

26:2H-5.8

LEGISLATIVE HISTORY CHECKLIST  
Compiled by the NJ State Law Library

(State Health Plan--advisory  
only--not controlling in  
issuance of need)

NJSA: 26:2H-5.8

LAWS OF: 1992

CHAPTER: 31

BILL NO: A1144

SPONSOR(S) Sosa and others

DATE INTRODUCED: March 23, 1992

COMMITTEE: ASSEMBLY: Health and Human Services

SENATE: Health and Human Services

AMENDED DURING PASSAGE: Yes Amendments during passage  
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: April 13, 1992 Veto over-ride 6-25-93

SENATE: May 7, 1992 Veto over-ride 6-29-93

DATE OF APPROVAL: June 29, 1992 without approval

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG: pp

[SECOND REPRINT]

ASSEMBLY, No. 1144

STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1992

By Assemblymen SOSA, MIKULAK, Collins, Assemblywoman Anderson, Assemblymen DiGaetano, Oros, Catania, Assemblywomen Farragher, Wright, Assemblymen Kramer, Azzolina, Singer, Cottrell, Assemblywoman Haines, Assemblymen Wolfe, Kavanaugh, Penn, Geist, Felice, Frelinghuysen, Kelly, Assemblywoman Derman, Assemblymen Warsh, Rocco, Corodemus, Assemblywoman Smith and Assemblyman Arnone

1 AN ACT concerning the State Health Plan and amending  
2 P.L.1991, c.187 <sup>1</sup>and P.L.1971, c.136<sup>1</sup>.

3

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

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

8 34. a. The State Health Planning Board shall prepare and  
9 revise annually, a State Health Plan. The State Health Plan shall  
10 identify the unmet health care needs in an area by service and  
11 location and it shall serve as <sup>1</sup>[the basis upon which all  
12 certificate of need applications shall be approved. The plan shall  
13 be effective beginning January 1, [1992] 1993] an advisory  
14 document which may be considered when certificate of need  
15 applications are reviewed for approval. Upon completion of the  
16 entire State Health Plan, the State Health Planning Board shall  
17 submit the plan to the commissioner and the board for their use  
18 on an advisory basis<sup>1</sup>.

19 <sup>2</sup>Effective May 15, 1992, notwithstanding any other provision  
20 of law to the contrary, neither the Health Care Administration  
21 Board or the Department of Health shall adopt any regulation  
22 which implements any goals, objectives or any other health  
23 planning recommendations that have been included in the State  
24 Health Plan prepared by the State Health Planning Board.<sup>2</sup>

25 The State Health Planning Board shall consider the  
26 recommendations of the local advisory boards in preparing and  
27 revising the plan to incorporate specific regional and geographic  
28 considerations of access to, and delivery of, health care services  
29 at a reasonable cost. The State Health Planning Board shall  
30 incorporate the recommendations of the local advisory boards  
31 into the plan unless the recommendations are in conflict with the  
32 best interests of Statewide health planning. <sup>1</sup>If any  
33 recommendations of the local advisory boards are not  
34 incorporated into the plan, the State Health Planning Board shall  
35 identify those recommendations, which shall be listed separately  
36 for each local health planning region, in an addendum to the plan  
37 and shall state the specific reason that each recommendation is

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:

<sup>1</sup> Assembly HH committee amendments adopted March 30, 1992.

<sup>2</sup> Senate SH committee amendments adopted May 4, 1992

1 in conflict with the best interests of Statewide health planning.<sup>1</sup>

2 For each unmet health care service identified in the plan, the  
3 plan shall specify the period of time for which a certificate of  
4 need for that service shall be valid.

5 <sup>1</sup>[The plan shall be adopted by the Commissioner of Health  
6 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
7 (C.52:14B-1 et seq.), subject to the approval of the Health Care  
8 Administration Board.]<sup>1</sup>

9 b. The State Health Planning Board shall review applications  
10 for certificates of need and make recommendations to the  
11 Commissioner of Health <sup>1</sup>[in accordance with the State Health  
12 Plan], for which purpose it may consider the State Health Plan on  
13 an advisory basis<sup>1</sup>.

