

passed in 1979. They and others that had been performing surgeries were grandfathered in under certificate of need and so they continue to provide that service. Bergan Mercy did not provide open-heart surgery and so they were not included under the grandfather clause. They weren't doing it. Later, in about '81-82, there started to be a desire on the part of Bergan Mercy to go to open-heart surgery. And then so a series of events resulted where Bergan tried to move to open-heart surgery without having to go through certificate of need. And let me just read to you, and I think it's almost comical if you'll listen just for a second about what happened in the summer and fall of 1985. I'm reading from a summary of what happened. The Department of Health in the summer of '85 began receiving phone calls from numerous people indicating that Bergan Mercy Hospital intended to provide open-heart surgery without going through the certificate of need process. The department wrote the hospital administrator asking what his plans were regarding open-heart surgery. The response was that a heart and lung pump, a piece of equipment used almost exclusively for open-heart surgery had indeed been ordered but Bergan Mercy Hospital did not intend to offer open-heart surgery. So what happened was they bought the machine to allow them to do this but they said they weren't going to do it. So, just months later in the fall of '85, Bergan Mercy Hospital notified the Department of Health that they now intended to offer open-heart surgery and Bergan Mercy Hospital asked the department to find that certificate of need would not be required. They contended that although open-heart surgery was a new service, no capital costs would be required. They already had bought a heart-lung pump that I mentioned earlier in the summer. The annual operating cost would be below the threshold of \$271,000 and they estimated that their annual volume would be about 100 cases. So in other words, they buy this piece of equipment and say they're not going to use it for open-heart surgery. Then after they buy it then they say, we've got this equipment so let us be able to do open-heart surgery, see, we don't need a certificate of need, we've already got the equipment and this is all in a matter of months. I mean, it's the old child that murders the parents and throws himself on the mercy of the court that he's an orphan. It's amazing what happened here. But in any event, they were taken to court by the Health Department and the Health Department won. That was and is now being appealed to the Supreme Court. Well, last year we went through this issue and again, 542 was gutted and this issue was placed into it and then a review was requested and I appreciate this on the part of Bergan Mercy Hospital. They did