubled, and if there be a third violation within such time, such
36 penalties shall be tripled. In addition thereto the department may, in
37 its discretion, suspend the license for such time as it may deem proper
38 or revoke said license.

39 Any person, firm, partnership, corporation or association who shall,
40 except in cases of an emergency, maintain more patients in his
41 premises than he is licensed so to do, shall be subject to a penalty, in
42 accordance with the procedure set forth in section 13, in an amount
43 equal to the daily charge collected from such patient or patients plus
44 \$25.00 for each day each extra patient is so maintained.
45 (cf: P.L.1986, c.6, s.1)

1 15. Section 12 of P.L.1992, c.160 (C.26:2H-18.62) is amended to
2 read as follows:

3 12. a. The monies in the hospital and other health care initiatives
4 account are appropriated for the establishment of a program which will
5 assist hospitals and other health care facilities in the underwriting of
6 innovative and necessary health care services and provide funding for
7 public or private health care programs, which may include any
8 program funded pursuant to section 25 of P.L.1991, c.187
9 (C.26:2H-18.47), managed care regulation and oversight pursuant to
10 P.L.1997, c.192 (C.26:2S-1 et al.), administration and enforcement of
11 health care facility licensing requirements pursuant to P.L.1971, c.136
12 (C.26:2H-1 et seq.), and for such other programs that the
13 commissioner deems necessary or appropriate to carry out the
14 provisions of section 5 of P.L.1992, c.160 (C.26:2H-18.55).

15 The commissioner shall develop equitable regulations regarding
16 eligibility for and access to the financial assistance, within six months
17 of the effective date of this act.

18 b. Such funds as may be necessary shall be transferred by the
19 department from the fund to the Division of Medical Assistance and
20 Health Services in the Department of Human Services for payment to
21 disproportionate share hospitals.

22 c. Notwithstanding any law to the contrary, each hospital whose
23 revenue cap was established by the Hospital Rate Setting Commission
24 in 1993 pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.) shall pay
25 .53% of its total operating revenue to the department for deposit in the
26 Health Care Subsidy Fund, except that the amount to be paid by a
27 hospital in a given year shall be prorated by the department so as not
28 to exceed the \$40 million limit set forth in this subsection. The
29 hospital shall make monthly payments to the department beginning
30 July 1, 1993, except that the total amount paid into the Health Care
31 Subsidy Fund plus interest shall not exceed \$40 million per year. The
32 commissioner shall determine the manner in which the payments shall
33 be made.

34 For the purposes of this subsection, "total operating revenue" shall
35 be defined by the department in accordance with financial reporting
36 requirements established pursuant to N.J.A.C.8:31B-3.3.

37 d. The monies paid by the hospitals shall be credited to the hospital
38 and other health care initiatives account.

39 (cf: P.L.1997, c.192, s.30)

40

41 16. (New section) a. Notwithstanding the provisions of section 7
42 of P.L.1971, c.136 (C.26:2H-7) to the contrary, 20 months after the
43 effective date of P.L. , c. (pending before the Legislature as this
44 bill) the following shall be exempt from the certificate of need
45 requirement:

46 Extracorporeal shock wave lithotripter;

1 Hyperbaric chamber;
2 Positron emission tomography;
3 Residential drug and alcohol services;
4 Ambulatory surgical facilities;
5 Basic obstetric and pediatric services and birth centers; and
6 Linear accelerator, including Cobalt 60 unit.

7 b. Notwithstanding the provisions of subsection a. of this section
8 to the contrary, if the Commissioner of Health and Senior Services
9 determines that Department of Health and Senior Services licensing
10 standards for a health care service or facility listed in subsection a. of
11 this section have been adopted by regulation of the department
12 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), the commissioner may exempt the health care
14 service or facility from the provisions of section 7 of P.L.1971, c.136
15 (C.26:2H-7) prior to the 20-month period established in subsection a.
16 of this section.

17 The commissioner shall publish notice of any exemptions
18 established pursuant to this subsection in the New Jersey Register and
19 provide for 45 days public notice prior to the effective date of the
20 exemption.

21 c. In the case of any health care service or facility that is not
22 exempted from the provisions of section 7 of P.L.1971, c.136
23 (C.26:2H-7) pursuant to this section or section 19 of P.L.1992, c.160
24 (C.26:2H-7a) and is not subject to expedited review, the commissioner
25 shall publish a call schedule for the initiation of the services or
26 facilities within 90 days of the date of enactment of this act. In the
27 event that the commissioner determines that there is insufficient need
28 to support the initiation of the service or facility, the commissioner is
29 authorized to cancel the call. The commissioner shall provide public
30 notice of the cancellation at least 45 days prior to the scheduled call
31 date.

32
33 17. (New section) There is established a 15-member Certificate of
34 Need Study Commission. The members shall include: the
35 Commissioners of Health and Senior Services and Human Services
36 who shall serve ex officio; the Chairman of the Senate Health
37 Committee and the Chairman of the General Assembly Health
38 Committee; and 11 public members. The public members shall be
39 appointed as follows: one State licensed health care professional and
40 one representative of a State licensed health care facility, to be
41 appointed by the President of the Senate; one State licensed health
42 care professional and one representative of a State licensed health care
43 facility, to be appointed by the Speaker of the General Assembly; and
44 two State licensed health care professionals, three representatives of
45 a State licensed health care facility, one health economist and one
46 consumer of health care services who is knowledgeable about health

1 care financing issues and who is a resident of this State, to be
2 appointed by the Governor. Vacancies in the membership of the
3 commission shall be filled in the same manner provided for the original
4 appointments.

