

## LEGISLATIVE BILL 429

Approved by the Governor May 19, 1989

Introduced by Baack, 47; Elmer, 38; Schellpeper, 18;  
Labeled, 5; Hall, 7

AN ACT relating to the Nebraska Health Care Certificate of Need Act; to amend sections 71-5801 to 71-5804, 71-5805.01, 71-5810, 71-5813, 71-5821.01, 71-5828 to 71-5832, 71-5833, 71-5834 to 71-5836.01, 71-5837, 71-5838, 71-5840, 71-5843, 71-5844, 71-5845, 71-5846, 71-5848, 71-5851, 71-5859, 71-5865, 71-5867, 71-5868, 71-5870, 71-5872, and 84-1409, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1637, 71-5842, 71-5866, and 81-651, Revised Statutes Supplement, 1988; to define and redefine terms; to change requirements for certificates of need as prescribed; to change provisions relating to application, review, and appeal procedures; to change a fee; to change and provide duties for the Certificate of Need Review Committee; to eliminate exemptions from certificate of need requirements; to eliminate provisions relating to health maintenance organizations; to eliminate the Certificate of Need Appeals Panel; to harmonize provisions; and to repeal the original sections, and also sections 71-5832.02, 71-5844.01, 71-5847, 71-5850, 71-5858, and 71-5860 to 71-5864, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 71-1637, Revised Statutes Supplement, 1988, be amended to read as follows:

71-1637. (1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors, in the State of Nebraska, shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in subsection (19) of section 71-2017.01 and the rules and regulations adopted and promulgated pursuant to such section. Such nurses or home health agency shall do and perform such duties as the city,

village, county, or township, by their officials and electors, shall prescribe and direct. The city, village, county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the actual valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. Each shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township organization.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing body, and may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, or the Nebraska Health Care Certificate of Need Act; (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by subsection (19) of section 71-2017.01, or (c) violate any rule or regulation adopted and promulgated by the department.

Sec. 2. That section 71-5801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5801. Sections 71-5801 to 71-5872 and sections 7, 10, 12, 29, and 32 to 35 of this act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 3. That section 71-5802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5802. The Legislature hereby declares that it is the purpose of sections 71-5801 to 71-5872 the Nebraska Health Care Certificate of Need Act to conserve the limited health care resources of personnel and health care 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. 4. That section 71-5803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5803. For purposes of sections 71-5801 to 71-5802 the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5804 to 71-5828 and sections 7, 10, and 12 of this act shall be used.

Sec. 5. That section 71-5804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5804. Ambulatory surgical facility shall mean a facility, not a part of a hospital, which as its primary function provides on an outpatient basis surgical procedures not ordinarily performed in a private physician's office to patients who are generally ambulatory but shall not include the private offices or clinics of physicians, podiatrists, or dentists who engage in the lawful practice of surgery in such offices or clinics, 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. 6. That section 71-5805.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5805.01. Capital expenditure minimum shall mean a base amount of one million two 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 1989, through the period most recently reported.

Sec. 7. Domiciliary facility shall have the same meaning as in section 71-2017.01.

Sec. 8. That section 71-5810, Reissue Revised Statutes of Nebraska, 1943, 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 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 professional practice of an independent practitioner, partnership, or professional corporation as defined in section 21-2202, home health agencies, or alcoholism or drug abuse treatment facilities which do not offer medical services under professional supervision.

Sec. 9. That section 71-5813, Reissue Revised Statutes of Nebraska, 1943, 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 and includes shall include the entities in or through which such services are provided but shall not include home health services.

Sec. 10. Residential care facility shall have the same meaning as in section 71-2017.01.

Sec. 11. That section 71-5821.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5821.01. Annual operating expenditure minimum shall mean a base amount of two five 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 1989, 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 and is directly

related to the offering of the specific new institutional health service. Operating expenditure shall not include (1) the direct cost of operation and maintenance of existing institutional health services, except to the extent that the offering of the new institutional health service increases the per-unit-of-service direct cost of operation and maintenance of existing institutional health services above the per-unit-of-service direct cost of operation and maintenance that would have been incurred had the new institutional health service not been offered, or (2) an allocation of general overhead expenses.

Sec. 12. Review committee shall mean the Certificate of Need Review Committee created in section 32 of this act.

Sec. 13. That section 71-5828, Reissue Revised Statutes of Nebraska, 1943, 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 within the 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 (5), (7), or (8)~~ of section 71-5830.

