

See House Bill 1151/91 (Amended) (3387) & Dr. Pass 4/4/91 (p. 1180)

MAR 27 1991

HOUSE FILE 668

Picor. On Calendar

BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HF 72)

Passed House, Date 4/4/91 (p. 1095) Passed Senate, Date 5/1/91 (p. 1582)

Vote: Ayes 89 Nays 3 Vote: Ayes 46 Nays 1

Approved May 30, 1991
Proposed House as amended by Senate & further amended 5/2/91 (p. 2018) 73-0 *Repassed Senate as further amended 5/3/91 (p. 1259) 45-0*

A BILL FOR

1 An Act relating to the certificate of need program and providing
2 penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 668

1 Section 1. Section 135.61, Code 1991, is amended to read
2 as follows:

3 135.61 DEFINITIONS.

4 As used in this division, unless the context otherwise
5 requires:

6 1. "Affected persons" means, with respect to an
7 application for a certificate of need:

8 a. The person submitting the application.

9 b. Consumers who would be served by the new institutional
10 health service proposed in the application.

11 c. Each institutional health facility or health
12 maintenance organization which is located in the geographic
13 area which would appropriately be served by the new
14 institutional health service proposed in the application. The
15 appropriate geographic service area of each institutional
16 health facility or health maintenance organization shall be
17 determined on a uniform basis in accordance with criteria
18 established in rules promulgated adopted by the department ~~in~~
19 ~~consultation-with-the-appropriate-health-systems-agency.~~

20 ~~d.--The-designated-health-systems-agencies-for-the-health~~
21 ~~systems-agency-area-in-which-the-new-institutional-health~~
22 ~~service-proposed-in-the-application-is-to-be-located-and-for~~
23 ~~each-of-the-health-systems-agency-areas-contiguous-thereeto~~
24 ~~including-those-in-other-states.~~

25 e d. Each institutional health facility or health
26 maintenance organization which, prior to receipt of the
27 application by the department, has formally indicated to the
28 department pursuant to this division an intent to furnish in
29 the future institutional health services similar to the new
30 institutional health service proposed in the application.

31 f e. Any other person designated as an affected person by
32 rules of the department.

33 1. Any payer or third-party payer for health services.

34 2. "Birth center" means birth center as defined in section
35 135G.2.

1 2 3. "Director" means the director of public health, or
2 the director's designee.

3 3 4. "Consumer" means any individual whose occupation is
4 other than health services, who has no fiduciary obligation to
5 an institutional health facility, health maintenance
6 organization or other facility primarily engaged in delivery
7 of services provided by persons in health service occupations,
8 and who has no material financial interest in the providing of
9 any health services.

10 4 5. "Council" means the state health facilities council
11 established by this division.

12 5 6. "Department" means the Iowa department of public
13 health.

14 6 7. "Develop", when used in connection with health
15 services, means to undertake those activities which on their
16 completion will result in the offer of a new institutional
17 health service or the incurring of a financial obligation in
18 relation to the offering of such a service.

19 7. ~~"Federal Act" means the national health planning and~~
20 ~~resources development Act of 1974, United States public law~~
21 ~~93-641, as amended to January 17, 1977.~~

22 8. "Financial reporting" means reporting by which
23 hospitals and health care facilities shall respectively record
24 their revenues, expenses, other income, other outlays, assets
25 and liabilities, and units of services.

26 9. "Health care facility" ~~is defined~~ means health care
27 facility as it is defined in section 135C.1.

28 10. "Health care provider" means a person licensed or
29 certified under chapter 147, 148, 148A, 148C, 149, 150, 150A,
30 151, 152, 153, 154, 154B, or 155A to provide in this state
31 professional health care service to an individual during that
32 individual's medical care, treatment or confinement.

33 11. "Health maintenance organization" ~~is defined~~ means
34 health maintenance organization as it is defined in section
35 514B.1, subsection 3.

1 12. "Health services" means clinically related diagnostic,
2 curative, or rehabilitative services, and includes alcoholism,
3 drug abuse, and mental health services.

4 ~~13.--"Health-systems-agency"--means-an-entity-which-is~~
5 ~~designated-and-operated-in-the-manner-described-in-the-federal~~
6 ~~Act.~~

7 ~~14.--"Health-systems-plan"--means-a-detailed-statement-of~~
8 ~~goals-developed-by-a-health-systems-agency,-which-describes-a~~
9 ~~healthful-environment-and-health-systems-in-the-area-which,~~
10 ~~when-developed,-will-assure-that-quality-health-services-will~~
11 ~~be-available-and-accessible-in-a-manner-which-assures~~
12 ~~continuity-of-care-at-reasonable-cost-for-all-residents-of-the~~
13 ~~area, and-which-is-responsive-to-the-unique-needs-and~~
14 ~~resources-of-the-area.~~

15 ~~15 13. "Hospital" is-defined-as-it-is~~ means hospital as
16 defined in section 1358.1, subsection 1.

17 ~~16 14. "Institutional health facility" means any of the~~
18 following, without regard to whether the facilities referred
19 to are publicly or privately owned or are organized for profit
20 or not or whether the facilities are part of or sponsored by a
21 health maintenance organization:

- 22 a. A hospital.
- 23 b. A health care facility.
- 24 c. A kidney disease treatment center, including any
- 25 freestanding hemodialysis unit but not including any home
- 26 hemodialysis unit.
- 27 d. An organized outpatient health facility.
- 28 e. An outpatient surgical facility.
- 29 f. A community mental health facility.
- 30 g. A birth center.

31 ~~17 15. "Institutional health service" means any health~~
32 service furnished in or through institutional health
33 facilities or health maintenance organizations, including
34 mobile health services.

35 16. "Mobile health service" means equipment used to

1 provide a health service that can be transported from one
2 delivery site to another.

3 ~~18~~ 17. "Modernization" means the alteration, repair,
4 remodeling, replacement or renovation of existing buildings or
5 of the equipment previously installed therein, or both.

6 ~~19~~ 18. "New institutional health service" or "changed
7 institutional health service" means any of the following:

8 a. The construction, development or other establishment of
9 a new institutional health facility ~~or health-maintenance~~
10 organization regardless of ownership.

11 b. Relocation of an institutional health facility ~~or a~~
12 ~~health-maintenance-organization.~~

13 c. Any capital expenditure, lease, or donation by or on
14 behalf of an institutional health facility ~~or a health~~
15 ~~maintenance-organization~~ in excess of ~~six-hundred-thousand~~
16 ~~dollars which, under generally-accepted-accounting-principles~~
17 ~~consistently-applied, is a capital expenditure, or any~~
18 ~~acquisition by lease or donation to which this subsection~~
19 ~~would be applicable if the acquisition were made by purchase~~
20 eight hundred thousand dollars within a twelve-month period.

21 d. A permanent change in the bed capacity, as determined
22 by the department, of an institutional health facility ~~or a~~
23 ~~health-maintenance-organization.~~ For purposes of this
24 paragraph, a change is permanent if it is intended to be
25 effective for one year or more.

26 e. Any expenditure in excess of two-hundred-fifty three
27 hundred thousand dollars by or on behalf of an institutional
28 health facility for health services which are or will be
29 offered in or through an institutional health facility ~~or a~~
30 ~~health-maintenance-organization~~ at a specific time but which
31 were not offered on a regular basis in or through that
32 institutional health facility ~~or health-maintenance~~
33 ~~organization~~ within the twelve-month period prior to that
34 time.

