

COUNCIL OF THE DISTRICT OF COLUMBIA

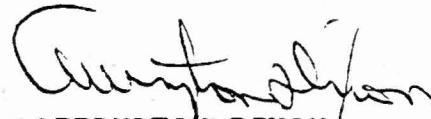
NOTICE

D.C. LAW 3-99

"District of Columbia Certificate of Need Act
of 1980".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 3-289, on first and second readings, June 17, 1980 and July 1, 1980, respectively. Following the signature of the Mayor on July 16, 1980, this legislation was assigned Act No. 3-221, published in the August 22, 1980, edition of the D.C. Register, (Vol. 27 page 3599) and transmitted to Congress on July 22, 1980 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and, therefore, cites this enactment as D.C. Law 3-99 effective September 16, 1980.


ARRINGTON DIXON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

July 22, 23, 24, 25, 28, 29, 30, 31

August 1, 4, 5, 6, 18, 19, 20, 21, 22, 25, 26, 27, 28

September 3, 4, 5, 8, 9, 10, 11, 12, 15

AN ACT

3-221

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a District of Columbia Certificate of
Need Program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "District of
Columbia Certificate of Need Act of 1980".

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Sec. 2. Purpose.

It is the purpose of this act to promote
effective and equitable health planning and
regulation of new institutional health services

CODIFICATION
D.C. Code,
sec. 32-341

and capital expenditures proposed for the District of Columbia.

Sec. 3. Definitions.

Unless otherwise specified as used in this act the term:

(1) "Annual Implementation Plan" (hereafter referred to as "AIP") means the plan prepared by the Statewide Health Coordinating Council (hereafter referred to as "SHCC") and the State Health Planning and Development Agency (hereafter referred to as "SHPDA") to specify actions which will achieve the goals and the objectives of the State Health Plan (hereafter referred to as "SHP").

(2) "Authorized bed capacity" means "H" plus or minus "A" where:

(a) "H" is:

(1) in the case of hospitals, and intermediate care or skilled nursing facilities, the licensed number of beds as of the last District government licensure inspection completed prior to May 1, 1980;

(2) in the case of the following District government facilities: District of

D.C.Code,
sec. 32-342

Columbia General Hospital, 500 beds; District of Columbia Village, 700 beds; Forest Haven, Intermediate Care portion, 492 beds; Glendale Hospital, 270 beds; J.B. Johnson Extended Care Facility, 225 beds; on Washington Center for Aging Services, intermediate care and skilled nursing portion, 275 beds;

(3) in the case of renal dialysis stations, the number of stations reported operating as of the date of enactment of this act, as certified by the End Stage Renal Dialysis Network of the Greater Capitol Area, Inc.; and

(b) "A" is a change in the number of beds which is accompanied by a capital expenditure, or an increase in the number of renal dialysis stations.

(3) "Capital expenditure" means an expenditure made by or on behalf of a health care facility which is under Generally Accepted Accounting Principles, not properly chargeable as an expense of operation and maintenance or which is an expenditure made to obtain by lease or comparable arrangement, transfer, or donation, any facility or part thereof or any equipment for a

facility or part, if either type of expenditure:

(a) exceeds one hundred fifty thousand dollars (\$150,000); (b) substantially changes the bed capacity of the facility with respect to which the expenditure is made; or (c) is intended to permit the increase of patient load or units of service of such facility by forty percent (40%) or more over present capacity.

(4) "District" means within the geographical boundaries of the District of Columbia.

(5) "District government" means the municipal government of the District of Columbia.

(6) "Ex parte contact" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.

(7) "Health care facility" (hereafter referred to as "HCF") means a public (including District government facilities) or private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, ambulatory care facility or clinic, kidney disease treatment center, freestanding

hemodialysis facility, intermediate care facility, ambulatory surgical treatment facility, diagnostic health care facility, or any other facility as defined by regulations issued in conformance with the National Health Planning Act which has an annual operating budget of at least seventy five thousand dollars (\$75,000). The term does not include Christian Science sanatoriums operated, listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, or those private office facilities for the private practice of a physician or dentist, or other health care facilities licensed or to be licensed, as community residence facilities.

