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New Jersey, State
Department of Health,
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CHAPTERS 136 & 138, LAWS OF NEW JERSEY 1971 HEALTH CARE FACILITIES PLANNING ACT,

(Chapter 136)
(NJS 26:2H-1 et seq.)

(Chapter 138)
(NJS 26:2H-8)

Approved May 10, 1971.

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An Act concerning the licensing and regulation of health care facilities, transferring certain powers and duties from the Department of Institutions and Agencies to the State Department of Health, and to amend "An act concerning hospital service corporations and regulating the establishment, maintenance and operation of hospital service plans, and supplementing Title 17 of the Revised Statutes by adding thereto a new chapter entitled 'Hospital Service Corporations,' approved June 14, 1938 (P.L.1938, c. 366).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. It is hereby declared to be the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the State, the State Department of Health, which has been designated as the sole agency in this State for comprehensive health planning under the "Comprehensive Health Planning and Public Health Services Amendments of 1966" (Federal Law 89-749), as amended and supplemented, shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, and all public and private institutions, whether State, county, municipal, incorporated or not incorporated, serving principally as boarding, nursing or maternity homes or other homes for the sheltered care of adult persons or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity or physical condition, shall be subject to the provisions of this act.

2. The following words or phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

a. "Health care facility" means the facility or institution whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tubercu-

losis hospital, chronic disease hospital, maternity hospital, out-patient clinic, dispensary, home health care agency, boarding home or other home for the sheltered care of adult persons and bioanalytical laboratory or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer.

b. "Health care service" means the preadmission, out-patient, in-patient and post-discharge care provided in or by a health care facility, and such other items or services as are necessary for such care, which are provided by or under the supervision of a physician for the purpose of health maintenance organizations, diagnosis or treatment of human disease, pain, injury, disability, deformity or physical condition, including, but not limited to, nursing service, home care nursing and other paramedical service, ambulance service, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board, but excluding services provided by a physician in his private practice or by practitioners of healing solely by prayer.

c. "Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

d. "Board" means the Health Care Administration Board established pursuant to this act.

e. "Government agency" means a department, board, bureau, division office, agency, public benefit or other corporation, or any other unit, however described, of the State or political subdivision thereof.

f. "State Health Planning Council" means the existing State Health Planning Council formed under the provisions of Federal Law 89-749, as amended and supplemented.

g. "Comprehensive area-wide health planning agency" means an officially recognized health planning agency formed under the provisions of Federal Law 89-749, as amended and supplemented.

h. "Area planning council" means a voluntary, non-profit organization composed of persons representative of hospitals, nursing homes, and consumers of medical care

services, formed for the purpose of planning the health facilities in a definite geographical area which is recognized by the commissioner through referral of applications for certificate of need as provided by this act.

i. "Department" means the State Department of Health.

j. "Commissioner" means the State Commissioner of Health.

3. The commissioner shall recognize the State Health Planning Council, the comprehensive area-wide health planning agencies and area planning councils as the recommending agencies in carrying out the purpose of this act. The State Health Planning Council shall act as the coordinating agency for the comprehensive area-wide health planning agencies and area planning councils in all matters, including but not limited to, comprehensive studies of requirements in various areas of the State for health care facilities.

4. There shall be in the State Department of Health, a Health Care Administration Board which shall consist of 13 members, 11 of whom shall be appointed by the Governor with the advice and consent of the Senate, and representative of medical and health care facilities and services, labor, industry and the public at large, and two of whom shall be ex-officio members. The State Commissioner of Health and the Commissioner of Insurance or their designated representatives, shall be ex-officio voting members of the board and shall serve on the board during their respective terms of office. Of the original members appointed to the board, four shall be appointed for terms of 3 years, four for terms of 2 years, and three for terms of 1 year. Following the expiration of the initial terms, members of the board shall be appointed for terms of 4 years. Any vacancy occurring in the membership of the board shall be filled in the same manner as the original appointment, but for the unexpired term only. The board shall meet at least quarterly and at such other times as its rules may prescribe or as in its judgment, may be necessary. The appointive members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

5. a. The commissioner, to effectuate the provisions and purposes of this act, shall have the power to inquire into health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment, personnel, rules and bylaws and the adequacy of financial resources and sources of future revenues.

b. The commissioner, with the approval of the board, shall adopt and amend rules and regulations in accordance with the Administrative Procedure Act P.L.1968,c.410 (C.52:14B-1 et seq.) to effectuate the provisions and purposes of this act, including but not limited to: (1) the establishment of requirements for a uniform State-wide system of reports and audit relating to the quality of health care provided, health care facility utilization and costs; (2) certification by the department of schedules of rates, payments, reimbursement, grants and other charges for health care services as provided in section 18; and (3) standards and procedures relating to the licensing of health care facilities and the institution of additional health care services.

c. The commissioner may enter into contracts with any government agency, institution of higher learning, voluntary nonprofit agency, or appropriate planning agency or council; and such entities are authorized to enter into contracts with the commissioner to effectuate the provisions and purposes of this act.

d. The commissioner may provide consultation and assistance to health care facilities in operational techniques, including but not limited to, planning, principles of management, and standards of health care services.

e. At the request of the commissioner, health care facilities shall furnish to the Department of Health such reports and information as it may require to effectuate the provisions and purposes of this act, excluding confidential communications from patients.

f. The commissioner may institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of this act or the determinations, rules, regulations and orders of the commissioner.

6. The commissioner shall designate an appropriate organizational unit in the State Department of Health to carry out the provisions and purposes of this act, which shall be under the supervision of a person who shall be appointed by and receive the compensation fixed by the commissioner, subject to appropriations made therefor.

7. No health care facility shall be constructed or expanded, and no new health care services shall be instituted after the effective date of this act except upon application for and receipt of a certificate of need as provided by this act. No agency of the State or of any county or municipal government shall approve any grant of funds for, or issue any license to, a health care facility which is constructed or expanded, or which institutes a new health care service, in violation of the provisions of this act.

8. No certificate of need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation. The commissioner shall cause appropriate surveys and studies to be made concerning the need for health care facilities and keep current records and statistics thereon by designated areas or regions of the State.

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In the case of an application by a health care facility established or operated by any recognized religious body or denomination the needs of the members of such religious body or denomination for care and treatment in accordance

with their religious or ethical convictions may be considered to be public need.

9. Certificates of need shall be issued by the commissioner in accordance with the provisions of this act and based upon criteria and standards therefor promulgated by the commissioner. The commissioner shall establish minimum needs for health care facilities in each area or region, and any applicant requesting a certificate of need who falls within such minimum needs, and who otherwise complies in all respects with this act and the criteria and standards established pursuant thereto shall be issued such certificate.

No such certificate shall be denied without the approval of the board and prior to the determination by the board, the applicant shall have been granted opportunity for hearing; and no decision shall be made contrary to the recommendations of the State Health Planning Council unless the council and the applicant shall have been granted opportunity for hearing. The department shall arrange within 60 days for fair hearings on all such cases and the commissioner or his designee shall furnish the board, the council and the applicant in writing his recommendations and reasons therefor. The board within 30 days shall make its determination.

10. Application for a certificate of need shall be made to the department, and shall be in such form and contain such information as the department may prescribe. The department shall charge a nonreturnable fee, not less than \$20.00 and not more than \$250.00 for the filing of an application for a certificate of need as it shall from time to time fix in rules or regulations. Upon receipt of an application, copies thereof shall be referred by the department to the appropriate planning agencies or councils for review.

These appropriate agencies and councils shall provide adequate mechanisms for full consideration of each application submitted to them and for developing recommendations thereon. Such recommendations, whether favorable or unfavorable, shall be forwarded to the commissioner within 60 days of the date of referral of the application. A copy of the recommendations made shall be forwarded to the applicant.

Recommendations concerning certificates of need shall be governed and based upon the principles and considerations set forth in section 8 hereof.

No member, officer or employee of any planning body shall be subject to civil action in any court as the result of any act done or failure to act, or of any statement made or opinion given, while discharging his duties under this act as such member, officer, or employee, provided he acted in good faith with reasonable care and upon proper cause.

11. A certificate of need shall be valid for 1 year from the date of issue, except that the commissioner may renew the certificate for further periods where the applicant has shown to the satisfaction of the commissioner by adequate proof that substantial progress towards completion of the project has been demonstrated.

12. a. No health care facility shall be operated unless it shall: (1) possess a valid license issued pursuant to this act, which license shall specify the kind or kinds of health care

services the facility is authorized to provide; (2) establish and maintain a uniform system of cost accounting approved by the commissioner; (3) establish and maintain a uniform system of reports and audits meeting the requirements of the commissioner; and (4) prepare and review annually a long range plan for the provision of health care services, which plan shall be compatible with the State Health Plan established pursuant to the "Comprehensive Health Planning and Public Health Services Amendments of 1966" (Federal Law 89-749) as related to medical health services, health care services, and health manpower.

b. (1) Application for a license for a health care facility shall be made upon forms prescribed by the department. The department shall charge such nonrefundable fees, not less than \$50.00 and not more than \$250.00 for the filing of an application for a license and any renewal thereof, as it shall from time to time fix in rules or regulations. The application shall contain the name of the health care facility, the kind or kinds of health care service to be provided, the location and physical description of the institution, and such other information as the department may require. (2) A license shall be issued by the department upon its findings that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care service are fit and adequate and there is reasonable assurance the health care facility will be operated in the manner required by this act and rules and regulations thereunder.

c. A license issued before the effective date of this act to a health care facility for its operation, upon the first renewal date thereafter, may be extended for a 1 year period of time, provided the facility then meets the requirements for licensure at the time said license was issued and submits an acceptable plan to meet current requirements at the end of said period of time.

13. In addition to authority granted to the department by this act or any other law, the department after serving the licensee with specific charges in writing, may assess penalties and collect the same within the limitations imposed by this act, deny, place on probationary or provisional license, revoke or suspend any and all licenses granted under authority of this act to any person, firm, partnership, corporation or association violating or failing to comply with the provisions of this act, or the rules and regulations promulgated hereunder.

Notice of the assessment of penalties, revocation, suspension, the placing on probationary or provisional license or denial of a license together with a specification of charges shall be served on the applicant or licensee, personally or sent by certified mail to the address of record and the notice shall set forth the particular reasons for the assessment, denial, suspension, the placing on probationary or provisional license or revocation of the license. Such assessment, denial, suspension, the placing on probationary or provisional license, or revocation shall become effective 30 days after mailing, unless the applicant or licensee, within such 30-day period shall meet the requirements of the department or shall file with the department a written answer to the charges and give written notice to the department of its desire for a hearing in which case the assessment, denial, suspension, the placing on probationary

or provisional license, or revocation may be held in abeyance until the hearing has been concluded and a final decision rendered.

The department shall afford the licensee an opportunity for a prompt hearing on the question of the assessment of penalties, the issuance, suspension or the placing on a probationary or provisional license, or revocation of the license. The procedure governing such hearings shall be in accordance with the rules and regulations of the department. Either party may be represented by counsel of his own choosing, and shall have the right to subpoena witnesses and to compel their attendance on forms furnished by the department.

The commissioner shall arrange for prompt and fair hearings on all such cases, render written decisions stating conclusions and reasons therefor upon each matter so heard, and is empowered to enter orders of denial, suspension, placing on probationary or provisional license or revocation consistent with the circumstances in each case, and may assess penalties and collect the same within the limitations imposed by this act.

14. Any person, firm, partnership, corporation or association who shall operate or conduct a health care facility without first obtaining the license required by this act, or who shall operate such health care facility after revocation or suspension of license, shall be liable to a penalty of \$50.00 for each day of operation in violation hereof for the first offense and for any subsequent offense shall be liable to a penalty of \$100.00 for each day of operation in violation hereof. Any person, firm, partnership, corporation or association who shall be found guilty of violating any rule or regulation adopted in accordance with this act as the same pertains to the care of patients and neglects to rectify same within 7 days after receiving notice from the department of such violation or who neglects to commence, within 7 days, such repairs to his licensed establishment after receiving notice from the department that hazardous or unsafe condition exists in or upon the structure in which the licensed premises is maintained shall be subject to a penalty of not less than \$10.00 or more than \$100.00 for each day that he is in violation of such rule or regulation. If, within 1 year after such violation such person, firm, partnership, corporation or association is found guilty of the same violation such penalties as hereinbefore set forth shall be doubled, and if there be a third violation within such time, such penalties shall be tripled. In addition thereto the department may, in its discretion, suspend the license for such time as it may deem proper.

Any person, firm, partnership, corporation or association who shall, except in cases of an emergency, maintain more patients in his premises than he is licensed so to do, shall be subject to a penalty in an amount equal to the charge collected from such patient or patients plus \$25.00 for each extra patient so maintained.

15. Whenever a boarding home for sheltered care, boarding house or rest home or facility or institution of like character, not licensed hereunder, by public or private advertising or by other means holds out to the public that it is equipped to provide postoperative or convalescent care for persons mentally ill or mentally retarded or who are suffering or recovering from illness or injury, or who are

chronically ill, or whenever there is reason to believe that any such facility or institution, not licensed hereunder, is violating any of the provisions of this act, then, and in such case, the department shall be permitted reasonable inspection of such premises for the purpose of ascertaining whether there is any violation of the provisions hereof. If any such boarding home for sheltered care, boarding house, rest home or other facility or institution shall operate as a private mental hospital, convalescent home, private nursing home or private hospital in violation of the provisions of this act, then the same shall be liable to the penalties which are prescribed and capable of being assessed against health care facilities pursuant to this act.

Any person, firm, association, partnership or corporation, not licensed hereunder, but who holds out to the public by advertising or other means that the medical and nursing care contemplated by this act will be furnished to persons seeking admission as patients, shall cease and desist from such practice and shall be liable to a penalty of \$100.00 for the first offense and \$500.00 for each subsequent offense, such penalty to be recovered as provided for herein.

16. The penalties prescribed and authorized by this act shall be recovered in a summary civil proceeding, brought in the name of the State in the Superior Court, a County Court or a county district court pursuant to the Penalty Enforcement Law (N.J. S. 2A:58-1 et seq.).

The commissioner may, in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in his judgment be proper under the circumstances in lieu of any suspension of any license by the commissioner. Any sums of money so collected by the commissioner shall be paid forthwith into the State Treasury for the general purposes of the State. In no case shall the penalty be compromised for a sum less than \$250.00 for the first offense and \$500.00 for the second and each subsequent offense; provided, however, that any penalty of less than \$250.00 or \$500.00, as the case may be, may be compromised for a lesser sum.

The department may maintain an action in the name of the State to enjoin any person, firm, partnership, association or corporation from continuing to conduct, manage or operate a health care facility without a license, or after suspension or revocation of license, or in violation of rules and regulations promulgated hereunder.

17. All orders or determinations under this act shall be subject to review by a court of competent jurisdiction in accordance with the Rules of Court.

18. a. No government agency and no hospital service corporation organized under the laws of the State shall purchase, pay for or make reimbursement or grant-in-aid for any health care service provided by a health care facility unless at the time the service was provided, the health care facility possessed a valid license or was otherwise authorized to provide such service.

b. Payment by government agencies for health care services provided by a health care facility shall be at rates established by the commissioner, based on elements of costs approved by him.

c. The Commissioner of Health in consultation with the Commissioner of Insurance shall determine and certify the

costs of providing health care services, as reported by health care facilities, which are derived in accordance with a uniform system of cost accounting approved by the Commissioner of Health. Said certification shall specify the elements and details of costs taken into consideration.

d. Payment by hospital service corporations, organized under the laws of this State, for health care services provided by a health care facility shall be at rates approved as to reasonableness by the Commissioner of Insurance with the approval of the Commissioner of Health. In establishing such rates, the commissioners shall take into consideration the total costs of the health care facility.

19. All of the functions, powers and duties of the State Board of Control, the Commissioner of Institutions and Agencies and the Department of Institutions and Agencies and its Hospital Licensing Board related to administration of laws governing and concerning boarding homes for the sheltered, care of children and adult persons, private mental hospitals, convalescent homes, private nursing homes and private hospitals, and relating to the planning, construction and licensing of health care facilities as defined in this act and the power to receive, allocate, expend, and authorize the expenditure of Federal moneys available for health care facility construction and renovation are hereby transferred and assigned to, assumed by and devolved upon the State Department of Health. To effectuate such transfer there shall also be transferred such officers and employees as are necessary, all appropriations or reappropriations, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, and all necessary books, papers, records and property. All rules, regulations, acts, determinations and decisions in force at the time of such transfer and proceedings or other such matters undertaken or commenced by or before the Department of Institutions and Agencies or the Hospital Licensing Board pertaining to the planning, construction, licensing and operation of such health care facilities, and the administration of Federal moneys for health care facility construction, and renovation pending at the time of such transfer, shall continue in force and effect until duly modified, abrogated or completed by the Department of Health.

20. Employees of the present Bureau of Community Institutions in the Department of Institutions and Agencies responsible for administration of laws governing and concerning boarding homes for the sheltered care of adult persons, private mental hospitals, convalescent homes, private nursing homes and private hospitals are hereby transferred to the State Department of Health. Persons so transferred shall be assigned such duties as the State Commissioner of Health shall determine.

21. All functions, powers, duties, records, and property of the Department of Institutions and Agencies, and personnel of the Bureau of Medical Facilities Construction and Planning relating to receipt of money from the Federal Government for the purpose of making payments for construction of hospitals, including public health centers and related facilities within the State, and for an inventory and survey in connection therewith under or pursuant to any Federal law providing for the payment of such moneys as established and authorized by the provisions of c.83,

P.L. 1947 (C.30:1-19 et seq.), are hereby transferred to the State Department of Health.

22. The Hospital Licensing Board created pursuant to P.L. 1947, c.340, s.7 (c.30:11-6) is hereby abolished. Upon the establishment of the Health Care Administration Board, all the functions, powers and duties of the Hospital Licensing Board, transferred to and vested in the Department of Health pursuant to section 19 of this act, shall be assumed by and devolved upon the Department of Health, to be exercised by the said Health Care Administration Board. Pending the appointment of members, establishment and convening of said Health Care Administration Board, all the functions, powers and duties thereof shall be exercised by the department.

23. With respect to the functions, powers and duties of the State Board of Control, the Commissioner of Institutions and Agencies and the Department of Institutions and Agencies, which are herein transferred and vested in the Department of Health, whenever in any law, rule, regulation, contract, document or otherwise, reference is made to the State Board of Control or the Department of Institutions and Agencies the same shall be deemed to mean and refer to the Department of Health, and reference to the Commissioner of Institutions and Agencies in connection therewith shall be deemed to mean and refer to the Commissioner of Health.

24. If any clause, sentence, paragraph, subsection or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection or section thereof directly involved in the controversy in which this judgment shall have been rendered.

25. Section 1 of c.366, P.L. 1938 (C.17:48-1) is amended to read as follows:

1. A hospital service corporation is hereby declared to be any corporation organized, without capital stock and not for profit, for the purpose of establishing, maintaining and operating a non-profit hospital service plan. A hospital service plan is hereby defined as a plan whereby health care services are provided by a hospital service corporation or by a health care facility with which the corporation has a contract for such health care services to persons who become subscribers under contracts with the corporation. Health care services provided by a hospital service corporation shall include health care provided (a) through a health care facility which is maintained by a State or any of its political subdivisions; (b) through a health care facility licensed by the Department of Health; (c) through such other health care facilities as shall have been designated by the Department of Health for health care services; (d) through health care facilities located in other states, which are subject to the supervision of such other States provided that such last mentioned health care facilities, if they were located in this State, would be eligible to be licensed or designated by the Department of Health; (e) through non-profit hospital service plans of other States approved by the Commissioner of Insurance.

26. Section 7 of c.366, P.L. 1938 (C.17:48-7) is amended to read as follows:

7. Any hospital service corporation may enter into contracts with health care facilities for the rendering of health care services to any of its subscribers only with licensed health care facilities.

Rates of payment by such hospital service corporation pursuant to written contract with a hospital or institution for the services contracted thereunder may be in the form of a level per diem amount established for the particular hospital or institution for each day of health care services and prior to payment, shall be approved as to reasonableness by the Commissioner of Insurance following certification made pursuant to section 18 of the Health Care Facilities Planning Act (P.L. 1971,c - 136). The maximum rate of payment to eligible hospitals and institutions not under contract with such hospital service corporation shall not exceed the particular hospital's or institution's regular charges to the general public for the same services and shall be set forth in the certificate issued by such hospital

service corporation to any subscriber. The basis and extent of payment, if any, by such hospital service corporation under agreement with nonprofit hospital service plans of other states shall be subject to the approval of the Commissioner of Insurance.

27. Nothing in this act shall be construed to deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or under any pension law or retirement system.

28. This act shall be known and may be cited as the "Health Care Facilities Planning Act."

29. This act shall take effect at the beginning of the eighth biweekly pay period following enactment except that all arrangements and actions necessary and appropriate to enable this act to become fully operative on such date shall be made as promptly as possible as though this act were effective and operative immediately.