35 f. The deletion of one or more health services, previously

1 offered on a regular basis by an institutional health facility
2 or health maintenance organization or the relocation of one or
3 more health services from one physical facility to another.

4 g. -- Any expenditure by or on behalf of an individual health
5 care provider or group of health care providers, in excess of
6 four hundred thousand dollars, made for the purchase or
7 acquisition of a single piece of new equipment which is to be
8 installed and used in a private office or clinic, and for
9 which a certificate of need would be required if the equipment
10 were being purchased or acquired by an institutional health
11 facility or health maintenance organization, and which is,
12 under generally accepted accounting principles consistently
13 applied, a capital expenditure.

14 h. -- Any expenditure by or on behalf of an institutional
15 health facility or a health maintenance organization in excess
16 of four hundred thousand dollars, which is made for the
17 purchase or acquisition of a single piece of new equipment
18 which is to be installed and used in an institutional health
19 facility or a health maintenance organization, and which is,
20 under generally accepted accounting principles consistently
21 applied, a capital expenditure.

22 g. Any acquisition by or on behalf of a health care
23 provider or a group of health care providers of any piece of
24 replacement equipment with a value in excess of four hundred
25 thousand dollars, whether acquired by purchase, lease, or
26 donation.

27 h. Any acquisition by or on behalf of a health care
28 provider or group of health care providers of any piece of
29 equipment with a value in excess of two hundred thousand
30 dollars, whether acquired by purchase, lease, or donation,
31 which results in the offering or development of a health
32 service not previously provided. A mobile service provided on
33 a contract basis is not considered to have been previously
34 provided by a health care provider or group of health care
35 providers.

1 i. Any acquisition by or on behalf of an institutional
2 health facility or a health maintenance organization of any
3 piece of replacement equipment with a value in excess of four
4 hundred thousand dollars, whether acquired by purchase, lease,
5 or donation.

6 j. Any acquisition by or on behalf of an institutional
7 health facility or health maintenance organization of any
8 piece of equipment with a value in excess of three hundred
9 thousand dollars, whether acquired by purchase, lease, or
10 donation, which results in the offering or development of a
11 health service not previously provided. A mobile service
12 provided on a contract basis is not considered to have been
13 previously provided by an institutional health facility.

14 k. Any air transportation system for transportation of
15 patients or medical personnel.

16 l. Any mobile health service with a value in excess of
17 three hundred thousand dollars.

18 m. Any of the following:

19 (1) Cardiac catheterization service.

20 (2) Open heart surgical service.

21 (3) Organ transplantation service.

22 20 19. "Offer", when used in connection with health
23 services, means that an institutional health facility, or
24 health maintenance organization, health care provider, or
25 group of health care providers holds itself out as capable of
26 providing, or as having the means to provide, specified health
27 services.

28 21 20. "Organized outpatient health facility" means a
29 facility, not part of a hospital, organized and operated to
30 provide health care to noninstitutionalized and nonhomebound
31 persons on an outpatient basis; it does not include private
32 offices or clinics of individual physicians, dentists or other
33 practitioners, or groups of practitioners, who are health care
34 providers.

35 22 21. "Outpatient surgical facility" means a facility

1 which as its primary function provides, through an organized
2 medical staff and on an outpatient basis to patients who are
3 generally ambulatory, surgical procedures not ordinarily
4 performed in a private physician's office, but not requiring
5 twenty-four hour hospitalization, and which is neither a part
6 of a hospital nor the private office of a health care provider
7 who there engages in the lawful practice of surgery.

8 "Outpatient surgical facility" includes a facility certified
9 or seeking certification as an ambulatory surgical center,
10 under the federal Medicare program or under the medical
11 assistance program established pursuant to chapter 249A.

12 23 22. "Technologically innovative equipment" means
13 equipment potentially useful for diagnostic or therapeutic
14 purposes which introduces new technology in the diagnosis or
15 treatment of disease, the usefulness of which is not well
16 enough established to permit a specific plan of need to be
17 developed for the state.

18 Sec. 2. Section 135.62, subsection 2, paragraph a,
19 subparagraph (2), Code 1991, is amended to read as follows:
20 (2) Serve as a member of any board or other policy-making
21 or advisory body of a health systems agency, an institutional
22 health facility, a health maintenance organization, or any
23 health or hospital insurer.

24 Sec. 3. Section 135.62, subsection 2, paragraph b,
25 unnumbered paragraph 3, Code 1991, is amended by striking the
26 unnumbered paragraph.

27 Sec. 4. Section 135.63, subsections 1 and 2, Code 1991,
28 are amended to read as follows:

29 1. A new institutional health service or changed
30 institutional health service shall not be offered or developed
31 in this state without prior application to the department for
32 and receipt of a certificate of need, pursuant to this
33 division. The application shall be made upon forms furnished
34 or prescribed by the department and shall contain such
35 information as the department may require under this division

1 ~~after-consultation-with-all-health-systems-agencies-serving~~
2 ~~the-state-of-iowa.~~ The application shall be accompanied by a
3 fee equivalent to two-tenths of one percent of the anticipated
4 cost of the project, as determined under rules promulgated by
5 the department. The fee shall be remitted by the department
6 to the treasurer of state, who shall place it in the general
7 fund of the state. If an application is voluntarily withdrawn
8 within thirty calendar days after submission, seventy-five
9 percent of the application fee shall be refunded; if the
10 application is voluntarily withdrawn more than thirty but
11 within sixty days after submission, fifty percent of the
12 application fee shall be refunded; if the application is
13 withdrawn voluntarily more than sixty days after submission,
14 ~~20~~ ²⁵ percent of the application fee shall be refunded.

15 2. ~~Nothing-in-this~~ This division shall not be construed to
16 augment, limit, contravene, or repeal in any manner any other
17 statute of this state which may authorize or relate to
18 licensure, regulation, supervision, or control of, nor to be
19 applicable to:

20 a. Private offices and private clinics of an individual
21 physician, dentist or other practitioner or group of health
22 care providers, except as provided by section 135.61,
23 subsection ~~19~~ 18, ~~paragraph~~ paragraphs "g" and "h", and
24 subsections 20 and 21.

25 b. Dispensaries and first aid stations, located within
26 schools, businesses or industrial establishments, which are
27 maintained solely for the use of students or employees of
28 those establishments and which do not contain inpatient or
29 resident beds that are customarily occupied by the same
30 individual for more than twenty-four consecutive hours.

31 c. Establishments such as motels, hotels, and boarding
32 houses which provide medical, nursing personnel, and other
33 health related services as an incident to their primary
34 business or function.

35 d. The remedial care or treatment of residents or patients

1 in any home or institution conducted only for those who rely
2 solely upon treatment by prayer or spiritual means in
3 accordance with the creed or tenets of any recognized church
4 or religious denomination.

5 e. A health maintenance organization or combination of
6 health maintenance organizations or an institutional health
7 facility controlled directly or indirectly by a health
8 maintenance organization or combination of health maintenance
9 organizations, except when the health maintenance organization
10 or combination of health maintenance organizations does any of
11 the following:

12 (1) Constructs, develops, renovates, relocates, or
13 otherwise establishes an institutional health facility.

14 (2) Acquires major medical equipment as provided by
15 section 135.61, subsection 19, ~~paragraph "g"~~ 18, paragraphs
16 "i" and "j".

17 f. A residential care facility, as defined in section
18 135C.1, including a residential care facility for the mentally
19 retarded, notwithstanding any provision in this division to
20 the contrary.

