

LEGISLATIVE BILL 172

Approved by the Governor May 22, 1979

Introduced by Public Health and Welfare Committee, Cullan, 49, Chm.; Kennedy, 21; R. Maresh, 32; Simon, 31; Clark, 47; Wesely, 26; Goodrich, 20

AN ACT to adopt the Nebraska Health Care Certificate of Need Act; to provide penalties; to provide severability; to provide an operative date; and to declare an emergency.

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

Section 1. This act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 2. The Legislature hereby declares that it is the purpose 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 alternative methods of delivering health care, and to maximize the effectiveness of expenditures made for health care.

Sec. 3. For purposes of this act, unless the context otherwise requires, the definitions found in sections 4 to 28 of this act shall be used.

Sec. 4. Ambulatory surgical facility shall mean a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization, but shall not include the offices of private physicians or dentists whether for individual or group practice.

Sec. 5. 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. 6. Certificate of need shall mean a written authorization by the department for a person to implement the project under review.

Sec. 7. Clinical equipment shall mean equipment required to perform diagnostic or therapeutic procedures.

Sec. 8. Department shall mean the Department of Health.

Sec. 9. To develop shall mean, when used in connection with health services, to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

Sec. 10. 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, health maintenance organizations, and other comparable facilities, but shall not include home health agencies.

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 part of the practice of an independent practitioner, partnership, or professional corporation as defined in section 21-2202, Reissue Revised Statutes of Nebraska, 1943.

Sec. 11. 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 physician services, (b) hospitalization, (c) laboratory, (d) X-ray, (e) emergency and preventive services, and (f) out-of-area coverage; (2) 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; and (3) 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. 12. Health services shall mean clinically related services, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services.

Sec. 13. Institutional 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. 14. Health systems agency shall mean a public or private nonprofit agency which meets the requirements of P.L. 93-641, 42, U.S.C., section 300k et seq., and which has been officially designated as a health systems agency.

Sec. 15. Home health agency shall mean an organization which offers a program of two or more health services in a client's residence or other community setting to people of all ages. Such services may include physician services, nursing services, physical therapy services, occupational therapy services, speech pathology services, home health aid-homemaker services, medically related social services, nutrition counseling services, laboratory services, and medical supplies and equipment.

Sec. 16. Hospital shall mean an institution or facility which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, but does not include psychiatric and tuberculosis hospitals.

Sec. 17. Psychiatric hospital shall mean an institution or facility which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

Sec. 18. Tuberculosis hospital shall mean an institution or facility which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

Sec. 19. Intermediate care facility shall mean an institution or facility which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to

provide, but who, because of their mental or physical condition, require health related care and services above the minimum level of room and board.

Sec. 20. 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. 21. 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. 22. 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.

Sec. 23. 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 located in the service area which provide services similar to those being proposed, health care facilities 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.

Sec. 24. Skilled nursing facility shall mean an institution or facility or a distinct part of an institution or facility which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Sec. 25. State health planning and development agency shall mean the single state health planning and development agency designated under P.L. 93-641, 42 U.S.C., section 300x et. seq., and the Department of Health is hereby designated as such agency.

Sec. 26. Statewide health coordinating council shall mean the body appointed by the Governor which meets the requirements under section 1524 of P.L. 93-641, 42 U.S.C., section 300m-3.

Sec. 27. Substantial and continuing progress shall mean:

(1) Expenditure of twenty per cent of the approved capital expenditure;

(2) Commencement of excavation or actual construction of a facility; or

(3) Commitment of staff required to provide the new service.

Sec. 28. Substantial change in health service shall mean 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 period prior to the time the services would be offered.

Sec. 29. After the operative date of this act, all applications submitted under this act 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 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. 30. After the operative date of this act, 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;

(3) A substantial change to an institutional health service;

(4) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds or redistributes beds among various categories or relocate beds from one physical facility or site to another by more than ten beds or more than ten per cent of total bed capacity, whichever is less, over a two-year period;

(5) Any expenditure or obligation incurred by or on behalf of a health care facility or health maintenance organization in excess of one hundred thousand dollars 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. 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) Any capital expenditure by a health care facility over one hundred thousand dollars not covered by subdivisions (1) to (5) of this section.

Sec. 31. This act shall not apply to the offices operated solely as part of the private medical practice of an independent practitioner, partnership, or professional corporation 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 the operative date of this act, no person shall engage in the purchase, acquisition, or lease of clinical equipment identified in this section, 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.

Sec. 32. No person shall divide a project to avoid the requirements of this act.

Sec. 33. 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 this act had it been purchased, such acquisition shall be subject to this act.

Sec. 34. The department may waive the procedures of the formal review requirements prescribed in this act and substitute a nonsubstantive review for projects meeting the conditions identified in section 35 of this act. 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 shall issue or decline to issue a certificate of need on all projects assigned nonsubstantive review status within fifteen days of this determination. If a project is denied nonsubstantive review status or is denied a certificate of need following a nonsubstantive review, the applicant may apply under the procedures of the formal review requirements of this act.

Sec. 35. A project which is determined to be subject to review may 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;

(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) 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.

Sec. 36. 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;

(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 this act;

(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 38 of this act. 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. 37. An application for a certificate of need shall be filed jointly with the department and the appropriate health systems agency.

Sec. 38. (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 36 of this act. 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

shall make its determination within ninety days of the date the application was received.

(3) If the application is incomplete for the purposes of review, the department shall make its determination 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.

Sec. 39. The appropriate health systems agency shall review each application for a certificate of need in accordance with criteria established under sections 52 to 55 of this act and for consistency with locally developed plans and standards which have been adopted by the respective health systems agency. The agency shall submit its written comments thereon to the department within sixty days after receipt of a complete application. The comments may include a recommendation to approve the application without modifications, to approve the application subject to specified modifications, or to reject the application. Suggested modifications, if any, shall relate directly to the project under review.

Sec. 40. The appropriate health systems agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits.

Sec. 41. 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 40 of this act.

Sec. 42. There is hereby created a Certificate of Need Advisory Committee consisting of five members to be appointed by the Governor. One member shall be appointed by the Governor from a list submitted by each health systems agency board in Nebraska and two members shall be appointed 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. 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). One member

appointed by the Governor shall be a physician licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107, Reissue Revised Statutes of Nebraska, 1943, and one member shall be chief executive of a hospital licensed in Nebraska under sections 71-2017 to 71-2029, Reissue Revised Statutes of Nebraska, 1943.

Sec. 43. Members of the Certificate of Need Advisory 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 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. 44. The members of the Certificate of Need Advisory Committee 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.

Sec. 45. Members of the Certificate of Need Advisory Committee shall be reimbursed for their actual and necessary expenses on the same basis and subject to the same conditions as provided under section 84-306.01, Revised Statutes Supplement, 1978, for full-time state employees.

Sec. 46. The department shall, except as provided in section 47 of this act, (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, or within the time period provided under sections 36 and 38 of this act, even if the health systems agency fails to complete a recommendation.

Sec. 47. The department shall issue or decline to issue a certificate of need thirty days after notification of findings has been given, if no appeal has been made under section 59 of this act. 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 50 of this act.

Sec. 48. The department shall, within fifteen days after it approves or rejects an application under section 30 of this act, 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 decision including the criteria listed in sections 52 to 55 of this act used by the department 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. 49. The certificate of need shall be valid only for a project as described in the application. If the applicant proceeds to develop a project which departs from the application as approved, the sanctions in sections 68 to 71 of this act shall apply.

Sec. 50. Any affected person may, for good cause shown, request, in writing, a public hearing for purposes of reconsideration of the decision of the department. A request shall be deemed to have shown good cause if it (1) presents significant, relevant information not previously considered by the department, (2) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision, or (3) demonstrates that the department has materially failed to follow its adopted procedures in reaching its decision. Such request must be received by the department within thirty days of the date the department issues its 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 shall provide, in writing, its decision and the findings and conclusions on which it based its decision, including the criteria listed in sections 52 to 55 of this act, within thirty days after conclusion of the hearing.

Sec. 51. The department shall, by rules and regulations, adopt, promulgate, and utilize, as appropriate, specific criteria for conducting its reviews under this act, including the criteria provided under sections 52 to 55 of this act.

Sec. 52. 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 1513(b)(2) and (3), of P.L. 93-641, 42 U.S.C., section 300 1-2(b)(2) and (3), if such plans are on file with the Secretary of State;

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

Sec. 53. 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;

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

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

Sec. 54. 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.

Sec. 55. 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) 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) 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.

Sec. 56. Each health systems agency shall adopt and utilize as appropriate specific criteria for conducting its reviews under this act, including, but not limited to, the criteria specified in sections 52 to 55 of this act.

Sec. 57. All criteria established by the department shall distinguish between rural and urban areas as defined by population density to the extent that variable standards will benefit the development of the most appropriate health care system for the health service area.

Sec. 58. Before issuing a certificate of need, the department shall consider, in accordance with the appropriate criteria of sections 52 to 55 of this act, 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. 59. The department shall promulgate rules and regulations establishing procedures by which any 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 procedures shall comply with Chapter 84, article 9, and shall include an opportunity for appeal to an appellate board.

Sec. 60. There is hereby created a Certificate of Need Appeal Panel consisting of nine members to be appointed by the Governor. Three members shall be appointed from each congressional district as such districts exist on the operative date of this act. Two persons from each congressional district shall be persons who are not providers of health care and one person shall be a provider 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).

Sec. 61. Members of the Certificate of Need Appeal Panel shall serve for terms of three years, except that, of the members first appointed, three shall serve for a term of one year, three for a term of two years, and three for a term of three years. In making the initial appointments to the panel, the Governor shall designate the term of office for each member appointed. Each congressional district shall have one member appointed for one year, one member appointed for two years, and one member appointed for three years. As the terms of 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 shall serve more than two consecutive terms.

Sec. 62. If an appeal is made, members of the Certificate of Need Appeal Panel shall elect from their members an appeal board of five members who shall act collectively as the appellate board for the appeal. All appeals boards shall have two members who are providers of health care and three members who are not providers of health care as defined in section 60 of this act.

Sec. 63. A member of the Certificate of Need Appeal Panel shall not participate in any appeal which would involve a conflict of interest.

Sec. 64. Members of the Certificate of Need Appeal Panel shall be paid a per diem of fifty 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 on the same basis and subject to the same conditions as provided under section 34-306.01, Revised Statutes Supplement, 1978, for full-time state employees.

Sec. 65. 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 criteria specified in the written findings of the department under section 48 of this act. 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.

Sec. 66. The findings of the appeal shall be based upon the criteria for review of an application for a certificate of need established pursuant to sections 52 to 55 of this act. The appeals board shall issue a final written decision affirming or reversing the determination of the department 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 are reversed or modified, constitute the determinations of the department.

Sec. 67. 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. The department may establish regulations to assure timely



completion of the project.

Sec. 68. 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 this act.

Sec. 69. (1) A license or permit which has been issued by the department pursuant to Chapter 71, article 20, or any other state statute to a health care facility which engaged in the activities identified in section 30 of this act without having first obtained a certificate of need shall be subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in Chapter 71, article 20.

(2) No license or permit may be issued or renewed by the department pursuant to Chapter 71, article 20, or any other state statute, nor may any type of approval be granted to any health care facility which engaged in the activities identified in section 30 of this act without having first obtained a certificate of need.

Sec. 70. Any person who violates this act by developing or offering any new institutional health service without first obtaining a certificate of need as required by 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. 71. After the operative date of this act, any person who sells, for a profit, a health care facility for which Medicaid reimbursement has been received shall reimburse the Department of Public Welfare for either (1) the amount of depreciation allowed and paid by the Department of Public Welfare for previous years to the time of sale of the property or (2) the product of the ratio of depreciation paid in past years to the total depreciation accumulated by the facility times the difference in the sales price of the property over the book value of the assets sold, whichever is less. The determination of the amount to be recaptured shall be made within one hundred twenty days of the effective date of the transfer or within thirty days of the date of receipt of the final cost report of the seller. The Department of Public Welfare shall adopt and promulgate rules and regulations to determine the

computation of such reimbursement.

Sec. 72. This act shall become operative on September 1, 1979. Any complete application received prior to the operative date of this act will not be subject to the provisions of this act.

Sec. 73. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 74. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.