Sec. 14. That section 71-5829, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5829. On July 17, 1982 or after 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 P.L. 92-603~~, if any such agreement exists, shall be modified to be consistent with the capital expenditure minimum of section 71-5805.01 except with respect to projects for which applications have been received prior to July 17, 1982 such date. All applications submitted under ~~sections 71-5801 to 71-5872~~ the Nebraska Health Care Certificate of Need 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 ~~sections 71-5801 to 71-5872~~ the 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. 15. That section 71-5830, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5830. 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 development, construction, acquisition, ~~or lease, or other establishment~~ of a health care facility, including ~~purchase~~ purchasing or obtaining controlling interest in the stock of a health care facility by any means. For the purposes of this section, controlling interest shall mean a majority of the voting rights of the shares of stock entitled to vote. 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;

(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;

(c) The facility to be acquired, leased, or purchased has not received federal or state reimbursement for one year or more prior to the date of such acquisition, lease, or purchase; and the transfer will not result in any increased reimbursement for capital costs by any governmental reimbursement or health care insurance program; or

(d) The acquisition of the facility is a transfer to the spouse or lineal descendants of the owner or controlling shareholder or to a corporation, general partnership, or limited partnership directly or indirectly controlled by the owner; or his or her

spouse, or lineal descendants, or any combination of such individuals, and the transfer will not result in any increased reimbursement for capital costs by any governmental reimbursement or health care insurance program.

An application for a certificate of need pursuant to this subdivision (1) of this section shall be denied whenever the approval of such development, construction, acquisition, or lease, or other establishment would result in any person, corporation, partnership, or holding company owning or having controlling interest in health care facilities which (i) account for twenty percent or more of the total patient discharges in the state for all hospitals with an average length of stay of less than thirty days or (ii) account for twenty percent or more of the total licensed beds in the state for all freestanding skilled nursing and intermediate care facilities;

(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;

(4) Entering into any obligation for any capital expenditure in excess of the base amount of seven hundred fifty thousand dollars, together with any adjustment made by the department by or on behalf of a health care facility which results in a substantial change to an institutional health service. 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, 1989, through the period most recently reported;

(5) Entering into any obligation for any capital expenditure by or on behalf (4) Any change in the bed capacity of a health care facility which increases or decreases the total number of beds, or redistributes beds among various categories, converts any type of hospital beds which may be licensed pursuant to sections 71-2017 to 71-2029 to skilled nursing or intermediate care beds or any combination of such beds, 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 percent of total bed capacity, whichever is less, over a two-year period. For purposes of this subdivision.

redistributions, conversions, or relocations of beds for residential care, domiciliary care, or swing beds shall not be included in the computation of bed capacity changes. Swing beds shall mean beds which may be used for acute or long-term care in a facility (a) located in an area which is not designated as urban by the United States Bureau of Census and (b) with up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

(5) Any change by a residential care facility that converts residential care beds to skilled nursing beds or intermediate care beds or any combination of such beds:

(6) Any change by a domiciliary facility that converts domiciliary beds to skilled nursing beds or intermediate care beds or any combination of such beds:

~~(6)~~ (7) Any capital expenditure or obligation incurred by or on behalf of a health care facility in excess of 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 in 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, diagnostic, treatment, or therapeutic 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

~~(7)~~ (8) Any capital expenditure by a health care facility over the capital expenditure minimum not covered by subdivisions (1) ~~to (6)~~ through (7) of this section.

Sec. 16. That section 71-5830.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5830.01. Notwithstanding any other



provisions of this act the Nebraska Health Care Certificate of Need Act, a certificate of need shall not be required for:

(1) The 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)~~ (a) affect charges for the provision of medical and other patient care services other than the services which are included in the research, ~~(2)~~ (b) substantially change the bed capacity of a health care facility, or ~~(3)~~ (c) 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~~ shall include patient care provided on an occasional and irregular basis and not as part of a research program; -

(2) The closing of a hospital;

(3) A change in classification of a facility from intermediate care to skilled nursing care or from skilled nursing care to intermediate care;

(4) The acquisition of computer equipment or software for use other than diagnostic or therapeutic purposes; or

(5) The sale of a health maintenance organization.