(8) "Health Maintenance Organization"

(hereafter referred to as "HMO") means a public or private organization which is a "qualifying HMO" under federal regulations, or has been determined to be an HMO pursuant to regulations adopted by the SHPDA in conformance with section 1521(8)(B) of the National Health Planning Act.

(9) "Health Service" means any clinically related (i.e. diagnostic, curative or rehabilitative) service, including those related

to alcohol abuse, drug abuse, or mental health, but not including those services provided by physicians, dentists, or other individual providers in individual or group practice.

(10) "Health Systems Agency" (hereafter referred to as "HSA") means a health systems agency designated pursuant to section 1521 of the National Health Planning Act.

(11) "Major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of one hundred fifty thousand dollars (\$150,000), except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory, to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and it has been determined to meet the requirements of section 1861(s) (10) and (11) under Title XVIII of the Social Security Act. In determining whether medical equipment has a value in excess of one hundred fifty thousand dollars (\$150,000), the cost of studies, surveys, designs, plans, working drawings, specifications, and other

activities essential to the acquisition of such equipment shall be included.

(12) "New institutional health service"

means:

(a) The construction, development,

or other establishment of:

(1) a health care facility,

(2) a home health or nursing

service, or

(3) any new health service.

(b) Any expenditure, including an

expenditure for major medical equipment, in excess of one hundred fifty thousand dollars (\$150,000)

by or on behalf of any HCF or any person engaged

in the provision of health services (except as

provided for in section 4(b)(2) which under

generally accepted accounting principles

consistently applied, is a capital expenditure;

HOWEVER, capital expenditures by physicians,

dentists, or other individual providers in

individual or group practice do not constitute a

new institutional health service unless the

expenditure is for acquisition of a piece of major

medical equipment which, along with any necessary

planning costs, construction costs and related equipment, constitutes a capital expenditure of more than one hundred fifty thousand dollars (\$150,000). If a person makes an acquisition under a lease or a comparable arrangement, or through a donation or through any other type of transfer, which would have constituted a capital expenditure of more than one hundred fifty thousand dollars (\$150,000) if the acquisition had been by purchase at fair market value, the acquisition shall be deemed a capital expenditure of more than one hundred fifty thousand dollars (\$150,000) for purposes of this act. When an acquisition is made under a lease or comparable arrangement, or through donation or any other type of transfer by two (2) or more persons acting in concert, and the aggregate cost of such acquisition would have constituted a capital expenditure of more than one hundred fifty thousand dollars (\$150,000) if the acquisition had been by purchase at fair market value, the acquisition shall be deemed a capital expenditure of more than one hundred fifty thousand dollars (\$150,000) for purposes of this act.

notwithstanding that the cost or value to each participating person of such acquisition may be less than one hundred fifty thousand dollars (\$150,000).*

(c) The obligation of any capital expenditure by or on behalf of an HCF or HMO (except as provided in section 4(b)(2)), which increases or decreases the total number of beds (or distributes beds among various categories, or relocates beds from one (1) physical facility or site to another) by ten (10) beds or ten percent (10%), whichever is less, in any two (2) year period. The SHPDA shall by regulation define a bed closure and the requirements for reporting bed closures.

(d) Health services which are offered by a HCF or inpatient services offered by a HMO not exempt under section 4(b)(2) and which were not offered on a regular basis by such HCF or HMO within the twelve (12) month period prior to the time such services would be offered and which entail an annual operating budget of at least seventy five thousand dollars (\$75,000) or which result from a capital expenditure in any amount.

(e) Any increase in the number of renal dialysis stations or relocation of such stations from one (1) physical facility or site to another.

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

(14) "National Health Planning Act" means the National Health Planning and Resources Development Act of 1974, approved January 4, 1975 (88 Stat. 2225; 42 U.S.C. sec. 300k et seq.).

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

(16) "Statewide Health Coordinating Council" (hereafter referred to as "SHCC") means the body established to advise the SHPDA and exercise certain health planning powers, as specified in Mayor's Order 77-43, dated March 15, 1977, pursuant to section 1536 of the National Health Planning Act.