21 g. A reduction in bed capacity of an institutional health
22 facility, notwithstanding any provision in this division to
23 the contrary, if all of the following conditions exist:

24 (1) The institutional health facility reports to the
25 department the number and type of beds reduced on a form
26 prescribed by the department at least thirty days before the
27 reduction. In the case of a health care facility, the new bed
28 total must be consistent with the number of licensed beds at
29 the facility. In the case of a hospital, the number of beds
30 must be consistent with bed totals reported to the department
31 of inspections and appeals for purposes of licensure and
32 certification.

33 (2) The institutional health facility reports the new bed
34 total on its next annual report to the department.

35 If these conditions are not met, the institutional health

1 facility is subject to review as a "new institutional health
2 service" or "changed institutional health service" under
3 section 135.61, subsection 18, paragraph "d", and subject to
4 sanctions under section 135.73. If the institutional health
5 facility reestablishes the deleted beds at a later time,
6 review as a "new institutional health service" or "changed
7 institutional health service" is required pursuant to section
8 135.61, subsection 18, paragraph "d".

9 h. The deletion of one or more health services, previously
10 offered on a regular basis by an institutional health facility
11 or health maintenance organization, notwithstanding any
12 provision of this division to the contrary, if all of the
13 following conditions exist:

14 (1) The institutional health facility or health
15 maintenance organization reports to the department the
16 deletion of the service or services at least thirty days
17 before the deletion on a form prescribed by the department.

18 (2) The institutional health facility or health
19 maintenance organization reports the deletion of the service
20 or services on its next annual report to the department.

21 If these conditions are not met, the institutional health
22 facility or health maintenance organization is subject to
23 review as a "new institutional health service" or "changed
24 institutional health service" under section 135.61, subsection
25 18, paragraph "f", and subject to sanctions under section
26 135.73.

27 If the institutional health facility or health maintenance
28 organization reestablishes the deleted service or services at
29 a later time, review as a "new institutional health service"
30 or "changed institutional health service" may be required
31 pursuant to section 135.61, subsection 18.

32 Sec. 5. Section 135.64, subsection 1, paragraphs a and l
33 through q, Code 1991 are amended to read as follows:

34 a. ~~The relationship of the proposed institutional health~~
35 ~~services to the applicable health systems plan and annual~~

1 ~~implementation-plan-adopted-by-the-affected-health-systems~~
2 agency The contribution of the proposed institutional health
3 service in meeting the needs of the medically underserved,
4 including persons in rural areas, low-income persons, racial
5 and ethnic minorities, handicapped persons, and the elderly,
6 as well as the extent to which medically underserved residents
7 in the applicant's service area are likely to have access to
8 the proposed institutional health service.

9 1. Special needs and circumstances of those entities which
10 provide a substantial portion of their services or resources,
11 or both, to individuals not residing in the health-systems
12 agency-areas immediate geographic area in which the entities
13 are located or-in-adjacent-health-systems-agency-areas, which
14 entities may include but are not limited to medical and other
15 health professional schools, multidisciplinary clinics, and
16 specialty centers.

17 m. ~~The special-needs-and-circumstances-of-health~~
18 ~~maintenance-organizations-~~ In the case of an intermediate
19 care facility for the mentally retarded, a demonstration of
20 compliance with rules that shall be adopted by the department
21 of human services, which shall include, but are not limited
22 to, family-scale size, location, and appropriateness of
23 inclusion within a community.

24 n. The special needs and circumstances of biomedical and
25 behavioral research projects designed to meet a national need
26 and for which local conditions offer special advantages.

27 o. The impact of relocation of an institutional health
28 facility or health maintenance organization on other
29 institutional health facilities or health maintenance
30 organizations and on the needs of the population to be served,
31 or which was previously served, or both.

32 p. In the case of a construction project,
33 ~~(1)---The~~ the costs and methods of the proposed
34 construction,--including--the--costs--and--methods--of--energy
35 supply, and

1 (2)--The the probable impact of the proposed construction
2 project on ~~the costs incurred by the person proposing the~~
3 ~~construction project in providing institutional health~~
4 ~~services~~ total health care costs.

5 q. In the case of a proposal for the addition of beds to a
6 health care facility, the consistency of the proposed addition
7 with the plans of other agencies of this state responsible for
8 provision and financing of long-term care services, including
9 home health services.

10 r. The recommendations of staff personnel of the
11 department assigned to the area of certificate of need,
12 concerning the application, if requested by the council.

13 Sec. 6. Section 135.65, subsection 1, Code 1991, is
14 amended to read as follows:

15 1. Before applying for a certificate of need, the sponsor
16 of a proposed new institutional health service or changed
17 institutional health service shall submit to the department,
18 ~~and to the designated health systems agency in whose area the~~
19 ~~proposed new or changed service is or will be located,~~ a
20 letter of intent to offer or develop a service requiring a
21 certificate of need. The letter shall be submitted as soon as
22 possible after initiation of the applicant's planning process,
23 and in any case not less than sixty days before applying for a
24 certificate of need and before substantial expenditures to
25 offer or develop the service are made. The letter shall
26 include a brief description of the proposed new or changed
27 service, its location, and its estimated cost.

28 Sec. 7. Section 135.66, subsections 2, 3, and 4, Code
29 1991, are amended to read as follows:

30 2. Upon acceptance of an application for a certificate of
31 need, the department shall promptly undertake to notify all
32 affected persons in writing that formal review of the
33 application has been initiated. Notification to those
34 affected persons who are consumers or third-party payers or
35 other payers for health services may be provided by

1 distribution of the pertinent information to the news media.

2 3. Each application accepted by the department shall be
3 formally reviewed for the purpose of furnishing to the council
4 the information necessary to enable it to determine whether or
5 not to grant the certificate of need. A formal review shall
6 consist at a minimum of the following steps:

7 a. Evaluation of the application against the criteria
8 specified in section 135.64.

9 b. A public hearing on the application, to be held prior
10 to completion of the evaluation required by paragraph "a" of
11 ~~this subsection, if requested by any party who is an affected~~
12 ~~person with respect to the application within thirty days~~
13 ~~after notification of affected persons that the application~~
14 ~~has been accepted for completeness, shall be conducted by the~~
15 council.

16 ~~c. A request to the designated health systems agency in~~
17 ~~whose area the proposed new institutional health service or~~
18 ~~changed institutional health service would be located for a~~
19 ~~recommendation for or against the granting of the certificate~~
20 ~~of need. The department shall assist the designated health~~
21 ~~systems agency to formulate a recommendation by furnishing any~~
22 ~~appropriate data and information on the proposed new~~
23 ~~institutional health service or changed institutional health~~
24 ~~service. The health systems agency may give notice of its~~
25 ~~intent to formulate a recommendation on the application, and~~
26 ~~may hold a public hearing on the application if requested by~~
27 ~~any party who is an affected person with respect to that~~
28 ~~application. If a hearing is held on the application by the~~
29 ~~health systems agency, the department may but shall not be~~
30 ~~required to hold a separate hearing under paragraph "b" of~~
31 ~~this subsection. The department shall allow the health~~
32 ~~systems agency sixty days after acceptance of the application~~
33 ~~by the department, except as otherwise provided by section~~
34 ~~135.72, subsection 4, to submit to the department~~
35 ~~recommendations with respect to the application. The~~

1 department shall consider any recommendations timely submitted
2 by the health systems agency.

