

The following Bill Analysis is not a complete review of HB 247 pn 257. Section 13 and Section 14 of the bill have been excluded from this particular analysis. Section 13 prohibits Self-Referrals.

HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

BILL ANALYSIS

BILL NO: **HB0247** PN0257

SPONSOR: Rep. Mundy

COMMITTEE: Insurance

DATE: April 8, 2009

PROPOSAL/EXECUTIVE SUMMARY: Amending the act of July 19, 1979 (P.L.130, No.48) known as the Health Care Facilities Act to reauthorize a Certificate of Need under the Department of Health.

ANALYSIS: Section 2 reenacts and amends Sections 201 and 401.3 of the act of September 18, 1992 (P.L.1602, No.179) by providing the Department of Health the following duties and powers:

1. Exercise exclusive jurisdiction over health care providers in accordance with the provisions of this act.
2. To issue determinations of reviewability or non-reviewability of certificate of need proposals.
- 2.1 To develop qualitative and quantitative standards and criteria for the review and approval of certificate of need applications.
3. To issue certificates of need and amended certificates of need in accordance with the provisions of this act.
4. To withdraw expired certificates of need.
5. To require submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.
6. Upon consultation with the policy board, to research, prepare and, after approval by the Governor, publish, no later than 18 months after the effective date of this act and annually thereafter, a revised Stat health services plan for the Commonwealth. Until the State health services plan is adopted, the department shall apply the State health plan in existence on the effective date of this act, along with any subsequent updates to that plan.
- 6.1 To develop a certificate of need exceptions process which permits exceptions to be granted to the standards and criteria in order to reflect local experience or ensure access or to respond to circumstances which pose a threat to public health and safety. The exceptions process shall begin only after the department issues a denial of a certificate of need application. All exceptions must be publicly disclosed. This provision creates no right to entitlement to an exception.

7. To collect and disseminate such other information as may be appropriate to determine the appropriate level of facilities and services for the effective implementation of certification of need under this act. Where such information is collected by any other agency of State government, duplication shall be avoided by coordination of data collection activities if such coordination does not otherwise unduly burden those State agencies.

8. To furnish such staff support and expertise to the policy board as may be needed to perform its responsibilities.

9. To receive a log and review all applications for certificates of need or amendments thereof and approve or disapprove the same.

10. To minimize the administrative burden on health care providers by eliminating unnecessary duplication of financial and operations reports and to the extent possible and without undue burden coordinating reviews and inspections performed by Federal, State, local and private agencies.

11. To adopt and promulgate regulations necessary to carry out the purposes and provisions of this act relating to certificate of need.

12. To enforce the rules and regulations promulgated by the department.

13. To provide technical assistance to individuals and public and private entities in filling out the necessary forms for the development of projects and programs.

14. To establish and publish in the Pennsylvania Bulletin a fee schedule for certificate of need applications and letters of intent.

15. To coordinate any data collection activities necessary for administration of this act so as not to duplicate unnecessarily the data collection activities of other Federal and State agencies.

16. To modify the list of reviewable clinically related health services.

17. To establish and publish in the PA Bulletin a detailed schedule of the review process for each certificate of need application submitted to the department.

The State health services improvement plan will consist of at a minimum:

1. An identification of the clinically related health services necessary to serve the health needs of the population of PA, including those medically underserved areas in rural and inner-city locations.
2. An analysis of the availability, accessibility and affordability of the clinically related health services.
3. Qualitative and quantitative standards and criteria for the review of certificate of need application by the department.
4. An exceptions process which permits exceptions to be granted to the standards and criteria in order to reflect local experience or ensure access or to respond to circumstances which pose a threat to the public health and safety.

Section 4 reenacts and amends Sections 603, 701 and 702 of the act of December 18, 1992 (P.L. 1602, No 179) Section 603 (Enforcement of orders relating to certificate of need) provides for no certificate of need to be granted to any person for a health care facility or reviewable clinically related health service unless such facility or clinically related health service is found by the department and CON review board to be needed. Any person operating a reviewable clinically related health service for which no certificate of need has been obtained, after service of a cease and desist order of the department will be fined between \$1,000-\$10,000.