Sec. 17. That section 71-5831, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5831. Sections 71-5801 to 71-5872 The Nebraska Health Care Certificate of Need 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~~ costs more than ~~four hundred thousand nine hundred thousand~~ four hundred thousand nine hundred thousand dollars, if purchased, and which are is 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. No

person shall engage in the purchase, acquisition, or lease of clinical equipment in excess of a base amount of nine hundred thousand four hundred thousand dollars as adjusted under this section, if purchased, and which would be located in the State of Nebraska, without having first applied for and received the necessary certificate of need. Notwithstanding any exemption provided by this section, no person shall acquire any clinical equipment which costs more than four hundred thousand a base amount of nine hundred thousand dollars as adjusted under this section, 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. 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, 1989, through the period most recently reported.

Sec. 18. That section 71-5832, Reissue Revised Statutes of Nebraska, 1943, 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~~ the Nebraska Health Care Certificate of Need Act.

Sec. 19. That section 71-5833, Reissue Revised Statutes of Nebraska, 1943, 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~~ the Nebraska Health Care Certificate of Need Act had it been purchased, such acquisition shall be subject to ~~sections 71-5801 to 71-5872~~ the act.

Sec. 20. That section 71-5834, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5834. The department shall waive the procedures of the formal review requirements prescribed in ~~sections 71-5801 to 71-5872~~ the Nebraska Health Care Certificate of Need 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 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 ~~review committee~~ department 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 ~~department~~ 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 appeal. 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.

Sec. 21. That section 71-5835, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) Capital expenditure projects necessary 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 health care 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, certification, 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 shall be~~ subject to the formal review requirements ~~of sections 71-5801 to 71-5872;~~

(2) Replacement of equipment with equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan, and 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;

(3) ~~A reduction in bed capacity or termination~~ 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;

(5) Capital expenditure projects necessitated by natural disaster or emergency;

(6) Replacement of major medical equipment if use of the replaced equipment is discontinued; or

(7) Replacement of heating or air conditioning equipment.

Sec. 22. That section 71-5836, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5836. The department, after consulting with appropriate governmental agencies and affected persons, shall by rule and 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 and procedure for notification of intent to file an application subject to review under ~~sections 71-5801 to 71-5872~~ the Nebraska Health Care Certificate of Need 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. The department shall disseminate notice of any extensions to the deliberation of a certificate of need application through public channels and to the applicant, to health care facilities providing similar services in the area affected by the application, and to any person who has requested such notice.

Sec. 23. That section 71-5836.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5836.01. 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} (1) 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 (2) In order 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 upon the written request of an applicant that such individual's application be subject to comparative review. Such written request shall be filed with the department within fifteen days of the publication of the original notice of intent; and

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

(4) Within five working days of the receipt of any notice of intent, the department shall publish notice of the notice of intent through public channels and shall notify health care facilities providing similar services in the area affected by the proposal and any person who has requested such notice; and

(5) Within ten days after filing a notice of intent, the department shall provide to the applicant all criteria the department will apply to the application. No additional criteria shall be applicable or shall be considered in evidence by the department in the approval or disapproval of the application.

Sec. 24. That section 71-5837, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5837. (1) An application for a certificate of need shall be filed with the department. All applications for a certificate of need shall be accompanied by a nonrefundable fee ~~of five hundred dollars.~~ as follows:

(a) For an application or project which is granted nonsubstantive review status, three hundred dollars;

(b) For an amendment to an application determined to be complete by the department, three hundred dollars;

(c) For any other application involving a capital expenditure of two million dollars or more or an annual operating expenditure of seven hundred thousand dollars or more, five hundred dollars plus five hundred dollars for each full or partial one-million-dollar increment of capital expenditures or three-hundred-fifty-thousand-dollar increment of annual operating expenditures. The maximum fee shall be two thousand five hundred dollars; and

(d) For any other application, five hundred

dollars.

(2) Such fee shall be deposited in remitted to the State Treasurer for credit to 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.

Sec. 25. That section 71-5838, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5838. (1) Within five working days of the receipt of any application, the department shall disseminate notice of the beginning of review through public channels and send written notice to health care facilities providing similar services in the area affected by the proposal and any person who has requested such notice. The notice shall show that an application has been received, describe the proposal, and state the date by which a person may request a public meeting pursuant to section 71-5840 and the date by which a person may submit written comments about the application to the department.

(2) 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. 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, or has been answered in a manner that does not fairly meet the question addressed, or the application 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) (3) If the application is complete for the purposes of review as it was submitted, the Certificate of Need Review Committee department shall make its final decision pursuant to section 71-5846 within ninety sixty days of the date the application was received.

(3) (4) If the application is incomplete for the purposes of review, the review committee department shall make a final decision pursuant to section 71-5846 within ninety sixty 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.