3 4. When a hearing is to be held pursuant to either
4 subsection 3, paragraph "b" or paragraph "c" of subsection 3
5 of this section, the department or the health systems agency,
6 as the case may be, shall give at least ten days days' notice
7 of the time and place of the hearing. At the hearing, any
8 affected person or that person's designated representative
9 shall have the opportunity to present testimony.

10 Sec. 8. Section 135.67, unnumbered paragraph 1, Code 1991,
11 is amended to read as follows:

12 The department may ~~with approval of the council~~, waive the
13 letter of intent procedures prescribed by ~~sections~~ section
14 135.65 and 135.66 and substitute a summary review procedure,
15 which shall be established by rules of the department, when it
16 accepts an application for a certificate of need for a project
17 which meets any of the ~~following~~ criteria in subsection 1
18 through 5:

19 Sec. 9. Section 135.67, subsection 5, Code 1991, is
20 amended to read as follows:

21 5. Any other project for which the applicant proposes, and
22 ~~both the council and the appropriate health systems agency~~
23 agree the department agrees to summary review.

24 Sec. 10. Section 135.67, Code 1991, is amended by adding
25 the following new unnumbered paragraph:

26 NEW UNNUMBERED PARAGRAPH. The department's decision to
27 disallow a summary review shall be binding upon the applicant.

28 *J 348678* Sec. 11. Section 135.69, unnumbered paragraph 1, Code
29 1991, is amended to read as follows:

30 The department shall complete its formal review of the
31 application within ninety days after acceptance of the
32 application, except as otherwise provided by section 135.72,
33 subsection 4. Upon completion of the formal review, the
34 council shall ~~approve with conditions~~ or deny the
35 application. ~~However, the council shall not approve an~~

~~1 application with conditions which mandate new institutional
2 health services not proposed by the applicant. The council
3 shall issue written findings stating the basis for its
4 decision on the application, and the department shall send
5 copies of the council's decision and the written findings
6 supporting it the decision to the applicant, ~~to the designated
7 health systems agency in whose area the new or changed
8 institutional health service is proposed to be offered or
9 developed,~~ and to any other person who so requests. ~~If the
10 application is approved or approved with conditions, the
11 department shall issue a certificate of need to the applicant
12 at the time the applicant is informed of the council's
13 decision.~~~~

14 Sec. 12. Section 135.70, Code 1991, is amended by striking
15 the section and inserting in lieu thereof the following:

16 135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

17 The council's final decision on an application for a
18 certificate of need when announced pursuant to section 135.69,
19 may be appealed by a dissatisfied party who is an affected
20 person with respect to that application, and who participated
21 or sought unsuccessfully to participate in the formal review
22 procedure prescribed by section 135.66. The appeal shall
23 first be made to the council and the appeals division of the
24 department of inspections and appeals shall conduct the review
25 proceedings and issue a proposed decision. The proposed
26 decision shall in turn be returned to the council or the
27 director who shall affirm, modify, or reverse the proposed
28 decision. The decision of the council or the director
29 regarding the proposed decision is the final decision. If the
30 appellant remains dissatisfied with the final decision, an
31 appeal may be taken in the manner provided in chapter 17A.

32 Sec. 13. Section 135.72, subsection 4, Code 1991, is
33 amended to read as follows:

34 4. Criteria for determining when it is not feasible to
35 complete formal review of an application for a certificate of

1 need, ~~or not feasible for a designated health systems agency~~
2 ~~to formulate and submit a recommendation on an application,~~
3 within the time limits specified in section 135.69 ~~and section~~
4 ~~135.66, subsection 3, paragraph "e", respectively.~~ The rules
5 adopted under this subsection shall include criteria for
6 determining whether an application proposes introduction of
7 technologically innovative equipment, and if so, procedures to
8 be followed in reviewing the application. However, no a rule
9 adopted under this subsection shall not permit a deferral of
10 more than sixty days beyond the time when a decision is
11 required under section 135.69, unless both the applicant and
12 the department agree to a longer deferment.

13 Sec. 14. Section 135.73, Code 1991, is amended to read as
14 follows:

15 135.73 SANCTIONS.

16 1. Any party constructing a new institutional health
17 facility or ~~a major~~ an addition to or renovation of an
18 existing institutional health facility without first obtaining
19 a certificate of need ~~therefor~~ or, in the case of a mobile
20 health service, ascertaining that the mobile health service
21 has received certificate of need approval, as required by this
22 division, ~~or who shall violate any of the provisions of this~~
23 ~~division,~~ may shall be denied licensure or change of licensure
24 by the appropriate responsible licensing agency of this state.

25 2. A party violating this division shall be subject to
26 penalties in accordance with this section. The department
27 shall adopt rules setting forth the violations by
28 classification, the criteria for the classification of any
29 violation not listed, and procedures for implementing this
30 subsection.

31 a. A class I violation is one in which a party offers a
32 new institutional health service or changed institutional
33 health service modernization or acquisition without review and
34 approval by the council. A party in violation is subject to a
35 penalty of three hundred dollars for each day of a class I

1 violation. The department may seek injunctive relief which
2 shall include restraining the commission or continuance of an
3 act which would violate the provisions of this paragraph.
4 Notice and opportunity to be heard shall be provided to a
5 party pursuant to Iowa rule of civil procedure 326 and
6 contested case procedures in accordance with chapter 17A. The
7 department may reduce, alter, or waive a penalty upon the
8 party showing good faith compliance with the department's
9 request to immediately cease and desist from conduct in
10 violation of this section.

11 b. A class II violation is one in which a party violates
12 the terms or provisions of an approved application. The
13 department may seek injunctive relief which shall include
14 restraining the commission or continuance of or abating or
15 eliminating an act which would violate the provisions of this
16 subsection. Notice and opportunity to be heard shall be
17 provided to a party pursuant to Iowa rule of civil procedure
18 326 and contested case procedures in accordance with chapter
19 17A. The department may reduce, alter, or waive a penalty
20 upon the party showing good faith compliance with the
21 department's request to immediately cease and desist from
22 conduct in violation of this section. A class II violation
23 shall be abated or eliminated within a stated period of time
24 determined by the department and specified by the department
25 in writing. The period of time may be modified by the
26 department for good cause shown. A party in violation may be
27 subject to a penalty of five hundred dollars for each day of a
28 class II violation.

29 2 3. Any Notwithstanding any other sanction imposed
30 pursuant to this section, a party offering or developing any
31 new institutional health service or changed institutional
32 health service without first obtaining a certificate of need
33 therefor as required by this division may be temporarily or
34 permanently restrained therefrom from doing so by any court of
35 competent jurisdiction in any action brought by the state, any

1 of its political subdivisions, or any other interested person.

2 3 4. The sanctions provided by this section are in
3 addition to, and not in lieu of, any penalty prescribed by law
4 for the acts against which these sanctions are invoked.

5 Sec. 15. Sections 135.80 and 135.82, Code 1991, are
6 repealed.

7 EXPLANATION

8 The bill amends the certificate of need program. The bill
9 includes in the definition of an "institutional health
10 service" a "mobile health service", thereby providing for
11 reviewability of these services under the certificate of need
12 program. In addition to any capital expenditures in excess of
13 \$800,000 within a 12-month period a lease or donation by or on
14 behalf of an institutional health facility in this amount also
15 will be reviewed under the certificate of need program. The
16 bill also provides for acquisitions by or on behalf of a
17 health care provider or a group of health care providers, or
18 by or on behalf of an institutional health facility or health
19 maintenance organization, of replacement equipment or other
20 equipment in certain amounts to be reviewed under the
21 certificate of need program. Certain air transportation
22 systems and mobile health services are also subject to review
23 under the certificate of need program, as are cardiac
24 catharization, open heart surgical, and organ transplantation
25 services.