Section 701 (Certificate of need required; clinically related health services subject to review) provides for any person who offers, develops, constructs, renovates, expands or otherwise establishes or undertakes to establish a clinically related health service that is included in the department's list of reviewable services or a health care facility must obtain a certificate of need from the department and CON review board if one or more of the factors apply:

- Under generally accepted accounting principles, consistently applied, the proposal requires a capital expenditure in excess of: \$500,000 for new high-cost technology, \$1 million for facility improvements in an ambulatory surgical facility or in an office where reviewable clinically related health care services are offered, or \$2 million for any other hospital-based improvement.
- The proposal involves the establishment of a health care facility
- The proposal increases the number of licensed beds by more than ten beds or 10%, whichever is less, every two years.
- The proposal substantially expands an existing clinically related health service as determined by the department.

Section 702 (Certificate of need; notice of intent; application; issuance) provides for projects requiring a certificate of need to at the earliest possible time in their planning, but no later than April 1 of the calendar year prior to the year of the proposed project start date, be submitted to the department and the CON review board in a letter of intent. A person desiring to obtain or amend a certificate shall apply in writing to the department and the CON review board, including a cost impact analysis as further defined by the department in regulations implementing this act. The department and the CON review board shall approve or disapprove the application within 90 days from the date of notification of the beginning of the review.

Section 7 reenacts Section 706, 707, and 708.1 of the act of December 18, 1992 (P.L.1602, No179) providing for an application for certificate of need to be considered for approval when the department and the CON review board determine that the application substantially meets the requirements listed below:

1. There is need by the population served or to be served by the proposed service or facility.
2. The proposed service or facility will provide care consistent with quality standards established by the department.
3. The proposed service or facility will meet the standards identified by the department for access to care by medically underserved groups, including individuals eligible for medical assistance and persons without health insurance.
4. The applicant has submitted a data-based cost analysis that includes an analysis demonstrating that is not a more appropriate, less costly or more effective alternative method of providing the proposed services.; the service or facility is financially and economically feasible, considering anticipated volume of care and the availability of reasonable financing based on information from the applicant and other sources during the review process; the proposed service or facility will not have an inappropriate, adverse impact on the overall level of health care expenditures in the area; and the proposed service or facility does not adversely impact the maintenance and development of rural and inner-city health services generally those services provided by health care providers which are based in rural and inner-city locations and which have an established history of providing services to medically underserved populations.

Section 9 – At least 30 days prior to termination or substantial reduction of a service or the provider shall notify the health systems agency and the department of its intended action.

Section 11 – Any persons that violates ay of the provisions of this act or the rules and regulations, the department may maintain any action in the name of the Commonwealth for an injunction or other process restraining or prohibiting such person from engaging in such activity.

Section 12 – The department shall issue a license to a health care provider when it is satisfied that the following standards have been met:

1. That the health care provider is a responsible person
2. That the place to be used as a health care facility is adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered
3. That the health care facility provides safe and efficient services which are adequate for the care, treatment and comfort of the patients or residents of such facility
4. That there is substantial compliance with the rules and regulations adopted by the department pursuant to this act
5. That a certificate of need has been issued if one is necessary

Separate licenses shall not be required for different services within a single health care facility except that home health care, home care, hospice or long-term nursing care will require separate licenses.

One year after the certificate of need has been issued, the department shall monitor quality of the facility or service by requesting from the council relevant data, which may include mortality rates and the number of procedures performed. If the department finds that the facility or service is not meeting the standards the department will take disciplinary action.

No claim for payment may be presented by any entity to any individual, third-party payor or other entity for a service furnished pursuant to conduct prohibited under subsection (a).

SECTION 15 – The department will charge a fee of \$500 for each letter of intent filed. The letter of intent fee shall be deducted from the total application fee required. For each application the department will charge a fee between \$500 - \$50,000.

EFFECTIVE DATE: Immediately

PREPARED BY: Lisa M. Kubeika, 787-4437