14 (cf: P.L.1991, c.187, s.34)

15 <sup>1</sup>2. Section 8 of P.L.1971, c.136 (C.26:2H-8) is amended to  
16 read as follows:

17 8. No certificate of need shall be issued unless the action  
18 proposed in the application for such certificate is [consistent with  
19 the health care needs identified in the State Health Plan and the  
20 action is] necessary to provide required health care in the area to  
21 be served, can be economically accomplished and maintained, will  
22 not have an adverse economic or financial impact on the delivery  
23 of health care services in the region or Statewide, and will  
24 contribute to the orderly development of adequate and effective  
25 health care services. In making such determinations there shall be  
26 taken into consideration (a) the availability of facilities or  
27 services which may serve as alternatives or substitutes, (b) the  
28 need for special equipment and services in the area, (c) the  
29 possible economies and improvement in services to be anticipated  
30 from the operation of joint central services, (d) the adequacy of  
31 financial resources and sources of present and future revenues,  
32 (e) the availability of sufficient manpower in the several  
33 professional disciplines, and (f) such other factors as may be  
34 established by regulation. The State Health Plan may also be  
35 considered in determining whether to approve a certificate of  
36 need application.

37 In the case of an application by a health care facility  
38 established or operated by any recognized religious body or  
39 denomination the needs of the members of such religious body or  
40 denomination for care and treatment in accordance with their  
41 religious or ethical convictions may be considered to be a public  
42 need.<sup>1</sup>

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

44 <sup>1</sup>3. Section 9 of P.L.1971, c.136 (C.26:2H-9) is amended to  
45 read as follows:

46 8. Certificates of need shall be issued by the commissioner in  
47 accordance with the provisions of P.L.1971, c.136 (C.26:2H-1 et  
48 seq.) and [the State Health Plan and] based upon criteria and  
49 standards therefor promulgated by the commissioner. The  
50 commissioner may approve or deny an application for a  
51 certificate of need [if the approval or denial is consistent with  
52 the State Health Plan]. If an application is denied, the applicant  
53 may appeal the decision to the board. No decision shall be made  
54 by the commissioner contrary to the recommendations of the

1 State Health Planning Board or the local advisory board  
2 concerning a certificate of need application or any other matter,  
3 unless the State Health Planning Board and the applicant shall  
4 have been granted opportunity for hearing. Requests for a fair  
5 hearing shall be made to the Department of Health within 30 days  
6 of receipt of notification of the commissioner's action. The  
7 department shall arrange within 60 days of a request, for fair  
8 hearings on all such cases and after such hearing the  
9 commissioner or his designee shall furnish the board, the State  
10 Health Planning Board and the applicant in writing the hearing  
11 examiner's recommendations and reasons therefor. The board  
12 within 30 days of receiving all appropriate hearing records or, in  
13 the absence of a request for a hearing within 30 days of receiving  
14 the denial recommendations of the commissioner, shall make its  
15 determination.

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

23 For the purposes of this section, capital construction project  
24 shall include the purchase of any major moveable equipment as  
25 well as any modernization, construction, or renovation project.

26 [If the commissioner intends to approve or deny an application  
27 for a certificate of need contrary to the State Health Plan, the  
28 commissioner shall submit to the board the entire record of the  
29 application, including the recommendations of the local advisory  
30 board and the State Health Planning Board and the  
31 commissioner's specific reasons for his intention to act contrary  
32 to the State Health Plan. If the board agrees with the  
33 commissioner, it shall request the commissioner to hold the  
34 affected application and direct the State Health Planning Board  
35 to amend the State Health Plan to reflect its determination.  
36 Upon the effective date of the amendment to the State Health  
37 Plan, the commissioner shall reconsider the application.]<sup>1</sup>

38 (cf: P.L.1991, c.187, s.32)

39 14. Section 35 of P.L.1991, c.187 (C.26:2H-5.9) is amended to  
40 read as follows:

41 35. There is established a program to provide local health  
42 planning on a Statewide basis in a minimum of five specific  
43 geographic regions to be designated by the Governor, in  
44 consultation with the Commissioner of Health. Each region shall,  
45 to the extent possible, include sufficient resources to provide a  
46 comprehensive range of health care facilities and services and  
47 the designation of each region shall take into account the  
48 compatibility of social, economic, transportation and geographic  
49 characteristics.