26 The bill also requires reporting only, not approval, of bed
27 reductions and deletions of services. The bill amends the
28 criteria to be considered in a certificate of need decision to
29 include the contribution of a proposed institutional health
30 service in meeting the needs of the medically underserved and
31 requires input from the staff personnel involved with
32 certificate of need if requested by the council. The bill
33 also requires a public hearing to be held prior to the
34 completion of the certificate of need evaluation and provides
35 that appeals of certificate of need decisions are initially

1 made to the council and the department of inspections and
2 appeals is to conduct the review procedures and issue the
3 proposed decision. The decision is then reviewed by the
4 council or the director of the department of inspections and
5 appeals whose decision is final and may be appealed under
6 chapter 17A. The bill prohibits licensure of a mobile health
7 service which has not obtained a certificate of need. The
8 bill also provides additional penalties for violation of the
9 certificate of need provisions.

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HOUSE FILE 668

3558

1 Amend House File 668, as passed by the House, as
2 follows:

- 3 1. Page 11, by striking lines 17 through 23 and
4 inserting the following:
5 "m. The special needs and circumstances of health
6 maintenance organizations."

By EMIL J. HUSAK

S-3558 FILED APRIL 24, 1991

Adopted 5/1/91 (p. 1580)

HOUSE FILE 668

S-3499

1 Amend House File 668, as passed by the House, as
2 follows:

- 3 1. Page 8, line 14, by inserting after the word
4 "refunded." the following: "Notwithstanding the
5 required payment of an application fee under this
6 subsection, an applicant for a new institutional
7 health service or a changed institutional health
8 service offered or developed by an intermediate care
9 facility for the mentally retarded or an intermediate
10 care facility for the mentally ill as defined pursuant
11 to section 135C.1 is exempt from payment of the
12 application fee."

- 13 2. Page 11, line 19, by inserting after the word
14 "retarded" the following: "or an intermediate care
15 facility for the mentally ill".

By MARK HAGERLA

S-3499 FILED APRIL 18, 1991

Adopted 5/1/91

HOUSE FILE 668

S-3621

1 Amend House File 668, as passed by the House, as
2 follows:

- 3 1. Page 8, line 14, by inserting after the word
4 "refunded." the following: "Notwithstanding the
5 required payment of an application fee under this
6 subsection, an applicant for a new institutional
7 health service or a changed institutional health
8 service offered or developed by an intermediate care
9 facility for the mentally retarded or an intermediate
10 care facility for the mentally ill as defined pursuant
11 to section 135C.1 is exempt from payment of the
12 application fee."

By MARK HAGERLA

S-3621 FILED APRIL 25, 1991

Adopted 5/1/91 (p. 1579)

HOUSE FILE 668

S-3485

- 1 Amend House File 668, as passed by the House, as
2 follows:
- 3 1. Page 14, by striking line 28 and inserting the
4 following:
5 "Sec. ____ . Section 135.69, Code".
- 6 2. Page 14, by inserting after line 29 the
7 following:
8 "COUNCIL TO MAKE FINAL DECISION."
- 9 3. Page 15, by inserting after line 13 the
10 following:
11 "Failure by the council to issue a written decision
12 on an application for a certificate of need within the
13 time required by this section shall constitute denial
14 of and final administrative action on the application;
15 ~~and is subject to appeal under section 135.70.~~"
- 16 4. Page 15, by striking lines 17 through 31 and
17 inserting the following:
18 "The council's decision on an application for
19 certificate of need, when announced pursuant to
20 section 135.69, is a final decision. Any dissatisfied
21 party who is an affected person with respect to the
22 application, and who participated or sought
23 unsuccessfully to participate in the formal review
24 procedure prescribed by section 135.66, may request a
25 rehearing in accordance with chapter 17A and rules of
26 the department. If a rehearing is not requested or an
27 affected party remains dissatisfied after the request
28 for rehearing, an appeal may be taken in the manner
29 provided by chapter 17A. Notwithstanding the Iowa
30 administrative procedures Act, chapter 17A, a request
31 for rehearing is not required, prior to appeal under
32 section 17A.19."
- 33 5. By renumbering as necessary.

By AL STURGEON

S-3485 FILED APRIL 18, 1991

Adopted 5/1/91 (p 1580)

HOUSE FILE 668

S-3387

- 1 Amend House File 668, as passed by the House, as
2 follows:
- 3 1. Page 5, line 29, by striking the word "two"
4 and inserting the following: "three".

By COMMITTEE ON HUMAN RESOURCES
BEVERLY A. HANNON, Chairperson

S-3387 FILED APRIL 10, 1991

Adopted 5/1/91 (p 1579)

SENATE AMENDMENT TO HOUSE FILE 668

H-4006

1 Amend House File 668, as passed by the House, as
2 follows:

3 1. Page 5, line 29, by striking the word "two"
4 and inserting the following: "three".

5 2. Page 8, line 14, by inserting after the word
6 "refunded." the following: "Notwithstanding the
7 required payment of an application fee under this
8 subsection, an applicant for a new institutional
9 health service or a changed institutional health
10 service offered or developed by an intermediate care
11 facility for the mentally retarded or an intermediate
12 care facility for the mentally ill as defined pursuant
13 to section 135C.1 is exempt from payment of the
14 application fee."

15 3. Page 11, by striking lines 17 through 23 and
16 inserting the following:

17 'm. The special needs and circumstances of health
18 maintenance organizations."

19 4. Page 14, by striking line 28 and inserting the
20 following:

21 "Sec. ____ . Section 135.69, Code".

22 5. Page 14, by inserting after line 29 the
23 following:

24 "COUNCIL TO MAKE FINAL DECISION."

25 6. Page 15, by inserting after line 13 the
26 following:

27 "Failure by the council to issue a written decision
28 on an application for a certificate of need within the
29 time required by this section shall constitute denial
30 of and final administrative action on the application,
31 ~~and is subject to appeal under section 135.70.~~"

32 7. Page 15, by striking lines 17 through 31 and
33 inserting the following:

34 "The council's decision on an application for
35 certificate of need, when announced pursuant to
36 section 135.69, is a final decision. Any dissatisfied
37 party who is an affected person with respect to the
38 application, and who participated or sought
39 unsuccessfully to participate in the formal review
40 procedure prescribed by section 135.66, may request a
41 rehearing in accordance with chapter 17A and rules of
42 the department. If a rehearing is not requested or an
43 affected party remains dissatisfied after the request
44 for rehearing, an appeal may be taken in the manner
45 provided by chapter 17A. Notwithstanding the Iowa
46 administrative procedures Act, chapter 17A, a request
47 for rehearing is not required, prior to appeal under
48 section 17A.19."

49 8. Page 18, by inserting after line 4, the
50 following:

H-4006

Page 2

1 "Sec. ____ . FULL-TIME EQUIVALENT POSITIONS --
2 HIRING PROHIBITED. For the fiscal year beginning July
3 1, 1991, and ending June 30, 1992, the department
4 shall not add any new full-time equivalent positions
5 for administration of the certificate of need program
6 and shall submit a full-time equivalent position needs
7 report to the general assembly by January 1, 1992."
8 9. By renumbering, relettering, or redesignating
9 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-4006 FILED MAY 1, 1991

House amended (4023), concurred 5/2/91 (p 2018)

HOUSE FILE 668

H-4023

1 Amend the Senate amendment, H-4006, to House File
2 668, as passed by the House, as follows:
3 1. By striking page 1, line 49, through page 2,
4 line 7.
5 2. By renumbering as necessary.