(17) "State Health Plan" (hereafter referred to as "SHP"), means the comprehensive health plan prepared by the SHCC and SHPOA in accordance with Mayor's Order 77-43, dated MARCH 15, 1977, pursuant to the National Health Planning Act.

(18) "State Health Planning and Development Agency" (hereafter referred to as "SHPOA") means the agency of the District government designated in Mayor's Order 75-59, dated February 4, 1976, to carry out the District government health planning and development program, pursuant to the National Health Planning Act.

Sec. 4. Certificate of Need Requirement for New Institutional Health Services; Applicability to HMOs; Acquisition of Health Care Facilities; Applicability to Predevelopment Activities; Closure of Health Care Facilities or Services.

D.C.Code,
sec. 32-343

(a)(1) All persons proposing to offer or develop a new institutional health service or to obligate a capital expenditure in the District shall, prior to proceeding with that offering, development or obligation, obtain from the SHPOA a

Certificate of Need indicating that there exists a public need for such new service or expenditure.

Only those institutional health services or capital expenditures which are granted a Certificate of Need shall be offered or developed or obligated within the District.

(b) Notwithstanding any other provisions of this act, (1) HMOs or HCFs controlled directly or indirectly by one (1) or more HMOs shall be subject to Certificate of Need requirements only when proposing:

(A) provision of inpatient institutional health services;

(B) acquisition of major medical equipment; or

(C) obligation of capital expenditures for the provision of inpatient institutional health services.

(2) A HMO, combination of HMOs, or HCF proposing to offer or develop a new inpatient institutional health service, to acquire major medical equipment for the provision of an inpatient institutional health service, or to obligate a capital expenditure for the provision of a new inpatient

institutional health service in the District shall be exempt from Certificate of Need requirements if it meets the criteria specified in SHPDA regulations adopted in conformance with section 1527(b)(1) of the National Health Planning Act, provided it has applied for such exemption as required by SHPDA regulations adopted in conformance with paragraph 1527(b)(2) of the National Health Planning Act, and the SHPDA has approved such application for exemption.

(c) A Certificate of Need shall, except as provided in subsection (b) be required for the obligation of a capital expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing HCF.

(d) A HCF (or any part thereof) or medical equipment with respect to which an exemption was granted under paragraph (b)(2) may not be sold or leased and a controlling interest in such facility or equipment may not be acquired, and a health care facility of the type described in SHPDA regulations adopted in conformance with paragraph 1527(b)(1)(C) of the National Health Planning Act

may not be used by any person other than the lessee described in such regulations unless:

- (1) the SHPDA issues a Certificate of Need approving the sale, lease, acquisition or use; or
 - (2) the SHPDA determines, upon application, that the entity to which the equipment or facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is an HMO or combination of HMOs which is exempt from Certificate of Need requirements under SHPDA regulations adopted in conformance with section 1527(b)(3) of the National Health Planning Act.
- (e) Expenditures in excess of one hundred fifty thousand dollars (\$150,000) in preparation to develop or offer a new institutional health service for which a Certificate of Need is required or arrangements or commitments for financing an offer or development of a new institutional health service for which a Certificate of Need is required shall not be made by any person unless a Certificate of Need has been granted. Expenditures in preparation for the

offering or development of a new institutional health service shall include expenditures for studies, surveys, designs, plans, working drawings, specifications and site acquisition which are essential to the offering or development of the service.

(f) Any person proposing to permanently close HCF, health service or HMO shall notify the SHPDA of this intention no later than ninety (90) days prior to the proposed closing, and shall provide the SHPDA such information as the SHPDA shall require by regulation. Such information shall include, but not be limited to, the number of patients to be affected by the closure, the condition of those patients, and provisions being made to provide for their continuing care. The termination or closure of a health service shall be deemed a substantial change in service by the SHPDA, and such termination or closure shall require a Certificate of Need if it involves a capital expenditure in any amount.