5 a. The Commissioner of Health and Senior Services shall serve as
6 chairman of the commission. The commission shall select a vice-
7 chairman from among the members. The commission shall organize as
8 soon as practicable following the appointment of its members.

9 The commission shall be entitled to call to its assistance and avail
10 itself of the services of the employees of any State, county or
11 municipal department, board, bureau, commission or agency as it may
12 require and as may be available to it for its purposes. The Department
13 of Health and Senior Services shall provide staff support for the
14 commission.

15 b. The commission shall conduct a comprehensive study to examine
16 the impact that elimination of certificate of need requirements would
17 have on each of the following health care services and facilities:
18 nursing homes; home health agencies; assisted living residences and
19 programs; comprehensive personal care homes; psychiatric beds;
20 comprehensive rehabilitation services; trauma services; transfer of
21 ownership of an existing general acute care hospital; new general acute
22 care hospitals; special hospitals; children's hospitals; organ banks;
23 cardiac surgery and cardiac catheterization; mobile intensive care
24 units; organ and bone marrow transplantation, including stem cell;
25 burn centers; specialized perinatal and pediatric services, including
26 maternal and child health consortia, pediatric intensive care and
27 neonatal intermediate and intensive care; and any other health care
28 services and facilities subject to certificate of need that are not
29 scheduled for exemption pursuant to sections 19 of P.L.1992, c.160
30 (C.26:2H-7a) and 16 of P.L. , c. (C.)(pending before the
31 Legislature as this bill). The commission shall assess the impact
32 deregulation of the services or facilities will have on:

- 33 (1) urban hospitals;
- 34 (2) access to care by residents in the State;
- 35 (3) quality of care;
- 36 (4) services that are delivered Statewide or on a regional basis; and
- 37 (5) the State General Fund, including programs such as Medicaid.

38 The commission shall make recommendations about which health
39 care services or facilities, if any, should continue to be subject to
40 certificate of need requirements or another type of State regulation,
41 and which services or facilities should be exempt from such State
42 regulation.

43 c. Within 20 months of the effective date of P.L. c. (pending
44 before the Legislature as this bill), the commission shall report its
45 findings and recommendations to the Governor and the Senate and

1 General Assembly Health Committees.

2 d. The commission shall expire upon the submission of its report.

3

4 18. (New section) Notwithstanding the provisions of P.L.1971,
5 c.136 (C.26:2H-1 et seq.) to the contrary, a health care service or
6 equipment which involves new technology that is not identified in
7 N.J.A.C.8:33 et seq., shall not be subject to certificate of need
8 requirements and may be initiated in the State in accordance with the
9 requirements of this section.

10 a. The new technology shall be directly related to, or shall be used
11 in conjunction with, a health care service or facility for which the
12 provider is already licensed and has obtained a certificate of need,
13 when required.

14 b. The provider shall notify the Commissioner of Health and Senior
15 Services about the intent to initiate the new technology at least 30
16 days prior to the date the provider will begin use of the technology.

17 c. The new technology shall have pre-market approval from the
18 federal Food and Drug Administration.

19 d. The provider shall use the new technology in accordance with
20 guidelines approved by the Joint Commission on Accreditation of
21 Health Care Organizations until such time as the Department of
22 Health and Senior Services has adopted licensing standards for the
23 new technology. The provider shall be required to comply with the
24 department's licensing standards for the new technology upon adoption
25 of the standards.

26 e. The provider shall agree to submit to the department appropriate
27 patient information and other data concerning use of the new
28 technology to assist the department in establishing licensing standards.
29 The provider shall submit the information and other data on a
30 quarterly basis until such time as licensing standards are adopted for
31 the new technology.

32 f. The department may suspend a provider's use of the new
33 technology if he determines that the provider is not in compliance with
34 the requirements of this section.

35

36 19. The following sections are repealed:

37 Section 35 of P.L.1991, c.187 (C.26:2H-5.9);

38 Section 20 of P.L.1992, c.160 (C.26:2H-7b); and

39 Section 37 of P.L.1991, c.187 (C.26:2H-10.1).

40

41 20. This act shall take effect immediately, except that section 7
42 shall take effect 45 days after the date of enactment; but the
43 commissioner may take such anticipatory administrative actions in
44 advance of the effective date of section 7 as shall be necessary for the
45 implementation of this act.

1 STATEMENT

2

3 This bill reforms the State's certificate of need program with the
4 goal of phasing out the regulation of health care facilities by certificate
5 of need to the maximum extent possible while insuring the quality of
6 and access to health care for the State's residents.