By HAMMOND of Story

H-4023 FILED MAY 2, 1991

ADOPTED *p 2018*

HOUSE FILE 668

S-3665

1 Amend House 668, as passed by the House, as
2 follows:
3 1. Page 18, by inserting after line 4, the
4 following:
5 "Sec _____. FULL-TIME EQUIVALENT POSITIONS -- HIRING
6 PROHIBITED. For the fiscal year beginning July 1,
7 1991, and ending June 30, 1992, the department shall
8 not hire any new full-time equivalent positions and
9 shall submit a full-time equivalent position needs
10 report to the general assembly by January 1, 1992."
11 2. By renumbering as necessary.

By MAGGIE TINSMAN
MARY KRAMER
FLORENCE BUHR

S-3665 FILED MAY 1, 1991
WITHDRAWN (p. 1582)

HOUSE FILE 668

S-3666

1 Amend House 668, as passed by the House, as
2 follows:
3 1. Page 18, by inserting after line 4, the
4 following:
5 "Sec _____. FULL-TIME EQUIVALENT POSITIONS -- HIRING
6 PROHIBITED. For the fiscal year beginning July 1,
7 1991, and ending June 30, 1992, the department shall
8 not add any new full-time equivalent positions for
9 administration of the certificate of need program and
10 shall submit a full-time equivalent position needs
11 report to the general assembly by January 1, 1992."
12 2. By renumbering as necessary.

By MAGGIE TINSMAN
MARY KRAMER
FLORENCE BUHR

S-3666 FILED MAY 1, 1991
ADOPTED (p. 1582)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 668

S-3690

- 1 Amend the Senate amendment, H-4006, to House File
- 2 668, as passed by the House, as follows:
- 3 1. By striking page 1, line 49, through page 2,
- 4 line 7.
- 5 2. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3690 FILED MAY 2, 1991
Senate concurred 5/3 (of 1659)

**HOUSE FILE 668
FISCAL NOTE**

A fiscal note for House File 668 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 668 amends the Certificate of Need (CON) Program in the Department of Public Health (DPH). The bill defines institutional health service and mobile health service, including air transportation systems, thereby making those services eligible for CON review. House File 668 also requires reporting only, not approval, of bed reductions and deletions of service, requires the DPH to adopt rules regarding the criteria for advertisement of services by facilities subject to CON, and provides penalties for the violation of CON provisions.

ASSUMPTIONS:

1. House File 668 expands the CON Program to cover the listed services. Additional revenue would be generated by these services participating in the Program, however, the DPH cannot estimate the amount of the funds generated by adding these services to the CON Program.
2. The DPH estimates an additional 3.0 FTE positions would be required to administrate the CON Program as defined in House File 668.

FISCAL EFFECT:

	<u>FY 1992</u>	<u>FY 1993</u>
<u>REVENUE</u>		
Filing Fees	\$?	\$?
<u>EXPENDITURES</u>		
Salaries	\$ 84,232	\$ 88,443
Support	\$ 7,100	\$ 7,455
Total	\$ 91,332	\$ 95,898

Source: Department of Public Health

(LSB 1369hv, RRS)

FILED APRIL 2, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 668

AN ACT

RELATING TO THE CERTIFICATE OF NEED PROGRAM AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 135.61, Code 1991, is amended to read as follows:

135.61 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Affected persons" means, with respect to an application for a certificate of need:

a. The person submitting the application.

b. Consumers who would be served by the new institutional health service proposed in the application.

c. Each institutional health facility or health maintenance organization which is located in the geographic area which would appropriately be served by the new institutional health service proposed in the application. The appropriate geographic service area of each institutional health facility or health maintenance organization shall be determined on a uniform basis in accordance with criteria established in rules promulgated ~~adopted~~ by the department in consultation with the appropriate health systems agency.

~~d. The designated health systems agencies for the health systems agency area in which the new institutional health service proposed in the application is to be located and for each of the health systems agency areas contiguous thereto, including those in other states.~~

e d. Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this division an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.

f e. Any other person designated as an affected person by rules of the department.

f. Any payer or third-party payer for health services.

2. "Birth center" means birth center as defined in section 135G.2.

2 3. "Director" means the director of public health, or the director's designee.

3 4. "Consumer" means any individual whose occupation is other than health services, who has no fiduciary obligation to an institutional health facility, health maintenance organization or other facility primarily engaged in delivery of services provided by persons in health service occupations, and who has no material financial interest in the providing of any health services.

4 5. "Council" means the state health facilities council established by this division.

5 6. "Department" means the Iowa department of public health.

6 7. "Develop", when used in connection with health services, means 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.

7 ~~7. "Federal Act" means the national health planning and resources development Act of 1974, United States public law 93-647 as amended to January 1, 1977.~~

8. "Financial reporting" means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.

9. "Health care facility" is defined means health care facility as it is defined in section 135C.1.

10. "Health care provider" means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 150, 150A, 151, 152, 153, 154, 154B, or 155A to provide in this state professional health care service to an individual during that individual's medical care, treatment or confinement.

11. "Health maintenance organization" is defined means health maintenance organization as it is defined in section 514B.1, subsection 3.

12. "Health services" means clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services.

13 ~~13. "Health systems agency" means an entity which is designated and operated in the manner described in the federal Act.~~

14 ~~14. "Health systems plan" means a detailed statement of goals developed by a health systems agency, which describes a healthful environment and health systems in the area which,~~

~~when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care at reasonable cost for all residents of the area, and which is responsive to the unique needs and resources of the area.~~

15 13. "Hospital" is defined as it is means hospital as defined in section 135B.1, subsection 1.

16 14. "Institutional health facility" means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not or whether the facilities are part of or sponsored by a health maintenance organization:

a. A hospital.

b. A health care facility.

c. A kidney disease treatment center, including any freestanding hemodialysis unit but not including any home hemodialysis unit.

d. An organized outpatient health facility.

e. An outpatient surgical facility.

f. A community mental health facility.

g. A birth center.

17 15. "Institutional health service" means any health service furnished in or through institutional health facilities or health maintenance organizations, including mobile health services.

16. "Mobile health service" means equipment used to provide a health service that can be transported from one delivery site to another.

18 17. "Modernization" means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

19 18. "New institutional health service" or "changed institutional health service" means any of the following:

a. The construction, development or other establishment of a new institutional health facility or health maintenance organization regardless of ownership.

b. Relocation of an institutional health facility or a health-maintenance-organization.

c. Any capital expenditure, lease, or donation by or on behalf of an institutional health facility or a health maintenance-organization in excess of six-hundred-thousand dollars which, under generally-accepted-accounting-principles consistently-applied, is a capital expenditure, or any acquisition by lease or donation to which this subsection would be applicable if the acquisition were made by purchase eight hundred thousand dollars within a twelve-month period.

d. A permanent change in the bed capacity, as determined by the department, of an institutional health facility or a health-maintenance-organization. For purposes of this paragraph, a change is permanent if it is intended to be effective for one year or more.

e. Any expenditure in excess of two-hundred-fifty three hundred thousand dollars by or on behalf of an institutional health facility for health services which are or will be offered in or through an institutional health facility or a health-maintenance-organization at a specific time but which were not offered on a regular basis in or through that institutional health facility or health-maintenance organization within the twelve-month period prior to that time.

f. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization or the relocation of one or more health services from one physical facility to another.

g. Any expenditure by or on behalf of an individual health care provider or group of health care providers, in excess of four-hundred-thousand-dollars, made for the purchase or acquisition of a single piece of new equipment which is to be installed and used in a private office or clinic, and for which a certificate of need would be required if the equipment were being purchased or acquired by an institutional health

facility or health maintenance organization, and which is, under generally-accepted-accounting-principles consistently applied, a capital expenditure.

h. Any expenditure by or on behalf of an institutional health facility or a health maintenance organization in excess of four-hundred-thousand-dollars, which is made for the purchase or acquisition of a single piece of new equipment which is to be installed and used in an institutional health facility or a health maintenance organization, and which is, under generally-accepted-accounting-principles consistently applied, a capital expenditure.

g. Any acquisition by or on behalf of a health care provider or a group of health care providers of any piece of replacement equipment with a value in excess of four hundred thousand dollars, whether acquired by purchase, lease, or donation.

h. Any acquisition by or on behalf of a health care provider or group of health care providers of any piece of equipment with a value in excess of three hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by a health care provider or group of health care providers.

i. Any acquisition by or on behalf of an institutional health facility or a health maintenance organization of any piece of replacement equipment with a value in excess of four hundred thousand dollars, whether acquired by purchase, lease, or donation.

j. Any acquisition by or on behalf of an institutional health facility or health maintenance organization of any piece of equipment with a value in excess of three hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a

health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by an institutional health facility.

k. Any air transportation system for transportation of patients or medical personnel.

1. Any mobile health service with a value in excess of three hundred thousand dollars.

m. Any of the following:

(1) Cardiac catheterization service.

(2) Open heart surgical service.

(3) Organ transplantation service.

20 19. "Offer", when used in connection with health services, means that an institutional health facility, or health maintenance organization, health care provider, or group of health care providers holds itself out as capable of providing, or as having the means to provide, specified health services.

21 20. "Organized outpatient health facility" means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

22 21. "Outpatient surgical facility" means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician's office, but not requiring twenty-four hour hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery.

"Outpatient surgical facility" includes a facility certified or seeking certification as an ambulatory surgical center, under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A.

23 22. "Technologically innovative equipment" means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

Sec. 2. Section 135.62, subsection 2, paragraph a, subparagraph (2), Code 1991, is amended to read as follows:

(2) Serve as a member of any board or other policy-making or advisory body of a health-systems-agency, an institutional health facility, a health maintenance organization, or any health or hospital insurer.

Sec. 3. Section 135.62, subsection 2, paragraph b, unnumbered paragraph 3, Code 1991, is amended by striking the unnumbered paragraph.

Sec. 4. Section 135.63, subsections 1 and 2, Code 1991, are amended to read as follows:

1. A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this division. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this division ~~after-consultation-with-all-health-systems-agencies-serving-the-state-of-iowa~~. The application shall be accompanied by a fee equivalent to two-tenths of one percent of the anticipated cost of the project, as determined under rules promulgated by the department. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the

application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for the mentally retarded or an intermediate care facility for the mentally ill as defined pursuant to section 135C.1 is exempt from payment of the application fee.

2. ~~Nothing in this~~ This division shall not be construed to augment, limit, contravene, or repeal in any manner any other statute of this state which may authorize or relate to licensure, regulation, supervision, or control of, nor to be applicable to:

a. Private offices and private clinics of an individual physician, dentist or other practitioner or group of health care providers, except as provided by section 135.61, subsection ~~19~~ 18, paragraph ~~paragraphs~~ "g" and "h", and subsections 20 and 21.

b. Dispensaries and first aid stations, located within schools, businesses or industrial establishments, which are maintained solely for the use of students or employees of those establishments and which do not contain inpatient or resident beds that are customarily occupied by the same individual for more than twenty-four consecutive hours.

c. Establishments such as motels, hotels, and boarding houses which provide medical, nursing personnel, and other health related services as an incident to their primary business or function.

d. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

(1) Constructs, develops, renovates, relocates, or otherwise establishes an institutional health facility.

(2) Acquires major medical equipment as provided by section 135.61, subsection ~~19~~-paragraph-"g" 18, paragraphs "i" and "j".

f. A residential care facility, as defined in section 135C.1, including a residential care facility for the mentally retarded, notwithstanding any provision in this division to the contrary.

g. A reduction in bed capacity of an institutional health facility, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility reports to the department the number and type of beds reduced on a form prescribed by the department at least thirty days before the reduction. In the case of a health care facility, the new bed total must be consistent with the number of licensed beds at the facility. In the case of a hospital, the number of beds must be consistent with bed totals reported to the department of inspections and appeals for purposes of licensure and certification.

(2) The institutional health facility reports the new bed total on its next annual report to the department.

If these conditions are not met, the institutional health facility is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18, paragraph "d", and subject to sanctions under section 135.73. If the institutional health

facility reestablishes the deleted beds at a later time, review as a "new institutional health service" or "changed institutional health service" is required pursuant to section 135.61, subsection 18, paragraph "d".

h. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this division to the contrary, if all of the following conditions exist:

(1) The institutional health facility or health maintenance organization reports to the department the deletion of the service or services at least thirty days before the deletion on a form prescribed by the department.

(2) The institutional health facility or health maintenance organization reports the deletion of the service or services on its next annual report to the department.

If these conditions are not met, the institutional health facility or health maintenance organization is subject to review as a "new institutional health service" or "changed institutional health service" under section 135.61, subsection 18, paragraph "f", and subject to sanctions under section 135.73.

If the institutional health facility or health maintenance organization reestablishes the deleted service or services at a later time, review as a "new institutional health service" or "changed institutional health service" may be required pursuant to section 135.61, subsection 18.

Sec. 5. Section 135.64, subsection 1, paragraphs a and 1 through g, Code 1991, are amended to read as follows:

a. The relationship of the proposed institutional health services to the applicable health systems plan and annual implementation plan adopted by the affected health systems agency. The contribution of the proposed institutional health service in meeting the needs of the medically underserved, including persons in rural areas, low-income persons, racial

and ethnic minorities, handicapped persons, and the elderly, as well as the extent to which medically underserved residents in the applicant's service area are likely to have access to the proposed institutional health service.

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-systems agency-areas immediate geographic area in which the entities are located or in-adjacent health-systems-agency-areas, which entities may include but are not limited to medical and other health professional schools, multidisciplinary clinics, and specialty centers.

m. The special needs and circumstances of health maintenance organizations.

n. The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

o. The impact of relocation of an institutional health facility or health maintenance organization on other institutional health facilities or health maintenance organizations and on the needs of the population to be served, or which was previously served, or both.

p. In the case of a construction project,
{1}--The the costs and methods of the proposed construction--including-the-costs-and-methods-of-energy supply; and

{2}--The the probable impact of the proposed construction project on the-costs-incurred-by-the-person-proposing-the construction-project-in-providing-institutional-health services total health care costs.

q. In the case of a proposal for the addition of beds to a health care facility, the consistency of the proposed addition with the plans of other agencies of this state responsible for provision and financing of long-term care services, including home health services.

r. The recommendations of staff personnel of the department assigned to the area of certificate of need, concerning the application, if requested by the council.