(g) When a closure of a HCF, HMO, or health service occurs, the SHPDA shall provide assistance

for an orderly transition of the patient load, to the extent possible.

Sec. 5. Adoption of Procedures and Criteria by the SHPDA Governing Application and Review.

D.C.Code,
sec. 32-344

(a) All applications for a Certificate of Need issued under section 4 shall be reviewed by the SHPDA. In order to carry out this function the SHPDA shall adopt and revise regulations according to the District of Columbia Administrative Procedure Act, approved October 21, 1958 (32 Stat. 1204; D.C. Code, sec. 1-1501 et seq.), governing review procedures and criteria which at a minimum meet the requirements of the National Health Planning Act, and any federal regulations issued under the National Health Planning Act.

(b) Existing SHPDA procedures and criteria in effect on the effective date of this act are valid if they are consistent with this act until new procedures and criteria are adopted.

(c) The general public shall have access to all applications reviewed by the SHPDA and all other written materials essential to SHPDA review contained in SHPDA project files, except that the SHPDA may establish a procedure to restrict access

of the general public from portions of applications or supporting documents which contain detailed descriptions of security systems, medical record systems or controlled substance storage systems.

(d) In issuing a Certificate of Need, the SHPDA shall specify in the Certificate the maximum amount of capital expenditures which may be obligated under the Certificate. The SHPDA shall in accordance with the National Health Planning Act and any federal regulations issued under the National Health Planning Act, prescribe the extent to which a project authorized by a Certificate of Need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum specified in the Certificate of Need.

(e) There shall be no ex parte contacts:

(1)(A) in the case of an application for a Certificate of Need, between the applicant for a Certificate of Need, any person acting on behalf of the applicant, or any person opposed to the issuance of a Certificate of Need for the applicant, and any person in the SHPDA who

exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect to it; or

(3) in the case of a proposed withdrawal of a Certificate of Need, between the holder of the Certificate of Need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the SHPDA who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the SHPDA's proposal to withdraw the Certificate of Need and before a decision is made on withdrawal.

(2) in the case where no public hearing on an application has been requested, but the period of prohibition of ex parte contacts shall begin upon adjournment of the SHCC Project Review committee meeting at which the applicant's proposal was considered. Whether or not a hearing has been held, information presented at the SHCC Project Review Committee meeting shall not be considered ex parte contacts so long as the SHCC

Project Review Committee chairperson affords opportunity for rebuttal.

(f) No Certificate of Need holder shall begin operation of the bed, facility, or service approved in the Certificate of Need until the SHPDA has conducted a review to determine compliance with the Certificate of Need requirements.

Sec. 6. Criteria for Review and Required Findings.

D.C. Code,
sec. 32-345

(a) In order to grant a Certificate of Need, except for a Certificate of Need to decrease the bed capacity of a HCF or HMO, the SHPDA must, upon review of an application, make a written finding that the proposed HCF, health service, HMO or capital expenditure is needed and meets the requirements of sections 123.410 and 123.411 of title 42 of the Code of Federal Regulations, as applicable to the type of project under review. In addition, the SHPDA shall make a written finding that:

(1) The applicant is in compliance with all assurances made pursuant to sections 603(e) or 1532(c)(5)(E) of the Public Health Service Act.

Approved July 1, 1944 (58 Stat. 582; 42 U.S.C. 201

et seq.)

(2) The applicant, if it operates on a fee-for-service basis and has not given assurances pursuant to sections 603(e) or 1532(c)(6)(E) of the Public Health Service Act, approved July 1, 1944 (58 Stat. 682; 42 U.S.C. sec. 201 et seq.) has assured the SHPDA that its facilities are available to all persons residing in its service area and that if needed, it will provide a reasonable volume of services without charge or at a charge less than the facility's usual charge for those services and that it will post a notice of this commitment as directed in regulations adopted by the SHPDA. A reasonable volume of services without charge for those services is defined as an amount equal to three percent (3%) of the HCF's or health service's total operating expenses for a fiscal year as set forth in an audited financial statement minus the amount of reimbursement, if any, received (or if not received, claimed) under Titles XVIII and XIX of the Social Security Act.