7 The certificate of need reform will be implemented in three phases.

8 Phase I of the reform provides that 45-days after enactment of the
9 bill, the following services would no longer require a certificate of
10 need, although the services would continue to be subject to licensure
11 by the Department of Health and Senior Services:

12 Hospital-based medical detoxification for drugs and alcohol;

13 Residential health care facility services;

14 Capital improvements and renovations to health care facilities,
15 including additions of medical/surgical beds in hospitals;

16 Replacement of existing major moveable equipment;

17 Inpatient operating rooms;

18 Hospital-based subacute care;

19 Ambulatory care facilities;

20 Alternate family care programs;

21 Comprehensive outpatient rehabilitation services;

22 Special child health clinics;

23 New technology in accordance with the provisions of this bill;

24 Transfer of ownership interest of a long-term care facility;

25 Additions to vehicles or hours of operation of a mobile intensive
26 care unit;

27 Magnetic resonance imaging; and

28 Acute renal dialysis.

29 Phase II of certificate of need reform will occur within the 20-
30 month period following the date of enactment of the bill. The 20-
31 month period is provided in order to insure the department has
32 sufficient time to adopt necessary licensing standards; however, the
33 commissioner is authorized to exempt any of the Phase II services at
34 any time during the 20-month period, upon giving public notice, if he
35 determines that licensing standards have been adopted by the
36 department. The services that will be exempt from certificate of need
37 during Phase II include:

38 Extracorporeal shock wave lithotripter;

39 Hyperbaric chamber;

40 Positron emission tomography;

41 Residential drug and alcohol services;

42 Ambulatory surgical facilities;

43 Basic obstetric and pediatric services and birth centers; and

44 Linear accelerator, including Cobalt 60 unit.

45 The bill also directs the Commissioner of Health and Senior
46 Services to publish a call schedule for the initiation of the services or

1 facilities that are not exempted from certificate of need, within 90 days
2 of the date of enactment of the bill, but provides that in the event that
3 the commissioner determines that there is insufficient need to support
4 the initiation of the service or facility, the commissioner is authorized
5 to cancel the call.

6 Phase III of certificate of need reform will begin immediately upon
7 enactment of the bill and continue through the second year after
8 enactment. Phase III concerns those health care services and facilities
9 that either have a potentially large impact on the State budget or are
10 specialized or Statewide or regional in nature. Prior to considering
11 exemption of any of these services from certificate of need, it is
12 prudent to determine the impact that elimination of certificate of need
13 requirements would have on each of the health care services or
14 facilities. Accordingly, the bill creates a 15-member Certificate of
15 Need Study Commission which will be established upon enactment of
16 the bill. The commission will assess the impact deregulation of the
17 services or facilities will have on:

- 18 (1) urban hospitals;
- 19 (2) access to care by residents in the State;
- 20 (3) quality of care;
- 21 (4) services that are delivered Statewide or on a regional basis; and
- 22 (5) State General Fund, including programs such as Medicaid.

23 The services and facilities the commission will consider include:
24 nursing homes, home health agencies, assisted living residences and
25 programs, comprehensive personal care homes, psychiatric beds,
26 comprehensive rehabilitation services, trauma services, transfer of
27 ownership interest of a general acute care hospital, new general acute
28 care hospitals, new special hospitals, children's hospitals, organ banks,
29 cardiac surgery and cardiac catheterization, mobile intensive care
30 units, organ and bone marrow transplantation (including stem cell),
31 burn centers, specialized perinatal and pediatric services, including
32 maternal and child health consortia, pediatric intensive care and
33 neonatal intermediate and intensive care and any other health care
34 services and facilities subject to certificate of need.

35 The members of the commission will include: the Commissioners of
36 Health and Senior Services and Human Services who shall serve ex
37 officio; the Chairman of the Senate Health Committee and the
38 Chairman of the General Assembly Health Committee and 11 public
39 members including four State licensed health care professionals, five
40 representatives of State licensed health care facilities, one health
41 economist and one consumer of health care services who is
42 knowledgeable about health care financing issues and who is a resident
43 of this State. The President of the Senate and Speaker of the General
44 Assembly shall each appoint a health care professional and health care
45 facility representative and the Governor will appoint the other
46 members. The Commissioner of Health and Senior Services shall serve

1 as chairman of the commission.

2 The commission is directed to report its findings and
3 recommendations to the Governor, the Senate and the General
4 Assembly within 20 months from the date of enactment of the bill.
5 Following receipt and review of the report, the Legislature and
6 Governor will determine which of the remaining certificate of need
7 services should be exempted from regulation under the program or
8 otherwise regulated by the State.

9 In order to address the issue of regulating new technology, the bill
10 provides that a health care service or equipment which involves new
11 technology that is not identified in N.J.A.C.8:33 et seq., (the
12 regulations governing certificate of need) shall not be subject to
13 certificate of need requirements and may be initiated in the State in
14 accordance with the following requirements:

15 a. The new technology shall be directly related to, or will be used
16 in conjunction with, a health care service or facility for which the
17 provider is already licensed and has obtained a certificate of need,
18 when required;

19 b. The provider shall notify the Commissioner of Health and Senior
20 Services about the intent to initiate the new technology at least
21 30 days prior to the date the provider will begin use of the technology;

22 c. The new technology shall have pre-market approval from the
23 federal Food and Drug Administration;

24 d. The provider shall use the new technology in accordance with
25 guidelines approved by the Joint Commission on Accreditation of
26 Health Care Organizations until such time as the Department of
27 Health and Senior Services has adopted licensing standards for the
28 new technology. The provider shall be required to comply with the
29 department's licensing standards for the new technology upon adoption
30 of the standards; and

31 e. The provider shall agree to submit to the department appropriate
32 patient information and other data concerning use of the new
33 technology to assist the department in establishing licensing standards.
34 The provider shall submit the information and other data on a
35 quarterly basis until such time as licensing standards are adopted for
36 the new technology.

37 The bill provides that the department may suspend a provider's use
38 of the new technology if he determines that the provider is not in
39 compliance with the requirements of this bill.

40 The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold for
41 health care facility construction projects and major moveable
42 equipment that are subject to certificate of need, from \$1 million to \$2
43 million.

44 The bill also simplifies the current certificate of need process by
45 eliminating the local advisory boards (LABs) established in 1991 so
46 that all applications will be reviewed only at the State level by the

1 State Health Planning Board and the commissioner, in the case of
2 applications subject to full review and by the commissioner, in the case
3 of applications subject to expedited review. To ensure community
4 input when a health care facility or service subject to certificate of
5 need may be closed or eliminated, however, the bill requires the State
6 Health Planning Board to conduct at least one public hearing in the
7 area served by the facility or service within 30 days of receipt of the
8 application for approval to close or eliminate the facility or service.
9 The bill also eliminates references to the State Health Plan, as this
10 document is no longer used as the basis for approving certificate of
11 need applications.

12 The membership of the State Health Planning Board is also changed
13 to reflect the elimination of the LABs (which were members of the
14 board), to include nine public members, five of whom are consumers
15 of health care services. Currently, the board has five public members,
16 three of whom are consumers.

17 The bill amends current law regarding appeals of denials of
18 certificates of need to provide that an applicant whose application was
19 denied by the commissioner, may request a hearing through the Office
20 of Administrative Law, rather than appeal the decision to the Health
21 Care Administration Board.

22 The bill redirects the funding for the local advisory boards (which
23 comes from the .53% assessment on hospitals) to the department's
24 enhanced health care services and facilities' licensing enforcement
25 activities required in the bill. Also, N.J.S.A.26:2H-12 is amended to
26 revise the \$2,000 limit on health care facility licensure fees. The bill
27 establishes a new fee structure for licensure and inspection activities,
28 which will help support the department's enhanced activities in these
29 areas. The bill provides that annual licensure fees shall not exceed
30 \$10,000 in the case of a hospital and \$4,000 in the case of any other
31 health care facility, and inspection fees shall not exceed \$5,000 in the
32 case of a hospital and \$3,000 in the case of any other health care
33 facility. No inspection fee shall be charged for inspections other than
34 biannual inspections. Also, the bill raises the limit on penalties for
35 violations of the "Health Care Facilities Planning Act," P.L.1971,
36 c.136, to up to \$1,000 per day for operating a health care facility
37 without a license and to up to \$2,500 per day for a violation
38 concerning patient care or physical plant standards. The current limits
39 on violations are \$250 and \$1,000, respectively.

40 The bill eliminates the so-called "25% rule" under which a
41 certificate of need applicant could proceed to the next level of review
42 even if the recommendation was to disapprove the application, if the
43 applicant had received a favorable vote on the application by at least
44 25% of the planning board's membership.

45 Finally, the bill repeals section 35 of P.L.1991, c.187 (C.26:2H-
46 5.9) which established the local advisory boards, and section 20 of

1 P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to
2 hospitals for certain construction projects. This provision is no longer
3 needed because the bill exempts all capital improvements and
4 renovations from certificate of need requirements. Also, the bill
5 repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the
6 "25% rule" for decisions made by the local advisory boards and the
7 State Health Planning Board.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2178

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1998

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 2178.

As amended by the committee, this bill reforms the State's certificate of need program with the goal of phasing out the regulation of health care facilities by certificate of need (CN) to the maximum extent possible while insuring the quality of and access to health care for the State's residents.

The CN reform will be implemented in three phases.

Phase I of the reform provides that 45 days after enactment of the bill, the following services would no longer require a CN, although the services would continue to be subject to licensure by the Department of Health and Senior Services (DHSS):

- Hospital-based medical detoxification for drugs and alcohol;
- Residential health care facility services;
- Capital improvements and renovations to health care facilities;
- Additions of medical/surgical, adult intensive care and adult critical care beds in hospitals;
- Replacement of existing major moveable equipment;
- Inpatient operating rooms;
- Hospital-based subacute care;
- Ambulatory care facilities;
- Alternate family care programs;
- Comprehensive outpatient rehabilitation services;
- Special child health clinics;
- New technology in accordance with the provisions of this bill;
- Transfer of ownership interest of a long-term care facility;
- Additions to vehicles or hours of operation of a mobile intensive care unit;
- Magnetic resonance imaging; and
- Acute renal dialysis.

Phase II of CN reform will occur within a 20-month period following the date of enactment of the bill. The 20-month period is provided in order to insure that DHSS has sufficient time to adopt necessary licensing standards; however, the commissioner is authorized to exempt any of the Phase II services at any time during

the 20-month period, upon giving public notice, if he determines that licensing standards have been adopted by DHSS. The services that will be exempt from CN requirements during Phase II include:

Extracorporeal shock wave lithotripter;

Hyperbaric chamber;

Positron emission tomography;

Residential drug and alcohol services;

Ambulatory surgical facilities;

Basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and

Linear accelerator, including Cobalt 60 unit.

The bill also directs the Commissioner of Health and Senior Services to publish a call schedule for the initiation of the services or facilities that are not exempted from CN requirements, within 90 days of the date of enactment of the bill, but provides that in the event that the commissioner determines that there is insufficient need to support the initiation of the service or facility, the commissioner is authorized to cancel the call.

Phase III of CN reform will begin immediately upon enactment of the bill and continue through the second year after enactment. Phase III concerns those health care services and facilities that either have a potentially large impact on the State budget or are specialized or Statewide or regional in nature. Prior to considering exemption of any of these services from CN requirements, it is prudent to determine the impact that elimination of CN requirements would have on each of the health care services or facilities. Accordingly, the bill creates a 15-member Certificate of Need Study Commission which will be established upon enactment of the bill. The commission will assess the impact that deregulation of the services or facilities will have on:

(1) urban hospitals;

(2) access to care by residents in the State;

(3) quality of care;

(4) services that are delivered Statewide or on a regional basis; and

(5) the State General Fund, including programs such as Medicaid.

The services and facilities the commission will consider include: nursing homes, home health agencies, assisted living residences and programs, comprehensive personal care homes, psychiatric beds, comprehensive rehabilitation services, trauma services, transfer of ownership interest of a general acute care hospital, new general acute care hospitals, new special hospitals, children's hospitals, organ banks, cardiac surgery and cardiac catheterization, mobile intensive care units, organ and bone marrow transplantation (including stem cell), burn centers, specialized perinatal and pediatric services, including maternal and child health consortia, pediatric intensive care and neonatal intermediate and intensive care and any other health care services and facilities subject to CN requirements.

The members of the commission will include: the Commissioners

of Health and Senior Services and Human Services who shall serve ex officio; the Chairman of the Senate Health Committee and the Chairman of the General Assembly Health Committee and 11 public members including four State licensed health care professionals, five representatives of State licensed health care facilities, one health economist and one consumer of health care services who is knowledgeable about health care financing issues and who is a resident of this State. The President of the Senate and Speaker of the General Assembly shall each appoint a health care professional and health care facility representative, not more than one of whom in each case is from the same political party, and the Governor will appoint the other members. The Commissioner of Health and Senior Services shall serve as chairman of the commission.

The commission is directed to report its findings and recommendations to the Governor, the Senate and the General Assembly within 20 months from the date of enactment of the bill. Following receipt and review of the report, the Legislature and Governor will determine which of the remaining CN services should be exempted from regulation under the program or otherwise regulated by the State.

In order to address the issue of regulating new technology, the bill provides that health care equipment which involves new technology that is not identified in N.J.A.C.8:33 et seq., (the regulations governing CN requirements) shall not be subject to CN requirements and may be initiated in the State in accordance with the following requirements:

- The new technology shall be directly related to a health care service for which the provider is already licensed and has obtained a CN, when required;

- The provider shall notify the Commissioner of Health and Senior Services about the intent to initiate the new technology at least 60 days prior to the date the provider will begin use of the technology;

- The new technology shall have pre-market approval from the federal Food and Drug Administration;

- The provider shall use the new technology in accordance with guidelines approved by the Joint Commission on Accreditation of Health Care Organizations until such time as DHSS has adopted licensing standards for the new technology. The provider shall be required to comply with DHSS licensing standards for the new technology upon adoption of the standards; and

- The provider shall agree to submit to DHSS appropriate patient information and other data concerning use of the new technology to assist DHSS in establishing licensing standards. The provider shall submit the information and other data on a quarterly basis until such time as licensing standards are adopted for the new technology.

The bill provides that the commissioner may suspend a provider's use of the new technology if he determines that the provider is not in

compliance with the requirements of this bill.

The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold for health care facility construction projects and major moveable equipment that are subject to CN requirements, from \$1 million to \$2 million.

The bill also simplifies the current CN process by eliminating the local advisory boards (LAB's) established in 1991 so that all applications will be reviewed only at the State level by the State Health Planning Board and the commissioner, in the case of applications subject to full review and by the commissioner, in the case of applications subject to expedited review. To ensure community input when a health care facility or service which is subject to CN requirements may be closed or eliminated, however, the bill requires the State Health Planning Board to conduct at least one public hearing in the area served by the facility or service within 30 days of receipt of the application for approval to close or eliminate the facility or service. The bill also eliminates references to the State Health Plan, as this document is no longer used as the basis for approving CN applications.

The membership of the State Health Planning Board is also changed to reflect the elimination of the LAB's (which were members of the board), to include nine public members, five of whom are consumers of health care services. Currently, the board has five public members, three of whom are consumers.

The bill amends current law regarding appeals of CN denials of to provide that an applicant whose application was denied by the commissioner, may request a hearing through the Office of Administrative Law, rather than appeal the decision to the Health Care Administration Board.

The bill redirects the funding for the LAB's (which comes from the .53% assessment on hospitals) to the enhanced health care services and facilities' licensing enforcement activities by DHSS which are required in the bill. Also, N.J.S.A.26:2H-12 is amended to revise the \$2,000 limit on health care facility licensure fees. The bill establishes a new fee structure for licensure and inspection activities, which will help support enhanced activities by DHSS in these areas. The bill provides that annual licensure fees shall not exceed \$10,000 in the case of a hospital and \$4,000 in the case of any other health care facility, and biennial inspection fees shall not exceed \$5,000 in the case of a hospital and \$3,000 in the case of any other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. Also, the bill raises the limit on penalties for violations of the "Health Care Facilities Planning Act," P.L.1971, c.136, to up to \$1,000 per day for operating a health care facility without a license and to up to \$2,500 per day for a violation concerning patient care or physical plant standards. The current limits on violations are \$250 and \$1,000, respectively.

The bill eliminates the so-called "25% rule" under which a CN applicant could proceed to the next level of review even if the recommendation was to disapprove the application, if the applicant had received a favorable vote on the application by at least 25% of the planning board's membership.

Finally, the bill repeals section 35 of P.L.1991, c.187 (C.26:2H-5.9) which established the LAB's, and section 20 of P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to hospitals for certain construction projects. This provision is no longer needed because the bill exempts all capital improvements and renovations from CN requirements. Also, the bill repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the "25% rule" for decisions made by the LAB's and the State Health Planning Board.

The committee amended the bill to:

- Add to the list of Phase I exempt services, additions to adult intensive care and adult critical care beds in hospitals, as well as medical/surgical beds in hospitals;
- Add to the list of Phase II exempt services, additions to basic obstetric and pediatric beds in hospitals;
- Correct language in the bill to clarify that inspections of health care facilities shall be conducted on a biennial (two-year) basis and that the inspection fee will be assessed on a biennial basis;
- Restore the language in P.L.1996, c.102 concerning subacute care bed limits to that which is currently in effect;
- Require that a health care provider give the commissioner 60 days notice, rather than 30 days, prior to the date the provider will begin use of new technology equipment;
- Specify that of the appointments of members to the Certificate of Need Study Commission by the President of the Senate and the Speaker of the General Assembly, not more than one of the two appointments in each case shall be of the same political party; and
- Make various technical changes to insure consistency in the terminology used in the bill.

As reported by the committee, this bill is identical to Senate Bill No. 1181 (1R) (Sinagra/Vitale), which is currently pending before the Senate Budget and Appropriations Committee.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2178

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 25, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2178 (1R), with committee amendments.

Assembly Bill No. 2178 (1R), as amended, reforms the State's certificate of need program to phase out the regulation of health care facilities by certificates of need.

The certificate of need (CN) program is part of the regulatory structure for the State's health care delivery system put in place in the 1970's that attempted to control health care costs by allocating health care resources through a centralized health planning mechanism. Significant changes in the economics of the health care system have since taken place. This bill phases out regulation by CN to the maximum extent possible while ensuring the quality of, and access to, health care.

The CN reform will be implemented in three phases.

Phase I of CN reform. The bill provides that 45 days after its enactment, the following services will no longer require a CN, although the services will continue to be subject to licensure by the Department of Health and Senior Services (DHSS):

- Hospital-based medical detoxification for drugs and alcohol;
- Residential health care facility services;
- Capital improvements and renovations to health care facilities;
- Additions of medical/surgical, adult intensive care and adult critical care beds in hospitals;
- Replacement of existing major moveable equipment;
- Inpatient operating rooms;
- Hospital-based subacute care;
- Ambulatory care facilities;
- Alternate family care programs;
- Comprehensive outpatient rehabilitation services;
- Special child health clinics;
- New technology in accordance with the provisions of this bill;
- Transfer of ownership interest of a long-term care facility;

Additions to vehicles or hours of operation of a mobile intensive care unit;

Magnetic resonance imaging; and
Acute renal dialysis.

Phase II of CN reform. The bill provides that Phase II will occur within a 20-month period following its enactment. The 20-month period will ensure that DHSS has sufficient time to adopt necessary licensing standards; however, the commissioner is authorized to exempt any of the Phase II services at any time during the 20-month period, upon giving public notice, if the commissioner determines that licensing standards have been adopted by DHSS. The services that will be exempted from CN requirements during Phase II include:

Extracorporeal shock wave lithotripter;
Hyperbaric chamber;
Positron emission tomography;
Residential drug and alcohol services;
Ambulatory surgical facilities;

Basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and

Linear accelerator, including Cobalt 60 unit.

The bill also directs the Commissioner of DHSS to publish a call schedule for the initiation of the services or facilities that are not exempted from CN requirements, within 90 days of the date of enactment of the bill, but provides that if the commissioner determines that there is insufficient need to support the initiation of the service or facility, the commissioner is authorized to cancel the call.

Phase III of CN reform. The bill begins Phase III immediately upon its enactment and continues it through the second year after enactment. Phase III concerns those health care services and facilities that either have a potentially large impact on the State budget, or are specialized, or Statewide or regional in nature.

Prior to considering exemption of any of these services from CN requirements, it is prudent to determine the impact that elimination of CN requirements would have on each of the health care services or facilities. Accordingly, the bill creates a 15-member Certificate of Need Study Commission which will be established upon enactment of the bill. The commission will assess the impact that deregulation of the services or facilities will have on:

- (1) urban hospitals;
- (2) access to care by residents in the State;
- (3) quality of care;
- (4) services that are delivered Statewide or on a regional basis; and
- (5) the State General Fund, including programs such as Medicaid.

The services and facilities the commission will consider include: nursing homes, home health agencies, assisted living residences and programs, comprehensive personal care homes, psychiatric beds, comprehensive rehabilitation services, trauma services, transfer of

ownership interest of a general acute care hospital, new general acute care hospitals, new special hospitals, children's hospitals, organ banks, cardiac surgery and cardiac catheterization, mobile intensive care units, organ and bone marrow transplantation (including stem cell), burn centers, specialized perinatal and pediatric services, including maternal and child health consortia, pediatric intensive care and neonatal intermediate and intensive care and any other health care services and facilities subject to CN requirements.

The members of the commission will include: the Commissioners of Health and Senior Services and Human Services who shall serve ex officio; the Chairman of the Senate Health Committee and the Chairman of the General Assembly Health Committee and 11 public members including four State licensed health care professionals, five representatives of State licensed health care facilities, one health economist and one consumer of health care services who is knowledgeable about health care financing issues and who is a resident of this State. The President of the Senate and Speaker of the General Assembly shall each appoint a health care professional and health care facility representative, not more than one of whom in each case is from the same political party, and the Governor will appoint the other members. The Commissioner of Health and Senior Services shall serve as chairman of the commission.

The commission is directed to report its findings and recommendations to the Governor, the Senate and the General Assembly within 20 months from the date of enactment of the bill. Following receipt and review of the report, the Legislature and Governor will determine which of the remaining CN services should be exempted from regulation under the program or otherwise regulated by the State.

To address the issue of regulating new technology, the bill provides that health care equipment which involves new technology that is not identified in N.J.A.C.8:33 et seq., (the regulations governing CN requirements) shall not be subject to CN requirements and may be initiated in the State in accordance with the following requirements:

- The new technology shall be directly related to a health care service for which the provider is already licensed and has obtained a CN, when required;

- The provider shall notify the Commissioner of Health and Senior Services about the intent to initiate the new technology at least 60 days prior to the date the provider will begin use of the technology;

- The new technology shall have pre-market approval from the federal Food and Drug Administration;

- The provider shall use the new technology in accordance with guidelines approved by the Joint Commission on Accreditation of Health Care Organizations until such time as DHSS has adopted licensing standards for the new technology. The provider shall be

required to comply with DHSS licensing standards for the new technology upon adoption of the standards; and

-- The provider shall agree to submit to DHSS appropriate patient information and other data concerning use of the new technology to assist DHSS in establishing licensing standards. The provider shall submit the information and other data on a quarterly basis until such time as licensing standards are adopted for the new technology.

The bill provides that the commissioner may suspend a provider's use of the new technology if he determines that the provider is not in compliance with the requirements of this bill.

The bill amends N.J.S.A.26:2H-7 to raise the dollar threshold at which health care facility construction projects and major moveable equipment become subject to CN requirements, from \$1 million to \$2 million.

The bill also simplifies the current CN process by eliminating the local advisory boards (LAB's) established in 1991. Under the bill all applications will be reviewed only at the State level by the State Health Planning Board and the commissioner, in the case of applications subject to full review and by the commissioner, in the case of applications subject to expedited review. To ensure community input when ownership of an acute care hospital is to be transferred or a health care facility or service which is subject to CN requirements may be closed or eliminated, however, the bill requires the State Health Planning Board to conduct at least one public hearing in the area served by the facility or service within 30 days of receipt of the application for approval to close or eliminate the facility or service. The bill also eliminates references to the State Health Plan, as this document is no longer used as the basis for approving CN applications.

The membership of the State Health Planning Board is also changed to reflect the elimination of the LAB's (which were members of the board), to include nine public members, five of whom are consumers of health care services. Currently, the board has five public members, three of whom are consumers.

The bill amends current law regarding appeals of CN denials of to provide that an applicant whose application was denied by the commissioner, may request a hearing through the Office of Administrative Law, rather than appeal the decision to the Health Care Administration Board.

The bill redirects the funding for the LAB's (which comes from the .53% assessment on hospitals) to the enhanced health care services and facilities' licensing enforcement activities by DHSS which are required in the bill. Also, N.J.S.A.26:2H-12 is amended to revise the \$2,000 limit on health care facility licensure fees. The bill establishes a new fee structure for licensure and inspection activities, which will help support enhanced activities by DHSS in these areas. The bill provides that annual licensure fees shall not exceed \$10,000 in the case

of a hospital and \$4,000 in the case of any other health care facility, and biennial inspection fees shall not exceed \$5,000 in the case of a hospital and \$3,000 in the case of any other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. Also, the bill raises the limit on penalties for violations of the "Health Care Facilities Planning Act," P.L.1971, c.136, from \$250 per day to up to \$1,000 per day for operating a health care facility without a license and from \$1,00 per day to up to \$2,500 per day for a violation concerning patient care or physical plant standards.

The bill eliminates the so-called "25% rule" under which a CN applicant could proceed to the next level of review even if the recommendation was to disapprove the application, if the applicant had received a favorable vote on the application by at least 25% of the planning board's membership.

The bill repeals section 35 of P.L.1991, c.187 (C.26:2H-5.9) which established the LAB's, and section 20 of P.L.1992, c.160 (C.26:2H-7b) which provided a limited exemption to hospitals for certain construction projects. This provision is no longer needed because the bill exempts all capital improvements and renovations from CN requirements. The bill repeals Section 37 of P.L.1991, c.187 (C.26:2H-10.1) concerning the "25% rule" for decisions made by the LAB's and the State Health Planning Board.

FISCAL IMPACT:

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2178 (1R). While the bill increases the upper limits of the fee ranges, it does not set actual fee amounts; DHSS has not provided information about fee levels or total revenue expectations from fees and fines.

COMMITTEE AMENDMENTS:

The amendments clarify that, to ensure community input, a hearing will be held when ownership of an acute care hospital is to be transferred, as well as when a health care facility or service subject to CN requirements may be closed or eliminated; however, the amendments also provide that the State Health Planning Board need not hold a public hearing on the application for a certificate of need to transfer ownership of the hospital if the Attorney General or the DHSS is required by State law to hold a public hearing on the transfer of ownership of the hospital.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2178

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: JULY 20, 1998

Bill Summary:

Assembly Bill No. 2178 (1R) of 1998 reforms the State's Certificate of Need (CON) program with the goal of phasing out the regulation of health care facilities by CON to the maximum extent possible while insuring the quality of and access to health care for the State's residents. CON reform will be implemented in three phases:

- **Phase I** would be implemented within 45-days of enactment. CONs would no longer be required for the following services: hospital-based medical detoxification for drugs and alcohol; residential health care facilities; capital improvements and renovations to health care facilities; additions of medical/surgical, adult intensive care and adult critical care beds in hospitals; replacement of existing major moveable equipment; inpatient operating rooms; hospital-based acute care; ambulatory care facilities; alternate family care programs; comprehensive outpatient rehabilitation services; special child health clinics; various new technologies; transfer of ownership interest of a long-term care facility; additions to vehicles or hours of operation of a mobile intensive care unit; magnetic resonance imaging; and acute renal dialysis.
- **Phase II** would be implemented over a 20-month period following enactment or sooner if appropriate licensing standards are in place. CONs for the following services would no longer be required: extracorporeal shock wave lithotripter; hyperbaric chamber; positron emission tomography; residential drug and alcohol services; ambulatory surgical facilities; basic obstetric and pediatric services and birth centers, including additions of basic obstetric and pediatric beds in hospitals; and linear accelerator, including Cobalt 60 unit.

- **Phase III** would be implemented immediately upon enactment and continue for two years following enactment. It would affect those health care services and facilities that either have a potentially large impact on the State budget or are specialized or Statewide or regional in nature. As part of Phase III, a 15-member Certificate of Need Study Commission would be established to assess deregulation's impact on: urban hospitals; access to care; quality of services; services that are delivered Statewide or on a regional basis; and the State's General Fund, including the Medicaid program. The services and facilities to be examined are: nursing homes; home health agencies; assisted living residences and programs; comprehensive personal care homes; psychiatric beds; comprehensive rehabilitation services; trauma services; transfer of ownership interest in a general acute care hospital, new general acute care hospitals; new special hospitals; children's hospitals; organ banks; cardiac surgery and cardiac catheterization; mobile intensive care units; organ and bone marrow transplantation; burn centers; specialized perinatal and pediatric services; pediatric intensive care and neonatal intermediate and intensive care; etc.

Other provisions of the bill would:

- Establish procedures for the use of new technology;
- Raise the dollar threshold for health care facility construction projects and major moveable equipment that would be subject to CON, from \$1 to \$2 million.
- Eliminate the local advisory boards and redirect their funding from the .53% assessment on hospitals to the Department of Health and Senior Services (DHSS) to enhance DHSS' health care services and facilities' licensing enforcement activities.
- Establish a new fee structure for licensure and inspection activities to enhance DHSS' efforts in those areas. Annual licensure fees would be increased to a maximum of \$10,000 for a hospital and \$4,000 for other health care facilities, and biennial inspection fees are established that would not exceed \$5,000 for a hospital and \$3,000 for other health care facilities. Penalties for licensure violations would be increased from the current \$250 to \$1,000 per day (operating a health care facility without a license) and from \$1,000 to \$2,500 per day (violations concerning patient care or physical plant standards).

Agency Comments:

DHSS and the Office of Management and Budget have not provided any fiscal information on the legislation.

Office of Legislative Services Comments:

Though costs and savings associated with the legislation cannot be determined, the following is noted:

- The CON process is self supporting through fees charged applicants; the CON program does not depend on General Fund revenues. Thus, proposed changes to the CON process should have no direct impact on the General Fund.
The FY 1999 recommended budget indicates that DHSS would process 156 CON applications of various types which would generate nearly \$3.5 million in fees. The proposed changes would reduce both the number of CON applications that would be filed and the amount of CON revenues that would be generated.
However, how much less CON revenues would be realized cannot be readily determined.
- The three local advisory boards each receive \$660,000 in revenues generated from a .53% assessment on hospital revenues. This \$2.0 million would now be available to DHSS for enhanced licensing activities.
- The FY 1999 recommended budget anticipates that DHSS would realize over \$2.2 million in various licensing and application fees and fines. The proposed changes will increase the amount of revenues DHSS collects in fines and from its licensing and application processing activities. How much additional revenues DHSS would realize cannot be determined. However, as the bill increases application and licensure fees and fines significantly, it is not unreasonable to expect revenues to double from current levels, though the amount may vary significantly from year to year.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.