

LEGISLATIVE BILL 378

Approved by the Governor April 16, 1982

Introduced by Public Health and Welfare Committee,
Cullan, 49, Chpn.; Fenger, 45; R. Maresh, 32;
R. Peterson, 21; Higgins, 9; Barrett, 39

AN ACT to amend sections 71-5801 to 71-5803, 71-5805, 71-5810, 71-5811, 71-5813, 71-5820 to 71-5823, 71-5823 to 71-5838, 71-5840 to 71-5844, 71-5846 to 71-5855, 71-5857 to 71-5859, 71-5865 to 71-5868, and 71-5870, Revised Statutes Supplement, 1980, and sections 71-5845 and 71-5864, Revised Statutes Supplement, 1981, relating to public health and welfare; to change provisions of the Nebraska Health Care Certificate of Need Act as prescribed; to provide a fee; to change certificate requirements; to change procedures for application and review; to define and redefine terms; to provide procedures for determining applicability of such act; to exempt certain organizations and facilities; to provide notification procedures; to provide for approval of certain applications; to change the name and function of a committee; to change provisions relating to appeal; and to repeal the original sections, and also sections 71-5814, 71-5827, 71-5839, and 71-5856, Revised Statutes Supplement, 1980.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-5801, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5801. Sections 71-5801 to 71-5872 and the other sections of this act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 2. That section 71-5802, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5802. The Legislature hereby declares that it is the purpose of sections 71-5801 to 71-5872 and the other sections of this act to conserve the limited health care resources of personnel and facilities in order to provide quality health care to all citizens of the state, to minimize unnecessary duplication of facilities and services, to encourage development of appropriate alternative methods of delivering health care, to promote

wherever appropriate a more competitive health care delivery system, to encourage the provision of high-quality health care which is available and accessible to all citizens of the state, and to maximize the effectiveness of expenditures made for health care.

Sec. 3. That section 71-5803, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5803. For purposes of sections 71-5801 to 71-5872 and the other sections of this act, unless the context otherwise requires, the definitions found in sections 71-5804 to 71-5828, and sections 5, 9, and 12 of this act shall be used.

Sec. 4. That section 71-5805, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5805. Capital expenditure shall mean an expenditure by or on behalf of a health care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, ~~and which exceeds one hundred thousand dollars.~~

The cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the site, plant, and equipment with respect to which the capital expenditure is made shall be included in determining the amount of the capital expenditure.

Sec. 5. Capital expenditure minimum shall mean a base amount of five hundred thousand dollars together with any adjustments made by the department pursuant to this section. On October 1 of each year the department shall adjust the base amount by an amount equal to the percentage change in the Department of Commerce Composite Construction Cost Index from October 1, 1981, through the period most recently reported.

Sec. 6. That section 71-5810, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5810. Health care facility shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, inpatient facilities owned or controlled by health maintenance organizations, rehabilitation facilities, home health agencies, and other comparable

facilities, but shall not include home--health--agencies alcoholism or drug abuse facilities which do not offer medical services provided under professional supervision.

Health care facility shall not include Christian Science Sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, and shall not include facilities operated solely as health maintenance organization ambulatory care facilities or as part of the practice of an independent practitioner, partnership, or professional corporation as defined in section 21-2202.

Sec. 7. That section 71-5811, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5811. Health maintenance organization shall mean a public or private organization organized under the laws of this state which:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: (a) ~~usual~~ Usual physician services; 7 (b) hospitalization; 7 (c) laboratory; 7 (d) X-ray; 7 (e) emergency and preventive services; 7 and (f) out-of-area coverage;

(2) ~~is~~ is compensated, except for copayments, for the provision of the basic health care services listed in subdivision (1) of this section to enrolled participants on a predetermined periodic rate basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and

(3) ~~provides~~ Provides physicians' services primarily (a) directly through physicians who are either employees or partners of such organization or (b) through arrangements with individual physicians or one or more groups of physicians, organized on a group practice or individual practice basis.

Sec. 8. That section 71-5813, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5813. Institutional health services, including home health services, shall mean health services provided in or through health care facilities or ~~health--maintenance--organizations~~ and includes the entities in or through which such services are provided.

Sec. 9. Rehabilitation facility shall mean an inpatient facility which is operated for the primary

purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision.

Sec. 10. That section 71-5820, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5820. Obligation shall mean any enforceable contract, ~~which is entered into for the construction, acquisition, lease, or permanent financing of a capital asset.~~ A contract shall be considered enforceable when all of the conditions outlined in such contract shall be met. An option to purchase or lease which is not binding shall not be considered an obligation.

Sec. 11. That section 71-5821, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5821. To offer shall mean, when used in connection with health services, that the health care facility ~~or health maintenance organization~~ holds itself out as capable of providing, or as having the means for the provision of, specified health services.

Sec. 12. Annual operating expenditure minimum shall mean a base amount of two hundred fifty thousand dollars together with any adjustments made by the department pursuant to this section. On October 1 of each year the department shall adjust the base amount by an amount equal to the percentage change in the Department of Commerce Composite Construction Cost Index from October 1, 1981, through the period most recently reported. For purposes of this section and when used in connection with the term annual operating expenditure minimum, operating expenditure shall mean an expenditure by or on behalf of a health care facility which, under generally accepted accounting principles, is properly chargeable as a direct cost of operation and maintenance, but shall not include an allocation of general overhead expenses.

Sec. 13. That section 71-5822, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5822. Person shall mean an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies, a state, ~~or~~ a political subdivision or instrumentality, including a municipal corporation, of a state, or any legal entity recognized by the state.

Sec. 14. That section 71-5823, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5823. Affected persons shall include the person who proposed a project, members of the public who are to be served by the proposed project, health care facilities and health maintenance organizations located in the service area which provide services similar to those being proposed, health care facilities and health maintenance organizations which prior to the submission of the application for a certificate of need have formally indicated an intention to provide such similar services in the future, either through adopting a plan or filing a letter of intent, ~~the health systems agency which is responsible for the area in which the application originates, and contiguous health systems agencies~~ and third-party payers who reimburse health care facilities for services in the service area in which the project is proposed to be located.

Sec. 15. That section 71-5828, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5828. Substantial change in health service shall mean (1) the offering of a health service which was not offered on a regular basis in or through a health care facility or health maintenance organization within the twelve-month twelve-month period prior to the time the services would be offered or (2) the termination of a health service provided in or through a health care facility. A technological improvement to a service already being offered shall not be considered a substantial change in health service, but a technological improvement may require a certificate of need under the provisions of subdivision (2), (6), or (7) of section 71-5830.

Sec. 16. That section 71-5829, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5829. ~~After September 1, 1979, all~~ Upon the effective date of this act, the existing agreement with the Secretary of the Department of Health and Human Services to conduct reviews of capital expenditures under Public Law 92-602, if any such agreement exists, shall be modified to be consistent with the capital expenditure minimum of section 5 of this act except with respect to projects for which applications have been received prior to the effective date of this act. All applications submitted under sections 71-5801 to 71-5872 or under the P.L. 92-603, section 1122 capital expenditure program shall be reviewed under a single unified review process. The rules, regulations, application, and process

described in sections 71-5801 to 71-5872 and the other sections of this act shall also be used by the department to govern and administer the P.L. 92-603, section 1122 capital expenditure program. The single unified review process shall result in a decision which shall constitute the determination of the department for the P.L. 92-603, section 1122 capital expenditure review and for the certificate of need review.

Sec. 17. That section 71-5830, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5830. ~~After September 17, 1979, no~~ No person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The construction, acquisition, or lease of a health care facility. The proposed lease, acquisition, or purchase of an existing health care facility shall be subject to this subdivision unless:

(a) The acquisition of the facility occurs at a judicial sale pursuant to foreclosure of the facility for collection of a debt secured by the facility or a lien on the facility arising by the operation of law, or a subsequent sale or lease of the facility by the secured lender or lienholder who has purchased the facility at a judicial sale; or

(b) The acquisition of the facility is a transfer of ownership occurring by reason of the death of the owner or part owner thereof, and the transferees are the owner's heirs, are persons designated in the owner's probated will or trust agreement, or are joint tenants with the owner on the title instrument;

(2) Offering a new institutional health service other than a home health service which will entail operating expenditures for the twelve-month period immediately following initiation of the new service in excess of the annual operating expenditure minimum;

(3) Offering a new home health service;

~~(3)~~ (4) A entering into any obligation for any capital expenditure by or on behalf of a health care facility which results in a substantial change to an institutional health service;

~~(4)~~ (5) A change in bed capacity of a health care facility or health maintenance organization entering into

any obligation for any capital expenditure by or on behalf of a health care facility which increases or decreases the total number of beds or redistributes beds among various categories or relocates beds from one physical facility or site to another if the bed capacity of the facility will have changed by more than ten beds or more than ten per cent of total bed capacity, whichever is less, over a two-year period;

~~(5)~~ (6) Any capital expenditure or obligation incurred by or on behalf of a health care facility or health-maintenance-organization in excess of one--hundred thousand-dollars the capital expenditure minimum made:

(a) In preparation for the offering or developing of a new institutional health service, in preparation for initiating a substantial change in an existing health service, or any arrangement or commitment made for financing the offering or development of such new or substantially changed health service. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications, but shall not include expenditures for preliminary plans, studies, and surveys or site acquisition;

(b) For the purchase, acquisition, or lease of clinical equipment; or

(c) For the acquisition of a capital asset other than a health care facility as described in subdivision (1) of this section. For the purpose of this subdivision a capital asset shall mean any property which will be depreciated for a period exceeding twelve months using generally accepted accounting procedures; or

~~(6)~~ (7) Any capital expenditure by a health care facility over one-hundred-thousand--dollars the capital expenditure minimum not covered by subdivisions (1) to (5) (7) of this section.

Sec. 18. That section 71-5831, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5831. Sections 71-5801 to 71-5872 and the other sections of this act shall not apply to health maintenance organization ambulatory care facilities or to the offices operated solely as part of the private medical practice of an independent practitioner, partnership, or professional corporation except for acquisitions of clinical equipment which cost more than four hundred thousand dollars, if purchased, and which

are to be used to provide services to inpatients of a hospital on more than a temporary basis in the event of a natural disaster, major accident, or equipment failure. if such offices do not include clinical equipment for the provision of renal dialysis therapy, radiation therapy employing megavoltage radiation equipment for diagnostic or therapeutic treatment, computerized tomography scanning, a scanner and automatic film processor used in nuclear medicine, ultrasound equipment for diagnostic or therapeutic treatment, heart or lung bypass units, or critical care remote monitoring units. The department may recommend to the legislature that other clinical equipment be included as equipment which such offices shall not acquire if the expenditure for such equipment would be in excess of one hundred thousand dollars and the equipment is the kind which is primarily used for inpatient or outpatient hospital care. The specification of such clinical equipment by the department shall be subject to the rulemaking procedures, including the notice and hearing procedures, under Chapter 84, article 9. The department shall annually, on or before January 1, file the recommendations it proposes under this section with the Clerk of the Legislature. If no recommendation is made a statement to that effect shall be filed with the clerk. After September 1, 1979, no person shall engage in the purchase, acquisition, or lease of clinical equipment identified in this section in excess of four hundred thousand dollars, which would be located in the State of Nebraska, without having first applied for and received the necessary certificate of need. When the expenditure for such clinical equipment would be in excess of one hundred thousand dollars. Notwithstanding any exemption provided by this section, no person shall acquire any clinical equipment which costs more than four hundred thousand dollars, if purchased, without having first provided thirty days' written notice to the department. The notice shall describe the equipment, state its cost and proposed location, and state whether the equipment will be used to provide services to hospital inpatients on more than an occasional and irregular basis. Failure to provide such notice shall require such person to apply for and receive a certificate of need.

Sec. 19. That section 71-5832, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5832. No person shall divide a project to avoid the requirements of sections 71-5801 to 71-5872 and the other sections of this act.

Sec. 20. When the estimated cost of a proposed project is certified and filed with the department, at

least thirty days before the date on which the obligation for an expenditure for the project is incurred, by a registered architect or licensed professional engineer to be less than the capital expenditure minimum, such proposed project shall be deemed not to exceed the capital expenditure minimum regardless of the actual cost of such project. A narrative statement showing the type and description of the project, including working drawings and specifications for construction projects, shall be filed with the department with the cost estimate. If the department finds the estimate to be substantially in error, and the project will cost in excess of the capital expenditure minimum, the department may, within twenty days after receiving the estimate, require that a certificate of need be obtained and shall so notify the proponent of the project in writing. When the actual cost of the project exceeds the capital expenditure minimum, the proponent of the project shall provide written notification of such cost to the department within thirty days after the date on which the proponent becomes aware that the actual cost of the proposed project will exceed such amount.

Sec. 21. Sections 71-5801 to 71-5872 and the other sections of this act shall not apply to a health maintenance organization or combination of health maintenance organizations, or to a health care facility controlled or leased with at least fifteen years remaining on the term of the lease by a health maintenance organization or combination of health maintenance organizations:

(1) If (a) the organization or combination of organizations has an enrollment of at least fifty thousand individuals, (b) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (c) at least seventy-five per cent of the patients who can reasonably be expected to receive the service will be enrolled with such organization or combination of organizations;

(2) If the health maintenance organizations involved have submitted an application, in such form and manner as the department shall prescribe to determine if the health maintenance organizations involved will meet the requirements of subdivision (1) of this section; and

(3) If the department determines that the requirements of subdivision (1) of this section are met. The department shall make such determination and notify the applicant in writing of its determination within thirty days after receipt of the application.

Sec. 22. That section 71-5833, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5833. When any person acquires, under a lease or comparable arrangement or through donation, (1) any health care facility or part thereof, (2) equipment for a facility, or (3) clinical equipment which would have been subject to sections 71-5801 to 71-5872 and the other sections of this act had it been purchased, such acquisition shall be subject to sections 71-5801 to 71-5872 and the other sections of this act.

Sec. 23. That section 71-5834, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5834. The department ~~may~~ shall waive the procedures of the formal review requirements prescribed in sections 71-5801 to 71-5872 and the other sections of this act and substitute a nonsubstantive review for projects meeting the conditions identified in section 71-5835. All requests for such nonsubstantive review status by the applicant shall be made in writing to the department. ~~The department, after consultation with the appropriate health systems agency,~~ shall make a determination within fifteen days after receipt of the written request for nonsubstantive review status. The department shall adopt an abbreviated form for submitting a request for nonsubstantive review status. Procedures to be followed for nonsubstantive review shall be established by the department. The department review committee shall issue or decline to issue a certificate of need on all projects assigned nonsubstantive review status within fifteen days of this determination. A determination by the Certificate of Need Review Committee on nonsubstantive review status or on issuance of a certificate of need as provided in this section shall be considered a final decision for purposes of sections 71-5850 and 71-5859. If a project is denied nonsubstantive review status or is denied a certificate of need following a nonsubstantive review, the applicant may request a public hearing for purposes of reconsideration of the decision, appeal the decision, or apply under the procedures of the formal review requirements of sections 71-5801 to 71-5872 and the other sections of this act.

Sec. 24. That section 71-5835, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5835. A project which is determined to be subject to review ~~may~~ shall be assigned nonsubstantive review status if it is for:

(1) Capital expenditure projects necessary to enable the health care facility to achieve or maintain compliance with federal, state, or other appropriate body's licensing, certification, accreditation, or safety requirements by (a) eliminating or preventing imminent safety hazards as defined by federal, state, or local fire, building, or life-safety codes; (b) complying with licensure standards; or (c) complying with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of the Social Security Act. Such projects shall be approved to the extent that the applicant proves they are essential to eliminate or prevent safety hazards or to comply with licensure, certification, or accreditation standards unless the department proves that the facility or service for which the capital expenditure is proposed to be made is not needed, or the obligation of the capital expenditure is not consistent with the state health plan. Findings of the appropriate federal, state, or local fire, building, or life-safety codes enforcement agency as to whether the proposed project is needed to remedy safety code, licensure, or accreditation standards violations shall be presumptive evidence of such need. Those portions of a proposed project which are not required by such safety hazards or standards are subject to the formal review requirements of sections 71-5801 to 71-5872 and the other sections of this act;

~~{2}--Capital expenditure projects--which--are required to remedy an emergency--situation--detected--not more--than--thirty--days--prior--to--the--request--for--a nonsubstantive review determination and--which--threatens the safety of patients or the ability of the facility--to remain in operation;~~

{3} {2} Replacement of clinical equipment with equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan, if the applicant demonstrates that there is now and will continue to be a need in the health service area for the equipment being replaced; or

~~{4}--Any acquisition, purchase, or lease of a health care facility which, after the examination of the application, including the financial statements and the proposed contract for purchase or lease, gives evidence that the increase in capital costs resulting from the acquisition, purchase, or lease shall not be greater than the per cent increase in the previous twelve month period of the value of New Construction Put in Place Index prepared by the United States Department of Commerce,~~

Bureau-of-Census:

(3) A reduction in bed capacity or termination of a single service which does not involve the closing or relocation of a health care facility; or

(4) Expenditures for energy conservation proposals associated with applications for federal or state energy conservation grants.

Sec. 25. That section 71-5836, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5836. The department, after consulting with ~~the health systems agencies and~~ appropriate governmental agencies and affected persons, shall by regulation:

(1) Prescribe the form to be used in applying for certificates of need and for applying for renewal, modification, or amendment of such certificates. The department may not require information under this section which is not prescribed and published as being required information, nor shall the department require an applicant to supply data or information as to other health care facilities;

(2) Prescribe the information and data an application must contain for the application to be considered complete for the purposes of review;

(3) Prescribe the form, ~~content,~~ and procedure for notification of intent to file an application subject to review under sections 71-5801 to 71-5872 and the other sections of this act. The notification shall contain (a) the name and address of the sponsor, (b) the anticipated date for filing the application, (c) the location and estimated costs of the project, (d) the source of funds, (e) the number of new beds, if applicable, (f) a concise, narrative description of the project showing the type and description of the proposed construction, major equipment, or proposed health services, and (g) the certification and telephone number of a responsible officer;

(4) Describe and clarify the rules and procedures to be followed in the review of an application. Such rules and procedures shall be issued with each application form; and

(5) Establish criteria for determining when it shall not be feasible to complete the review of an application for a certificate of need within ninety days, as provided under section 71-5838. If the department

determines that these criteria have been met for a particular project, the review shall be extended for a period not to exceed sixty days with the consent of the applicant. Affected parties shall be notified of any extensions to the deliberation of a certificate of need application.

Sec. 26. The procedure for notification of intent to file an application shall include the following requirements:

(1) For applications which will entail a capital expenditure in excess of fifteen times the capital expenditure minimum, except purchases and leases of existing health care facilities, a notification of intent to file an application shall be submitted to the department at least one hundred eighty days before the application is filed. Upon a showing of good cause, the department shall reduce the time period for submitting this notification;

(2) For projects which are required to remedy an emergency situation and which qualify for nonsubstantive review under subdivision (1) of section 71-5835, a notification of intent shall not be required prior to filing an application;

(3) For projects subject to combined review under subsection (5) of section 71-5838 or to permit comparative review of other projects, the department shall waive the notice of intent requirement when a notification of intent to file an application has already been received for a competing proposal; and

(4) For projects not covered by subdivisions (1) to (3) of this section, a notification of intent to file an application shall be submitted at least thirty days before the application is filed.

Sec. 27. Within thirty days of receipt of a written request describing a proposed action, the department shall make a determination whether the proposed action requires a certificate of need and shall mail its determination and statement of reasons therefor to the person making the request. An action for a declaratory judgment on the requirement of obtaining a certificate of need shall be available under section 84-912 or sections 25-21,149 to 25-21,164.

Sec. 28. That section 71-5837, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5837. An application for a certificate of need shall be filed jointly with the department. All applications for a certificate of need shall be accompanied by a nonrefundable fee of five hundred dollars. Such fee shall be deposited in the Department of Health Cash Fund. The fee shall be used to partially defray the expenses of the Department of Health incurred in the administration of the Nebraska Health Care Certificate of Need Act. and the appropriate health systems-agency.

Sec. 29. That section 71-5838, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5838. (1) The department shall have fifteen days from the date the application is received to determine if the application is complete for the purposes of review, as provided under subdivision (2) of section 71-5836. ~~This determination shall be made in consultation with the appropriate health systems-agency.~~ The department may find that an application is incomplete when a question on the application form has not been answered in whole or in part, has been answered in a manner that does not fairly meet the question addressed, or does not include attachments of supporting documents necessary to complete the answer. If the department determines that an application is incomplete, it shall notify the applicant within fifteen days from the date the application is received, stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) If the application is complete for the purposes of review as it was submitted, the department Certificate of Need Review Committee shall make its determination final decision pursuant to section 71-5846 within ninety days of the date the application was received.

(3) If the application is incomplete for the purposes of review, the department review committee shall make its determination a final decision pursuant to section 71-5846 within ninety days of the date the application was received, not counting the days which elapse between the date the department notifies the applicant that the application is incomplete and the date the department receives the additional information which completes the application for the purposes of review.

(4) The department shall issue a written recommendation to the review committee within sixty days after application is complete for purposes of review. The applicant shall receive a copy of the written

recommendation.

(5) Notwithstanding other provisions of this section, the department shall prescribe a separate schedule for submission of applications pertaining to similar types of services, facilities, or equipment affecting the same health service area or subarea to be considered in relation to each other. Such consideration of applications by the department shall be known as a combined review. The schedule shall insure that an opportunity shall exist at least six times each year for any type of project subject to combined review to be submitted for review.

Applications subject to combined review received after a combined review has begun shall be considered received on the date the next combined review is scheduled to begin. Applications involving addition of services in general medical-surgical, psychiatric, obstetric, pediatric, intermediate care, or skilled nursing care shall be combined. A separate application shall be required for each proposal subject to combined review. Projects which qualify for nonsubstantive review under section 71-5835, purchases, leases, mergers, or consolidations of health care facilities, demonstration programs, and biomedical research projects shall not be subject to combined review. Projects not specified as subject to combined review shall not be subject to combined review.

The department shall notify all health care facilities in writing at least one hundred twenty days before a combined review will begin, specifying the date the review will begin, and the category of projects which will be reviewed. If, after a combined review has begun, the department determines that the application is incomplete and requires the applicant to submit additional information, the department shall give the applicant not more than fifteen days to submit the information, and upon request of the applicant, the department shall extend its review period not more than fifteen days. This extension shall apply to all other applications which have been combined with the applications for which additional information is required, except that any combined review may only be delayed by one fifteen-day extension of time.

Sec. 30. The Certificate of Need Review Committee shall approve an application for a certificate of need submitted by a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, if the review committee finds that:

(1) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(2) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Sec. 31. That section 71-5840, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5840. The appropriate-health--systems--agency department shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits within forty-five days after the application is complete for purposes of review.

Sec. 32. That section 71-5841, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5841. Any affected person may file written comments and exhibits concerning a proposal under review with the appropriate--health--systems--agency--and--the department prior to or during the public meeting held pursuant to section 71-5840.

Sec. 33. That section 71-5842, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5842. There is hereby created a Certificate of Need Advisory Review Committee consisting of five seven members to be appointed by the Governor. One member Two members shall be appointed by the Governor from a list submitted by each health systems agency board in Nebraska and two members shall be appointed each congressional district and one member shall be appointed at large by the Governor. Each list submitted by a health systems agency board shall contain the names of at least three individuals who reside within the health systems agency's area, are residents of the State of Nebraska, and are not providers of health care. Such persons may be members of the board of directors or of any standing committee of the health systems agency. At least four members of the review committee shall not be providers of health care. For the purpose of this

section, provider of health care shall be defined according to section 1531 of P.L. 93-641, 42 U.S.C., section 300n (3) as amended by P.L. 96-79. One member appointed by the Governor shall ~~may~~ be a physician licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107, and one member shall be chief executive of a hospital licensed in Nebraska under sections 71-2017 to 71-2029, and one member may be a nursing home administrator licensed in Nebraska under sections 71-2041.01 to 71-2045.09.

Sec. 34. That section 71-5843, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5843. Members of the Certificate of Need Advisory Review Committee shall serve for terms of three years, except that, of the members first appointed, two shall serve for a term of one year, two for a term of two years, and one three for a term of three years. As the terms of the initial appointees expire, succeeding appointments shall be made in the same manner as the original appointments are made and succeeding appointees shall have the same qualifications as their predecessors. An individual appointed to fill a vacancy, occurring other than by the expiration of a term of office, shall be appointed for the unexpired term of the member such individual succeeds. No individual may serve more than two consecutive terms.

Sec. 35. That section 71-5844, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5844. ~~The members of the Certificate of Need Advisory Review Committee shall: may collectively advise the Department of Health on each certificate of need application:--Majority--and--minority--opinions--may--be submitted to the department:--Members of the Certificate of Need Advisory Committee shall have access to any information submitted for a certificate of need application filed with the Department of Health:~~

(1) Make the decision with respect to each application for a certificate of need accepted by the department;

(2) Determine and adopt such policies as are authorized by law and are deemed necessary to efficient discharge of its duties;

(3) Advise and counsel with the department concerning the provisions of the Nebraska Health Care Certificate of Need Act, and the policies and procedures adopted by the department pursuant to such act; and

(4) Hold meetings pursuant to sections 84-1408 to 84-1414 at least once each month, if an application is ready for consideration and more frequently, if necessary, to enable the review committee to expediently discharge its duties. Meeting dates shall be set upon adjournment or by call of the chairperson upon five days notice to the other members. Such meeting shall be conducted in accordance with Chapter 84, article 9. Each member of the review committee shall receive a per diem of seventy-five dollars for each day actually and necessarily engaged in the performance of his or her duties as a member of such committee.

Sec. 36. That section 71-5845, Revised Statutes Supplement, 1981, be amended to read as follows:

71-5845. Members of the Certificate of Need Advisory Review Committee shall be reimbursed for their actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 37. That section 71-5846, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5846. The department Certificate of Need Review Committee shall, except as provided in section 71-5847, make a final decision to (1) issue a certificate of need with or without any specified modifications or (2) reject the application within thirty days after receiving the ~~comments-on-the-application-from-the-health systems-agency~~ recommendations of the department, or within the time period provided under sections 71-5836 and 71-5838. ~~even-if-the-health-systems--agency--fails to-complete-a-recommendation-~~ The review committee shall not make its final decision subject to any condition not directly related to criteria promulgated under sections 71-5852 to 71-5855, and any condition or modification shall bear a direct and rational relationship to the project under review.

Sec. 38. That section 71-5847, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5847. The department Certificate of Need Review Committee shall issue or decline to issue a certificate of need thirty days after ~~notification--of findings-has-been-given,~~ a final decision is rendered if no hearing for purposes of reconsideration is required under section 71-5850 or if no appeal has been made under section 71-5859. A certificate shall not be withheld pending reconsideration or appeal limited to conditions attached to the certificate. The---department---may promulgate-by-regulation-criteria-by-which-a--certificate

~~of need for contested cases will be withheld for thirty days to permit a request for a hearing for reconsideration, as provided under section 71-5850.~~

Sec. 39. That section 71-5848, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5848. The department Certificate of Need Review Committee shall, within fifteen five days after it approves or rejects an application under section 71-5830, provide in writing to the applicant, ~~to the appropriate health systems agency~~ and, upon request, to affected persons, the findings and conclusions on which it based its the decision including the criteria listed in sections 71-5852 to 71-5855 used by the department review committee in making such a decision, ~~and a detailed statement of the reasons for any inconsistency with the written comments submitted to the department by the appropriate health systems agency.~~

Sec. 40. That section 71-5849, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5849. The certificate of need shall be valid only for a project as ~~described in the application approved.~~ The department shall establish rules and regulations for adjusting the approved expenditures for contingencies and inflation. A new review may be required if a project exceeds the maximum capital expenditure approved by the department or otherwise departs from the project as approved, but changes only in minor details shall not be considered departures from the approved project. The department shall establish rules and regulations to require reporting of costs upon completion of construction or development of approved projects. If the applicant proceeds to develop a project which departs from the application as approved, the sanctions in sections 71-5868 to 71-5871 shall apply.

Sec. 41. That section 71-5850, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5850. ~~Any affected person may, for good cause shown, request, in writing~~ Upon written request, a public hearing for purposes of reconsideration of the decision of the department Certificate of Need Review Committee shall be granted to any affected person upon a showing of good cause. Such hearing shall be conducted in accordance with Chapter 84, article 9, and all matters relevant to the application and review may be raised. A request shall be deemed to have shown good cause if it (1) presents significant, relevant information not previously considered by the department review committee,

(2) demonstrates that there have been significant changes in factors or circumstances relied upon by the department review committee in reaching its decision, or (3) demonstrates that the department review committee has materially failed to follow its adopted procedures in reaching its decision, or (4) provides any other basis which the review committee considers good cause. Such request must be received by the department within thirty days of the date the department review committee issues its the final decision and the written findings and conclusions on which it bases its decision. Such hearings shall commence within thirty days of the receipt of such request. The department may promulgate by regulation the procedures for such a hearing for reconsideration. The department review committee shall provide, in writing, its decision and the findings and conclusions on which it based its decision, including the criteria listed in sections 71-5852 to 71-5855, within thirty days after conclusion of the hearing. Such decision shall be considered a final decision of the department for purposes of section 71-5859.

Sec. 42. That section 71-5851, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5851. The department shall, by rules and regulations, adopt, promulgate, and utilize, as appropriate, specific criteria for conducting its reviews under sections 71-5801 to 71-5872 and the other sections of this act, including the criteria provided under sections 71-5852 to 71-5855. Approval or disapproval of an application shall be based on appropriate and significant criteria.

Sec. 43. That section 71-5852, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5852. The department shall, by rules and regulations, provide criteria for:

~~{1}--The--relationship--of--the--health--services being reviewed to the applicable health systems plan--and annual implementation--plan--adopted--under--section 1524(b)(2) and (3), of P.L. 93-641, 42 U.S.C., section 300-4-2(b)(2) and (3), if such plans are on file with the Secretary of State;~~

{2} {1} The relationship of the health services being reviewed to the state health plan adopted under section 1524(c)(2)(A) of P.L. 93-641, 42 U.S.C., section 300m-3(c)(2)(A) and to the state medical facilities plan, adopted under section 1603 of P.L. 93-641, 42 U.S.C., section 300o-2, as amended by P.L. 96-79, but exceptions

to the state health plan shall be made when justification is shown by a preponderance of the evidence. The department may incorporate as part of its rules and regulations adopted pursuant to Chapter 84, article 9, any part of such plans; and

{3} (2) The relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services.

Sec. 44. That section 71-5853, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5853. The department shall, by rules and regulations, provide criteria for:

(1) The need that the population served or to be served by the services has for the services, and the extent to which all residents of the area, and in particular low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services, except that the services offered by health maintenance organizations or health care facilities controlled directly or indirectly by such organizations may be considered available to meet needs of nonmembers of such organizations only to the extent of the reasonably anticipated use of such services by nonmembers;

(2) In the case of a reduction or elimination of a service, including the relocation of a facility or service, the need that the population presently served has for the service, the extent to which that need will be adequately met by the proposal, and the effect of the proposal on the ability of underserved groups and the elderly to obtain needed health care;

(3) The contribution of the proposed service in meeting the health-related needs of medically underserved groups, including consideration of the following with respect to the facility as a whole:

(a) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(b) The findings of an agency or court that the applicant has not met obligations for provision of uncompensated care, community service, or access by

minorities and handicapped persons, and the applicant's progress in correcting any deficiencies; and

(C) The extent to which Medicare, Medicaid, and medically indigent patients are served by the applicant.

Failure to meet the criteria promulgated pursuant to this subdivision shall not require the disapproval of any application;

~~(2)~~ (4) The availability of less costly or more effective alternative methods for providing the services; and

~~(3)~~ (5) The immediate and long term financial feasibility of the proposal, as well as the probable impact of the proposal on the applicant's costs of and charges for providing health services, ~~by the person proposing the new institutional health service.~~

Sec. 45. That section 71-5854, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5854. The department shall, by rules and regulations, provide criteria for:

(1) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided;

(2) The availability of resources, including, but not limited to, health manpower, management personnel, and funds for capital and operating needs for the provision of the services proposed to be provided and the availability of alternative uses of those resources for the provision of other health services; and

(3) The relationship, including the organizational relationship, of the health services to be provided to ancillary or support services; -

(4) The efficiency and appropriateness of the use of existing services and facilities similar to those proposed; and

(5) In the case of existing facilities or services, the quality of care provided by those facilities in the past. Licensure under Chapter 71, article 20, and the regulations adopted and promulgated thereunder shall create a presumption that the quality of care is sufficient. Accreditation by the Joint Commission on Accreditation of Hospitals shall be presumptive evidence of sufficient quality of care for

services for which the findings required for licensure are not relevant, provided the standards upon which the accreditation is based are submitted as part of the application.

Sec. 46. That section 71-5855, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5855. The department shall, by rules and regulations, provide criteria for:

(1) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service area in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers;

~~(2) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the public health services act, 42-U.S.C., section 300e et seq. Such needs and circumstances shall include the needs of and costs to members and projected members of the health maintenance organizations in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services;~~

~~(3) (2) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages; and~~

~~(4) (3) In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of providing energy, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; =~~

(4) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(5) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes;

(6) The factors which affect competition in the supply of the health services being reviewed;

(7) Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness; and

(8) The need for the availability of services and facilities for osteopathic physicians and their patients, including training programs for doctors of osteopathy, when an application for a certificate of need is made by an osteopathic facility.

Sec. 47. That section 71-5857, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5857. ~~All--criteria--established~~ Standards adopted by the department shall distinguish between rural and urban areas, ~~as--defined--by--population--density~~ recognize rural needs and local differences, and may allow varying priorities for different areas of the state to the extent that variable standards such distinctions will benefit the development of the most appropriate health care system for the health service area.

Sec. 48. That section 71-5858, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5858. Before issuing a certificate of need, the department Certificate of Need Review Committee shall consider, in accordance with the appropriate criteria of sections 71-5852 to 71-5855, the need for (1) health care facilities, (2) services related to health care facilities, and (3) clinical equipment as projected in various state plans prepared annually by ~~health--systems agencies--and~~ state agencies, including, but not limited to, the medical facilities construction and modernization program, mental health centers plan, programs for facilities and services for the mentally retarded, rehabilitation services program, the alcoholic and drug abuse programs, and special studies, surveys, and information.

Sec. 49. That section 71-5859, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5859. The department shall adopt and promulgate rules and regulations establishing procedures by which any affected person ~~applying--for--a--new, modified,--or--amended--certificate--of--need--or--a--health systems--agency~~ may appeal a final decision by the department. The department may appeal a decision made by

the review committee. The procedures shall comply with Chapter 84, article 9, and shall include an opportunity for appeal to an appellate board as described in sections 71-5860 to 71-5866.

Sec. 50. That section 71-5864, Revised Statutes Supplement, 1981, be amended to read as follows:

71-5864. Members of the Certificate of Need Appeal Panel shall be paid a per diem of fifty seventy-five dollars for each day actually and necessarily engaged in the performance of their duties as members of such panel and shall be reimbursed for their actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 51. That section 71-5865, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5865. In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria specified in the written findings of the department review committee under section 71-5848. In an appeal of a decision to grant a certificate of need, the person appealing that decision shall bear the burden of proof that the application does not meet the applicable criteria. The appeals shall be conducted in a manner prescribed by the appeals board pursuant to law which shall include a requirement that any interested person wishing to present oral or written evidence to the board shall so notify the board within a reasonable time before the hearing and that no such person, except upon a showing of good cause, will be permitted to testify absent such notice. The appeals board may provide for a preliminary conference between such interested persons for the purposes of listing and agreeing on admission of documents, simplification of the issues, identification of witnesses and the scope of testimony, and limitation of hearing time. The board may further provide that documents not listed at the preliminary conference will not be received into evidence by the appeals board, except upon a showing of good cause.

Sec. 52. That section 71-5866, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5866. The findings of the appeal shall be based upon the applicable criteria for review of an application for a certificate of need established pursuant to sections 71-5852 to 71-5855. The appeals board shall issue a final written decision affirming or reversing the determination of the department Certificate

of Need Review Committee within forty-five days after the hearing date. The findings, conclusions, and the decisions resulting from the hearing shall, to the extent the determinations of the department review committee are reversed or modified, constitute the determinations of the department, except that the review committee, the department, or any affected person may seek judicial review as provided in sections 84-917 to 84-919.

Sec. 53. That section 71-5867, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5867. The application for a certificate of need shall specify a timetable for making the service or equipment available. A new, modified, or amended certificate of need is valid for a period of one year from the date of issuance and shall be renewed at the expiration of such period for one or more times for periods of up to one year, if evidence of substantial and continuing progress on the project is submitted or if the applicant demonstrates a commitment to obligations for the proposed project within the extension period until the service or equipment is made available, if the holder of the certificate establishes that the holder is meeting the timetable or making a good faith effort to meet it. The department may establish regulations to assure timely completion of the project and to prescribe the form, content, and procedure for renewal applications. The department shall give written notice to an applicant for a renewal certificate of its decision within thirty days of receipt of an application submitted in accordance with the department's regulations. Such decision shall be considered a final decision of the department for purposes of sections 71-5850 to 71-5859.

Sec. 54. That section 71-5868, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5868. The department may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person undertaking a capital expenditure or instituting a new institutional health service without first having a valid certificate of need therefor or against any person otherwise in violation of sections 71-5801 to 71-5872 and the other sections of this act.

Sec. 55. That section 71-5870, Revised Statutes Supplement, 1980, be amended to read as follows:

71-5870. Any person who violates sections 71-5801 to 71-5872 and the other sections of this act by developing or offering any new institutional health

service without first obtaining a certificate of need as required by sections 71-5801 to 71-5872 and the other sections of this act shall be guilty of a Class IV misdemeanor. Each day of violation constitutes a separate offense. The magnitude of the violation shall be the primary consideration in establishing the amount of the fine.

Sec. 56. Notwithstanding any other provisions of this act, a certificate of need shall not be required for the acquisition of clinical equipment to be used solely for research, or the obligation of a capital expenditure to be made solely for research, if the person proposing such activity notifies the department in writing of the use to be made of such equipment, service, or capital expenditure prior to such activity. A certificate of need shall be required if such notice is not given, or if the department finds within sixty days of receipt of such notice that the equipment, service, or expenditure will not be solely for research. For purposes of this section, the term solely for research shall mean that the activity does not (1) affect charges for the provision of medical and other patient care services other than the services which are included in the research, (2) substantially change the bed capacity of a facility, or (3) substantially change the medical or other patient care services of a facility which were offered before the acquisition, offering, or obligation. The term solely for research includes patient care provided on an occasional and irregular basis and not as part of a research program.

Sec. 57. That original sections 71-5801 to 71-5803, 71-5805, 71-5810, 71-5811, 71-5813, 71-5820 to 71-5823, 71-5828 to 71-5838, 71-5840 to 71-5844, 71-5846 to 71-5855, 71-5857 to 71-5859, 71-5865 to 71-5868, and 71-5870, Revised Statutes Supplement, 1980, and sections 71-5845 and 71-5864, Revised Statutes Supplement, 1981, and also sections 71-5814, 71-5827, 71-5839, and 71-5856, Revised Statutes Supplement, 1980, are repealed.