(D) In order to grant a Certificate of Need to decrease the bed capacity of a HCF or non-exempt

HMO, the SHPDA, upon review of an application must find that:

(1) the proposal is not inconsistent with the goals of the SHP and the AIP; and

(2) patients will not experience serious problems in terms of cost, quality, availability, acceptability, continuity, or accessibility in obtaining care in a bed of the type proposed to be closed; or

(3) the facility is not in compliance with life safety and licensing codes and the owner is not financially capable of bringing the facility into compliance without a decrease in beds; or

(4) the facility is operated in an efficient manner but it is not economically possible for the owner of the facility to continue operation of all beds because of unacceptable long term financial losses connected to the operation of the facility.

(c)(1) In conducting Certificate of Need review, the SHPDA shall utilize all appropriate criteria as specified in the National Health Planning Act, federal regulations issued under the

National Health Planning Act, this act, and any other criteria adopted by the SHPDA by regulation.

(2) In the case of applications submitted by an HMO, qualifying under section 1527(b) of the National Health Planning Act, except for applications for an inpatient health care facility where the SHPDA determines that the HMO membership will account for less than seventy-five percent (75%) of inpatient days, it shall review the proposal in accordance with the provisions of sections 123.409(a) and 123.410 of Title 42 of the Code of Federal Regulations, the considerations shall be limited to those specified in section 1527(b)(5) of the National Health Planning Act and federal regulations issued under section 1527(b)(5) of the National Health Planning Act.

(d) An application for a Certificate of Need for a capital expenditure which is required to:

(1) eliminate or prevent imminent safety hazards as defined by federal or District government fire, building, or life safety codes or regulations;

(2) comply with District government licensure standards; or

(3) comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of the Social Security Act, shall be approved unless the SHDA finds that the HCF or health service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation for such capital expenditure is not consistent with the SHP. An application for a Certificate of Need approved under this subsection shall be approved only to the extent of the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraphs (2) or (3).

(e) The SHCC shall, in the performance of its review functions, follow procedures and apply criteria developed and published by the SHDA, and adopted by the SHCC, in accordance with federal regulations.

Sec. 7. Emergency Issuance of a Certificate of Need.

D.C. Code,
sec. 32-346

(a) Notwithstanding any other provision of this act, if the need for emergency repair of a facility or replacement of equipment occurs, the Certificate of Need application process may be suspended and an Emergency Certificate of Need issued immediately.

(b) The term "emergency repair or replacement" means the repair of a facility or replacement of equipment which poses an immediate threat to the health and safety of the patients served, the providers, their employees, their visitors, or their independent contractors, but expenditures for repairs or replacement are authorized only to the extent necessary for resumption of operations and provision of services at the level provided before the emergency.

Sec. 8. Duration, Modification, Sale or

Transfer of a Certificate of Need.

(a) The SHPDA shall issue a Certificate of Need valid for one (1) year unless a shorter period is requested by an applicant. Certificate of Need shall be renewed for a period of one (1) year, unless a shorter period is requested by the applicant, after a showing of substantial progress

D.C.Code,
sec. 32-347

or a justification for the lack of progress (as defined in SHPDA regulations) on a project governed by a Certificate of Need. A Certificate of Need, including a Certificate of Need originally issued before the effective date of this act, shall not be renewed for more than four (4) years without SHPDA reconsideration of the need for the project. The SHPDA shall adopt regulations to define the schedule of performance, including reporting thereof, criteria for evaluating compliance or noncompliance with the schedule, and criteria for determining and reviewing major modifications after a Certificate of Need has been issued. The SHPDA may administratively extend the period of validity of a Certificate of Need for a period of up to ninety (90) days. A Certificate of Need may also be withdrawn by the SHPDA after holding a public hearing to ascertain the facts if, on the basis of periodic reports submitted by the holder, the SHPDA determines that the holder of the Certificate of Need is not meeting the timetable specified in its application and is not making a good faith effort to meet such timetable.

(b) A Certificate of Need obtained prior to the effective date of this act shall continue to be valid for the period specified in granting the Certificate of Need and may be renewed only after review in accordance with subsection (a).