50 a. Local health planning in each region shall be conducted by a  
51 local advisory board approved by the Commissioner of Health,  
52 which shall be organized as a nonprofit corporation.

53 The commissioner shall establish requirements for the  
54 composition of the governing body of each corporation and shall

1 specify, under the terms of an agreement with the corporation  
2 for the awarding of a grant pursuant to this section, those  
3 functions which the board, at a minimum, shall perform. The  
4 commissioner shall award to each corporation a grant of such  
5 monies as shall be determined by the commissioner.

6 The membership of the governing body of the corporation  
7 approved as a local advisory board shall be composed of  
8 consumers and providers of health care who reside or have their  
9 principal place of business within the geographic region  
10 designated by the commissioner, except that no less than 51% but  
11 no more than 60% of the members shall be persons who are not  
12 providers of health care.

13 b. The local advisory board shall conduct local health planning  
14 for its designated region and make recommendations at least  
15 annually to the State Health Planning Board for incorporation  
16 into the State Health Plan. The local advisory board shall also  
17 review certificate of need applications for any proposed project  
18 in its region and make recommendations to the Commissioner of  
19 Health [in accordance with the State Health Plan].

20 c. A member of the governing body or employee of the  
21 corporation shall not, by reason of his performance of any duty,  
22 function or activity required of, or authorized to be undertaken  
23 by the corporation, be held civilly or criminally liable if that  
24 person acted within the scope of his duty, function or activity as  
25 a member of the governing body or employee of the corporation  
26 and without gross negligence or malice toward any person  
27 affected thereby.

28 A corporation shall not, by reason of the performance of any  
29 duty, function or activity required of, or authorized to be  
30 undertaken by the corporation, be held civilly or criminally liable  
31 if the member of the governing body or the employee of the  
32 corporation who acted on behalf of the corporation in the  
33 performance of that duty, function, or activity acted within the  
34 scope of his duty, function or activity as a member of the  
35 governing body or employee of the corporation, exercised due  
36 care and acted without gross negligence or malice toward any  
37 person affected thereby.<sup>1</sup>

38 (cf: P.L.1991, c.187, s.35)

39 <sup>1</sup>[2.] 5.1 This act shall take effect immediately.

40

41

42

43

44 \_\_\_\_\_  
Makes State Health Plan advisory.

# ASSEMBLY, No. 1144

## STATE OF NEW JERSEY

INTRODUCED MARCH 23, 1992

Assemblymen SOSA, MIKULAK, Collins, Assemblywoman Anderson, Assemblymen DiGaetano, Oros, Catania, Assemblywomen Farragher, Wright, Assemblymen Kramer, Azzolina, Singer, Cottrell, Assemblywoman Haines, Assemblymen Wolfe, Kavanaugh, Penn, Geist, Felice, Frelinghuysen, Kelly, Assemblywoman Derman, Assemblymen Warsh, Rocco, Corodemus, Assemblywoman Smith and Assemblyman Arnone

1 AN ACT concerning the State Health Plan and amending  
2 P.L.1991, c.187.

3

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

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

8 34. a. The State Health Planning Board shall prepare and  
9 revise annually, a State Health Plan. The State Health Plan shall  
10 identify the unmet health care needs in an area by service and  
11 location and it shall serve as the basis upon which all certificate  
12 of need applications shall be approved. The plan shall be  
13 effective beginning January 1, [1992] 1993.

14 The State Health Planning Board shall consider the  
15 recommendations of the local advisory boards in preparing and  
16 revising the plan to incorporate specific regional and geographic  
17 considerations of access to, and delivery of, health care services  
18 at a reasonable cost. The State Health Planning Board shall  
19 incorporate the recommendations of the local advisory boards  
20 into the plan unless the recommendations are in conflict with the  
21 best interests of Statewide health planning.