(5) The department shall disseminate notice of its decision through public channels and to the applicant, any person who has submitted comments, testimony, or exhibits to the department about the application, and any person who has requested such notice. (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. 26. That section 71-5840, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5840. The Upon written request of any affected person, the department shall, or the department of its own volition may, during the course of its review, provide an opportunity for hold a public meeting at which interested persons any person may introduce testimony and exhibits within forty-five days after the application is complete for purposes of review in connection with an application or a competing application. The request or department decision to hold a public meeting shall be made within fifteen days after the department's dissemination of notice pursuant to subsection (1) of section 71-5838. Such meeting shall be held no later than thirty days after the request or department decision to hold a public meeting and upon five days' notice, not including days the application is deemed to be incomplete.

Sec. 27. That section 71-5846, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5846. The Certificate of Need Review Committee shall, except as provided in section 71-5847; department shall make a final decision in writing to (1) issue a certificate of need with or without any specified modifications or (2) reject the application. The department within thirty days after receiving the recommendations of the department; or within the time period provided under sections 71-5836 and 71-5838. The review committee shall not make its final decision subject to any condition not directly related to criteria adopted and 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. 28. That section 71-5848, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5848. The Certificate of Need Review Committee shall, within five days after department shall, when it approves or rejects an application, under section 71-5830; provide in writing to the applicant;

and, upon request, to affected persons; the decision and the findings and conclusions on which it based the decision, including the criteria adopted and promulgated under listed in sections 71-5852 to 71-5855 used by the review committee department in making such a decision.

Sec. 29. That section 71-5867, Reissue Revised Statutes of Nebraska, 1943, 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 shall be~~ 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, 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~~ adopt and promulgate rules and 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 rules and regulations. Such decision shall be considered a final decision of the department for purposes of sections 71-5850 to 71-5859 appeal. If the decision is not appealed, it shall be final as of the date issued.

Sec. 30. That section 71-5851, Reissue Revised Statutes of Nebraska, 1943, 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 reviews under ~~sections 71-5801 to 71-5872~~ the Nebraska Health Care Certificate of Need 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. 31. That section 71-5859, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5859. The department shall adopt and promulgate rules and regulations establishing procedures by which any affected person may appeal a final decision by the department. The department may appeal a decision made by the review committee. The procedures shall include an opportunity for appeal to the review

committee and shall comply with the Administrative Procedure Act, except that the appeal shall be filed within fifteen days of the date the department issues the decision and provides the written findings and conclusions on which the decision is based, and shall include an opportunity for appeal to an appellate board as described in sections 71-5860 to 71-5866-

Sec. 32. That section 71-5842, Revised Statutes Supplement, 1988, be amended to read as follows:

71-5842- There is hereby created a Certificate of Need Review Committee consisting of seven members to be appointed by the Governor. Two members shall be appointed by the Governor from each congressional district, and one member shall be appointed at large by the Governor. 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. 300n (3), as amended by P.L. 96-79. One member appointed by the Governor may be a physician licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107, one member shall may 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 71-2045.10.

Sec. 33. That section 71-5843, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5843- Members of the Certificate of Need Review Committee 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 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.

A member of the review committee shall not participate in an appeal which would involve a conflict of interest.

Sec. 34. That section 71-5845, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~71-5845- Members of the Certificate of Need Review Committee review committee shall receive a per diem of seventy-five dollars for each day actually and necessarily engaged in the performance of their duties and shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177, for state employees-~~

Sec. 35. That section 71-5844, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~71-5844- The Certificate of Need Review Committee review committee shall:~~

~~(1) Make the decision Hear appeals from decisions of the department with respect to each application for a certificate applications for certificates 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 and promulgated 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 appeal 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. Five members shall constitute a quorum. Such meeting shall be conducted in accordance with the Administrative Procedure Act; and - 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-~~

~~(5) Elect a chairperson to preside at the appeal hearing. The chairperson or such other member of the review committee as may be designated by the chairperson shall have authority to conduct preliminary conferences, rule on prehearing motions, and decide on any other preliminary matter.~~

Sec. 36. That section 71-5865, Reissue Revised Statutes of Nebraska, 1943, 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 review committee department 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 de novo and conducted in a manner prescribed by the appeals board review committee pursuant to law which shall include a requirement that any interested person wishing to present oral or written evidence to the board review committee shall so notify the board review committee 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 review committee 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 review committee may further provide that documents not listed at the preliminary conference will not be received into evidence by the appeals board; review committee except upon a showing of good cause.

Sec. 37. That section 71-5866, Revised Statutes Supplement, 1988, be amended to read as follows:

71-5866. The findings of the decision on 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 review committee shall not make its decision subject to any condition not directly related to such criteria, and any condition or modification shall bear a direct and rational relationship to the project under review. The review committee shall issue a final written decision affirming or reversing the determination of the Certificate of Need Review Committee department within forty-five days after the hearing date the hearing was requested unless the applicant consents to an extension of time. The findings, conclusions, and the decisions resulting from the hearing shall, to the extent the determinations of the review committee are reversed or modified, constitute the determinations of the department, except that the review committee; the department, the

applicant, or any affected person who has intervened may appeal the decision; and the appeal shall be in accordance with the Administrative Procedure Act in the matter before the review committee may seek judicial review as provided in sections 84-917 to 84-919.

Sec. 38. That section 71-5868, Reissue Revised Statutes of Nebraska, 1943, 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 the Nebraska Health Care Certificate of Need Act.

Sec. 39. That section 71-5870, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5870. Any person who violates sections 71-5801 to 71-5872 the Nebraska Health Care Certificate of Need 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 the act shall be guilty of a Class IV misdemeanor. Each day of violation constitutes shall constitute a separate offense. The magnitude of the violation shall be the primary consideration in establishing the amount of the fine.

Sec. 40. That section 71-5872, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5872. Sections 71-5801 to 71-5872 The Nebraska Health Care Certificate of Need Act shall become operative on September 1, 1979. Any complete application received prior to September 1, 1979, will not be subject to the provisions of sections 71-5801 to 71-5872 act.

Sec. 41. That section 81-651, Revised Statutes Supplement, 1988, be amended to read as follows:

81-651. (1) The Department of Health may provide visiting community nursing services or home health services to persons living in the state and may charge fees for such services. The department shall not be exempt from licensure under subsection (19) of section 71-2017.01. or the Nebraska Health Care Certificate of Need Act.

(2) The department may organize, license, and operate home health agencies to assist in providing services under subsection (1) of this section.

(3) The department (a) may employ necessary personnel, including, but not limited to, licensed nurses, physical therapists, physical therapy assistants, audiologists, speech-language pathologists, communication assistants, occupational therapists, occupational therapy assistants, home health aides, homemakers, respiratory care practitioners, nutritionists, social workers, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program or (b) may contract with individuals or licensed agencies to obtain such services or to assist in providing services under subsection (1) of this section.

(4) The department may contract with any public, private, for-profit, or nonprofit agency or individual to provide home health services through any licensed home health agency created under subsection (2) of this section.

Sec. 42. That section 84-1409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-1409. As used in For purpose of sections 79-327, 84-1408 to 84-1414, and 85-104, unless the context otherwise requires:

(1) Public body shall mean (a) governing bodies of all political subdivisions of the State of Nebraska, (b) governing bodies of all agencies, now or hereafter created by Constitution, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (c) all independent boards, commissions, bureaus, committees, councils, subunits, ~~Certificate of Need appeal panels~~, or any other bodies, now or hereafter created by Constitution, statute, or otherwise pursuant to law, (d) the Certificate of Need Review Committee, (e) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, and ~~(e)~~ (f) advisory committees of the bodies referred to in subdivisions (a), (b), and (c) of this subdivision. Sections 79-327, 84-1408 to 84-1414, and 85-104 shall not apply to subcommittees of such bodies unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body nor shall such sections apply to judicial proceedings, unless a court or other judicial body is exercising

rulemaking authority, deliberating, or deciding upon the issuance of administrative orders; and

(2) Meeting shall mean all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.

Sec. 43. That original sections 71-5801 to 71-5804, 71-5805.01, 71-5810, 71-5813, 71-5821.01, 71-5828 to 71-5832, 71-5833, 71-5834 to 71-5836.01, 71-5837, 71-5838, 71-5840, 71-5843, 71-5844, 71-5845, 71-5846, 71-5848, 71-5851, 71-5859, 71-5865, 71-5867, 71-5868, 71-5870, 71-5872, and 84-1409, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1637, 71-5842, 71-5866, and 81-651, Revised Statutes Supplement, 1988, and also sections 71-5832.02, 71-5844.01, 71-5847, 71-5850, 71-5858, and 71-5860 to 71-5864, Reissue Revised Statutes of Nebraska, 1943, are repealed.