(c)(1) A Certificate of Need may not be sold or transferred. The transfer of effective control over a project for which a current Certificate of Need has been granted shall cause withdrawal of the Certificate of Need, effective as of the time at which such sale or transfer occurs.

(2) The term "effective control" means the ability of any person, by reason of a direct or indirect ownership interest (whether of record or beneficial) in a corporation, partnership or other entity which holds a Certificate of Need, to direct or cause the direction of the management or policies of that corporation, partnership or other entity.

(3) Any transfer, assignment or other disposition of ten percent (10%) or more of the stock or voting rights thereunder of a corporation or other entity which is the operator of a RCF or HOD; or any transfer, assignment or other

disposition of the stock or voting rights thereunder of such corporation which results in the ownership or control of more than ten percent (10%) of the stock or voting rights thereunder of such corporation by any person. When that corporation or entity holds a current Certificate of Need, shall cause the withdrawal of the Certificate of Need. Restoration of a Certificate of Need withdrawal under the provisions of this subsection shall be accomplished only through the formal SHPDA application and review procedure described in sections 4 and 5. The SHPDA review shall include, in addition to the criteria described in section 6, an examination of the financial responsibility and business interests of the person obtaining effective control and the ability of the HCF to continue to provide needed services. The prior approval of a Certificate of Need by the SHPDA shall have no bearing on any subsequent SHPDA review of an identical or similar Certificate of Need application which may be necessitated by this subsection.

Sec. 9. Reconsideration of Review Decisions.

D.C.Code,
sec. 32-348

(b) After a decision on an application for a new or renewal Certificate of Need is made by the SHPDA, the SHPDA shall notify the applicant, the SHCC, all previously appearing parties, and contiguous HSAs and SHPDAs of the decision. The SHPDA shall give any person, for good cause shown, an opportunity within thirty (30) days of the date of the notice to request reconsideration of a certificate of Need decision at a public hearing before the SHPDA, which hearing shall be held without charge. If such a request demonstrates good cause, the SHPDA shall conduct a public hearing within thirty (30) days of the request for reconsideration of the decision.

- (d) For purposes of this section the term "good cause" means:
- (1) presentation of significant and relevant information not previously considered by the SHPDA;
 - (2) demonstration of a significant change in a factor or circumstance relied upon in reaching the decision;
 - (3) demonstration of a material failure to follow SHPDA review procedures; or

(4) presentation of another basis for a public hearing such that the SHPDA determines that a hearing is in the public interest.

(c) If the SHPDA reconsiders a decision, it shall notify persons requesting the hearing, the applicant, the SHCC, HSAs in contiguous areas, and SHPDAs in contiguous states, and shall publish a notice of the hearing in at least two (2) newspapers of general circulation. Any person may submit testimony at the hearing. Ex parte contacts shall also be prohibited after commencement of the reconsideration hearing. A record of the hearing shall be made by the SHPDA and be available to the public upon request.

(d) Upon reconsideration, the SHPDA shall issue findings giving the basis for its decision. The SHPDA may affirm, modify, or reverse its original decision. The SHPDA shall render its final decision in writing by issuing or denying a Certificate of Need within fifteen (15) days following the public hearing. The decision made at this time shall be the decision of SHPDA for all purposes.

Sec. 10. Administrative Appeal.

(a) After reconsideration by the SHPDA, the final decision of the SHPDA on an application for Certificate of Need may be appealed by the SHCC, the applicant or any previously appearing persons to the Board of Appeals and Review established by Organization Order 112, dated August 11, 1955 (O.O. 55-1600; D.C. Code; title 1, appendix). This appeal must be made within thirty (30) days of the date of the final SHPDA decision issued under Section 9. The appeal hearing must be initiated within thirty (30) days of the request.