Sec. 6. Section 135.65, subsection 1, Code 1991, is amended to read as follows:

1. Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit to the department, and to the designated health systems agency in whose area the proposed new or changed service is or will be located, a letter of intent to offer or develop a service requiring a certificate of need. The letter shall be submitted as soon as possible after initiation of the applicant's planning process, and in any case not less than sixty days before applying for a certificate of need and before substantial expenditures to offer or develop the service are made. The letter shall include a brief description of the proposed new or changed service, its location, and its estimated cost.

Sec. 7. Section 135.66, subsections 2, 3, and 4, Code 1991, are amended to read as follows:

2. Upon acceptance of an application for a certificate of need, the department shall promptly undertake to notify all affected persons in writing that formal review of the application has been initiated. Notification to those affected persons who are consumers or third-party payers or other payers for health services may be provided by distribution of the pertinent information to the news media.

3. Each application accepted by the department shall be formally reviewed for the purpose of furnishing to the council the information necessary to enable it to determine whether or not to grant the certificate of need. A formal review shall consist at a minimum of the following steps:

a. Evaluation of the application against the criteria specified in section 135.64.

b. A public hearing on the application, to be held prior to completion of the evaluation required by paragraph "a" of this subsection, ~~if requested by any party who is an affected person with respect to the application within thirty days after notification of affected persons that the application has been accepted for completeness,~~ shall be conducted by the council.

~~c. A request to the designated health systems agency in whose area the proposed new institutional health service or changed institutional health service would be located for a recommendation for or against the granting of the certificate of need. The department shall assist the designated health systems agency to formulate a recommendation by furnishing any appropriate data and information on the proposed new institutional health service or changed institutional health service. The health systems agency may give notice of its intent to formulate a recommendation on the application, and may hold a public hearing on the application if requested by any party who is an affected person with respect to that application. If a hearing is held on the application by the health systems agency, the department may but shall not be required to hold a separate hearing under paragraph "b" of this subsection. The department shall allow the health systems agency sixty days after acceptance of the application by the department, except as otherwise provided by section 135.72, subsection 4, to submit to the department recommendations with respect to the application. The department shall consider any recommendations timely submitted by the health systems agency.~~

4. When a hearing is to be held pursuant to either subsection 3, paragraph "b" or paragraph "c" of subsection 3 of this section, the department or the health systems agency, as the case may be, shall give at least ten days days' notice of the time and place of the hearing. At the hearing, any affected person or that person's designated representative shall have the opportunity to present testimony.

Sec. 8. Section 135.67, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The department may, with approval of the council, waive the letter of intent procedures prescribed by sections section 135.65 and 135.66 and substitute a summary review procedure, which shall be established by rules of the department, when it accepts an application for a certificate of need for a project which meets any of the following criteria in subsection 1 through 5:

Sec. 9. Section 135.67, subsection 5, Code 1991, is amended to read as follows:

5. Any other project for which the applicant proposes, and both the council and the appropriate health systems agency agree the department agrees to summary review.

Sec. 10. Section 135.67, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department's decision to disallow a summary review shall be binding upon the applicant.

Sec. 11. Section 135.69, Code 1991, is amended to read as follows:

COUNCIL TO MAKE FINAL DECISION.

The department shall complete its formal review of the application within ninety days after acceptance of the application, except as otherwise provided by section 135.72, subsection 4. Upon completion of the formal review, the council shall approve, ~~approve with conditions,~~ or deny the application. ~~However, the council shall not approve an application with conditions which mandate new institutional health services not proposed by the applicant.~~ The council shall issue written findings stating the basis for its decision on the application, and the department shall send copies of the council's decision and the written findings supporting it the decision to the applicant, ~~to the designated health systems agency in whose area the new or changed institutional health service is proposed to be offered or~~

~~developed, and to any other person who so requests. If the application is approved or approved with conditions, the department shall issue a certificate of need to the applicant at the time the applicant is informed of the council's decision.~~

Failure by the council to issue a written decision on an application for a certificate of need within the time required by this section shall constitute denial of and final administrative action on the application, ~~and is subject to appeal under section 135.70.~~

Sec. 12. Section 135.70, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

135.70 APPEAL OF CERTIFICATE OF NEED DECISIONS.

The council's decision on an application for certificate of need, when announced pursuant to section 135.69, is a final decision. Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure prescribed by section 135.66, may request a rehearing in accordance with chapter 17A and rules of the department. If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by chapter 17A. Notwithstanding the Iowa administrative procedures Act, chapter 17A, a request for rehearing is not required, prior to appeal under section 17A.19.

Sec. 13. Section 135.72, subsection 4, Code 1991, is amended to read as follows:

4. Criteria for determining when it is not feasible to complete formal review of an application for a certificate of need, ~~or not feasible for a designated health systems agency to formulate and submit a recommendation on an application,~~ within the time limits specified in section 135.69 ~~and section 135.66, subsection 3, paragraph "c", respectively.~~ The rules adopted under this subsection shall include criteria for

determining whether an application proposes introduction of technologically innovative equipment, and if so, procedures to be followed in reviewing the application. However, no a rule adopted under this subsection shall not permit a deferral of more than sixty days beyond the time when a decision is required under section 135.69, unless both the applicant and the department agree to a longer deferment.

Sec. 14. Section 135.73, Code 1991, is amended to read as follows:

135.73 SANCTIONS.

1. Any party constructing a new institutional health facility or ~~a major~~ an addition to or renovation of an existing institutional health facility without first obtaining a certificate of need therefor or, in the case of a mobile health service, ascertaining that the mobile health service has received certificate of need approval, as required by this division, or who shall violate any of the provisions of this division, may shall be denied licensure or change of licensure by the appropriate responsible licensing agency of this state.

2. A party violating this division shall be subject to penalties in accordance with this section. The department shall adopt rules setting forth the violations by classification, the criteria for the classification of any violation not listed, and procedures for implementing this subsection.

a. A class I violation is one in which a party offers a new institutional health service or changed institutional health service modernization or acquisition without review and approval by the council. A party in violation is subject to a penalty of three hundred dollars for each day of a class I violation. The department may seek injunctive relief which shall include restraining the commission or continuance of an act which would violate the provisions of this paragraph. Notice and opportunity to be heard shall be provided to a party pursuant to Iowa rule of civil procedure 326 and

contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section.

b. A class II violation is one in which a party violates the terms or provisions of an approved application. The department may seek injunctive relief which shall include restraining the commission or continuance of or abating or eliminating an act which would violate the provisions of this subsection. Notice and opportunity to be heard shall be provided to a party pursuant to Iowa rule of civil procedure 326 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section. A class II violation shall be abated or eliminated within a stated period of time determined by the department and specified by the department in writing. The period of time may be modified by the department for good cause shown. A party in violation may be subject to a penalty of five hundred dollars for each day of a class II violation.

2 3. Any Notwithstanding any other sanction imposed pursuant to this section, a party offering or developing any new institutional health service or changed institutional health service without first obtaining a certificate of need therefor as required by this division may be temporarily or permanently restrained therefrom from doing so by any court of competent jurisdiction in any action brought by the state, any of its political subdivisions, or any other interested person.

3 4. The sanctions provided by this section are in addition to, and not in lieu of, any penalty prescribed by law for the acts against which these sanctions are invoked.

Sec. 15. Sections 135.80 and 135.82, Code 1991, are repealed.

ROBERT C. ARNOULD
Speaker of the House

JOE J. WELSH
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 668, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 30, 1991

TERRY E. BRANSTAD
Governor