22 For each unmet health care service identified in the plan, the  
23 plan shall specify the period of time for which a certificate of  
24 need for that service shall be valid.

25 The plan shall be adopted by the Commissioner of Health  
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
27 (C.52:14B-1 et seq.), subject to the approval of the Health Care  
28 Administration Board.

29 b. The State Health Planning Board shall review applications  
30 for certificates of need and make recommendations to the  
31 Commissioner of Health in accordance with the State Health Plan.  
32 (cf: P.L.1991, c.187, s.34)

33 2. This act shall take effect immediately.

34

35

36

### STATEMENT

37

38 This bill delays the effective date of the State Health Plan

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 until January 1, 1993.

2 Although P.L.1991, c.187, which mandated the State Health  
3 Plan, provided that the plan take effect on January 1, 1992, the  
4 plan is still being prepared and it is expected that the final plan  
5 will not be presented to the Health Care Administration Board  
6 until June 1992, at the earliest. Even though the original  
7 deadline has not been met, the health planning process has been  
8 too accelerated and the period for public comment too limited.  
9 Therefore, it is necessary to formally delay the effective date of  
10 the plan in order to ensure that the Legislature and the citizens  
11 of the State have sufficient time to properly assess and evaluate  
12 the economic impact of the proposed plan and the effect the  
13 proposed plan will have on health care services in the State.

14 The delay will also provide an opportunity for the recently  
15 established local advisory boards to make recommendations and  
16 provide grass roots participation in the Statewide health planning  
17 process, as mandated by law.

18

19

20

21

22 Delays effective date of State Health Plan until January 1, 1993.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1144**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 30, 1992

The Assembly Health and Human Services Committee favorably reports Assembly Bill No. 1144 with committee amendments.

As amended by the committee, this bill provides that:

- the State Health Plan provided for in section 34 of the "Health Care Cost Reduction Act," P.L.1991, c.187 (C.26:2H-5.8), shall be an advisory document only and may be considered by local advisory boards, the State Health Planning Board, the Commissioner of Health and the Health Care Administration Board when determining whether to approve certificate of need applications;

- upon completion of the entire State Health Plan, the State Health Planning Board shall submit the plan to the Commissioner of Health and the Health Care Administration Board for their use on an advisory basis; and

- if any recommendations of the local advisory boards are not incorporated into the State Health Plan, the State Health Planning Board shall identify those recommendations, which shall be listed separately for each local health planning region, in an addendum to the State Health Plan and shall state the specific reason that each recommendation is in conflict with the best interests of Statewide health planning.

The committee amendments provide that the State Health Plan shall be advisory only and delete the provisions of section 34 of P.L.1991, c.187 (C.26:2H-5.8) which provided for adoption of the plan in regulations by the Commissioner of Health. The amendments also delete the provision in the original bill which delayed for one year, from January 1, 1992 to January 1, 1993, the effective date of the State Health Plan. The amendments do not specify a deadline for completion of the plan but stipulate that only upon completion of the entire plan shall the State Health Planning Board submit the plan to the Commissioner of Health and the Health Care Administration Board.



SENATE HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

[FIRST REPRINT]

**ASSEMBLY, No. 1144**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 4, 1992

The Senate Health and Human Services Committee favorably reports Assembly Bill No. 1144 [1R] with committee amendments.

As amended by committee, this bill provides that:

- The State Health Plan provided for in section 34 of the "Health Care Cost Reduction Act," P.L.1991, c.187 (C.26:2H-5.8), shall be an advisory document only and may be considered by local advisory boards, the State Health Planning Board, the Commissioner of Health and the Health Care Administration Board when determining whether to approve certificate of need applications;
- The Health Care Administration Board and the Commissioner of Health shall not adopt any regulation which implements any goals, objectives or any other health planning recommendations that have been included in the State Health Plan prepared by the State Health Planning Board;
- Upon completion of the entire State Health Plan, the State Health Planning Board shall submit the plan to the Commissioner of Health and the Health Care Administration Board for their use on an advisory basis; and
- If any recommendations of the local advisory boards are not incorporated into the State Health Plan, the State Health Planning Board shall identify those recommendations, which shall be listed separately for each local health planning region, in an addendum to the State Health Plan and shall state the specific reason that each recommendation is in conflict with the best interests of Statewide health planning.

The committee amendments prohibit the Health Care Administration Board and Commissioner of Health from adopting any regulations to implement the goals, objectives or recommendations of the State Health Plan.

This bill is identical to Senate Bill No. 610 SCA (Scott/B. Smith), which the committee also reported favorably on this date.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

June 22, 1992

ASSEMBLY BILL NO. 1144

(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 1144 (Second Reprint) without my approval.

The State Health Plan process was established as part of the Health Care Cost Reduction Act, L. 1991, c.187. The State Health Plan, which assesses future health needs and sets priorities for health care spending, is intended to be the blueprint for statewide health planning. The Plan serves as a guide to the Commissioner in deciding which new health care services are truly needed and where they should be located. The Plan touches upon a broad spectrum of areas ranging from addictions to maternal and child health, long-term care, and AIDS. On June 18, 1992, the Health Care Administration Board (HCAB) approved the Plan by a vote of nine to zero, with one abstention.

Assembly Bill No. 1144 (Second Reprint) would transform the State Health Plan from a binding to an advisory document. It would also prohibit both the Department of Health and the Health Care Administration Board from enacting any regulation to effectuate the goals and purposes of the State Health Plan.

I cannot support this legislation for many reasons. It would reverse a serious effort to control health care costs. It is based on a faulty understanding of the process of developing the State Health Plan and its actual impact. It jeopardizes critical funding for a creative and important State maternal and perinatal care program. And, finally, the prohibitions it would establish on rulemaking raise due process concerns under the State Constitution and may contravene the principle of separation of powers.

The lack of a comprehensive system of statewide health planning has been a major factor contributing to spiraling health care costs

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

2

and limited access to care for large segments of the population. Just one example of the kind of costly waste that careful planning can avoid is provided by the unchecked proliferation of Magnetic Resonance Imagers (MRIs) that occurred in the 1980's. New Jersey now has at least 80 of these extremely expensive diagnostic tools; in contrast, there are only 15 MRIs in all of Canada.

The adoption of the State Health Plan has been criticized on many levels, including an alleged lack of public participation in the process. Nothing could be further from the truth. The six Local Advisory Boards (LABs) have voting representation on the State Health Planning Board and many held hearings in their areas. Five of the six LAB representatives voted to send the Plan on to the Health Care Administration Board for its review and approval. The HCAB held an extended public comment period on the Plan and held six public hearings, one in each LAB region. At those hearings, not only did members of the public speak, but each LAB presented its own testimony. Department of Health staff met with legislators, hospital officials and physicians, and held town meetings and conducted site visits to health care facilities. Substantial alterations to the Plan occurred in the course of this public review process. As a result of the hearings held by the State Health Planning Board, major changes were made to the Plan proposals and the HCAB made a number of changes before finally adopting the State Health Plan on June 18, 1992.

The Plan has also been criticized for "closing" six hospitals around the State. The Department of Health does not have the power to "close" hospitals on the basis of the plan, only the boards of the hospitals can do this. Rather, the plan sets a five to ten year time frame in which we would move to transition these hospitals for other health care uses, with ongoing review and changes in direction if necessary.

Implementation of the State Health Plan is necessary to preserve an estimated \$2.7 million to fund a consortia of seven perinatal

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

3

clinics, which supply care for pregnant women and newborn babies. This consortia will help achieve appropriate levels of care for pregnant women and ensure that children have access to preventative health services.

This bill would also prohibit the Department of Health and the HCAB from promulgating any regulation which would in any way effectuate any goal objectives or any other health planning recommendations that have been included in the State Health Plan. This provision is overbroad because it would infringe upon almost all rulemaking in many areas by the Department of Health and the HCAB, possibly in violation of due process rights of the regulated public. It may also contravene the vital principle of separation of powers, as articulated in Article III, paragraph I of our Constitution.

Accordingly, I herewith return Assembly Bill No. 1144 (Second Reprint) without my approval.

Respectfully

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ M. Robert DeCotiis

Chief Counsel to the Governor