(b) The Board of Appeals and Review shall review the record and any additional evidence presented on behalf of the parties to the appeal. It shall take due account of the presumption of official regularity, the experience and specialized competence of the SHPDA, and the purposes of this act. The Board of Appeals and Review must make its written decision within forty-five (45) days of the conclusion of its review. The decision must be provided to the applicant, the SHPDA, the person requesting the hearing and to any other person upon request. The

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

Sec. 11. Judicial Review of Certificate of Need Decisions.

D.C. Code,
sec. 32-350

The final decision upon an application for a Certificate of Need or for exemption from Certificate of Need review under this act, after the exhaustion of all administrative remedies, shall be subject to judicial review of a contested case by the District of Columbia Court of Appeals pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1958 (32 Stat. 1204; D.C. Code, secs. 1-1510).

Any person adversely affected by a final decision of the SHPDA may obtain such judicial review. The decision of the SHPDA shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

Sec. 12. Certificate of Need Mandatory Condition Precedent.

D.C. Code,
sec. 32-351

The issuance of a Certificate of Need, if required under this act, shall be a condition precedent to the issuance of any license, permit,

or any other type of official approval (except zoning approval) by an agency or officer or employee of the District government which is, in addition, necessary for the project.

Sec. 13. Penalties for Non-Compliance.

D.C. Code,
sec. 32-352

(a) It shall be unlawful for any person to proceed with any project which under this act would require a Certificate of Need without first acquiring a Certificate of Need.

(b) The Corporation Counsel may seek injunctive relief from a court of competent jurisdiction when he or she finds that a person is offering, developing or operating a service in violation of this act.

(c) Any person violating this act by willful failure to obtain a Certificate of Need, willfully deviating from the provisions of a Certificate of Need, or beginning or continuing construction or initiating a new or expanded service after expiration of a Certificate of Need shall be subject to a criminal penalty of not less than one hundred dollars (\$100) and not more than two thousand and five hundred dollars (\$2,500). Each

day of continuing violation shall constitute a separate offense.

(d) Any person willfully not providing or withholding information required relative to proposals subject to review under this act or any person willfully providing false or intentionally misleading information relative to such proposals shall be subject to a criminal penalty of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500). Each day of continuing violation shall constitute a separate offense.

(e) The SHPDA may, after holding a public hearing to ascertain the facts, withdraw a Certificate of Need held by any person which the SHPDA finds has violated the provisions of subsection (c) or (d) regardless of the initiation of any criminal prosecution.

Sec. 14. Immunity from Legal Liability.

D.C.Code,
sec. 32-353

No member of the SHCC may be held personally liable for any action taken in the course of carrying out his official duties and responsibilities as set forth in this act or

sections 1524 and 1512 of the National Health Planning Act.

Sec. 15. Moratorium on Applications.

The SHPDA may impose a moratorium for up to one hundred and twenty (120) days for any specific type of new institutional health service if the SHPDA requires additional time to develop and adopt criteria and standards for such new institutional health service.

D.C.Code,
sec. 32-354

Sec. 16. Annual Report.

A report of the reviews conducted, including the status of each review by the SHPDA, shall be prepared and published at least annually. Such a report shall include reviews completed by the SHPDA since the last report, and a general statement of the findings and decisions made in the course of such reviews.

D.C.Code,
sec. 32-355

Sec. 17. Regulatory Authority.

The SHPDA is authorized to adopt any other regulation necessary to carry out the purposes of this act. The regulation shall be adopted according to the District Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code, sec. 1-1501 et seq.).

D.C.Code,
sec. 32-356

Sec. 18. Severability Clause.

If any provision of this act is held invalid for any reason, the invalidity shall not affect the other provisions which can be given effect without the invalid provisions, and to this end all the provisions of this act are declared severable.

D.C.Code,
sec. 32-357

Sec. 19. Repealer Provision.

The District of Columbia Certificate of Need Act of 1977, approved February 28, 1977 (D.C. Law 2-43; D.C. Code, secs. 32-341 - 32-355) is repealed.

D.C.Code,
sec. 32-341 et seq.

Sec. 20. Effective Date.

This act shall take effect after a thirty (30) day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization

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Enrolled Original

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Act, approved December 24, 1973 (87 Stat. 813;
D.C. Code, sec. 1-147(c)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia