

District of Columbia Official Code 2001 Edition Currentness  
Division VIII. General Laws.

Title 44. Charitable and Curative Institutions. (Refs & Annos)  
Subtitle I. Health Related Institutions.  
Chapter 4. Health Services Planning.

**§ 44-401. Definitions.**

For the purposes of this chapter, the term:

(1) "Acquiring of effective control" means:

(A) Any transfer, assignment or other disposition of 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity which is a HCF or is the operator or owner of a HCF;

(B) Any transaction which results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of such a corporation or other entity;

(C) Any transaction which results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of such a corporation; or

(D) Any conversion which results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, as defined by § 44-602, of a nonprofit HCF to a for-profit entity whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including such an entity that results from, or is created in connection with, the conversion.

(2) "Annual Implementation Plan" means the plan prepared annually by the State Health Planning and Development Agency and the Statewide Health Coordinating Council to specify actions which will achieve the goals and objectives of the Health Systems Plan.

(2A)(A) "Bad debt" means an account receivable based on physician and hospital medical services furnished to any patient for which payment is:

(i) Expected, but is regarded as uncollectible following reasonable collection efforts; and

(ii) Not the obligation of any federal, state, or local governmental unit.

(B) The term "bad debt" does not include charity care.

(3) "Capital expenditure" means:

(A) Any expenditure by or on behalf of a health care facility, or by or on behalf of a person, which is, under generally accepted accounting principles, not properly chargeable as an expense of operation or maintenance and which exceeds \$2,500,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Hospital Construction Cost Index issued by the U.S. Department of Commerce;

(B) Any acquisition under a lease or comparable arrangement, or through any other type of transfer, which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been made at fair market value;

(C) Any acquisition under a lease or comparable arrangement, or through donation or through any other type of transfer by 2 or more persons acting in concert in which the aggregate cost of such acquisition would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been by purchase at fair market value, notwithstanding that the cost or value to each participating person of the acquisition would not, alone, otherwise constitute a capital expenditure under subparagraph (A) of this paragraph; and

(D) Any action or combination of related actions by a person or by 2 or more persons acting in concert which is taken for the purpose of acquiring, or otherwise results in the acquiring of effective control of a health care facility or any other corporation, partnership, or other entity which holds a certificate of need, and which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition or intended acquisition had been by purchase at a fair market value.

(3A) "Charity care" means the physician and hospital medical services provided to persons who are unable to pay for the cost of services, especially those persons who are low-income, uninsured and underinsured, but excluding those services determined to be caused by, or categorized as, bad debt.

(4) Repealed.

(5) Repealed.

(6) Repealed.

(6A) "Department" means the Department of Health.

(6B)(A) "Diagnostic health care facility" means:

(i) A diagnostic imaging center accredited by the American College of Radiology whose primary business is the provision of diagnostic imaging services to the public;

(ii) A cardiac catheterization laboratory;

(iii) A radiation therapy facility; or

(iv) An independent diagnostic laboratory whose primary business is the provision of diagnostic imaging services to the public and at which at least 3 of the following exams are performed:

(I) Magnetic resonance imaging;

(II) CAT scan;

(III) Nuclear medicine;

(IV) Ultrasound;

(V) X-ray; or

(VI) Mammography.

(B) The term “diagnostic health care facility” shall not include the offices of private physicians, whether in individual or group practice.

(7) “Director” means the director of the SHPDA established by § 44-402.

(7A) “Director of the Department of Mental Health” means the Director of the Department of Mental Health established by § 7-1131.03.

(8) “District government” means the government of the District of Columbia.

(9) “Ex parte contact” means an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

(9A) “Expedited administrative review” means a review conducted by the SHPDA staff, using the same criteria and standards that apply to projects reviewed through use of the regular process, the results of which are reported to the SHCC at the next regularly scheduled SHCC meeting.

(10) “Health care facility” (“HCF”) means any private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility home health agency, hospice, or other comparable health care facility which has an annual operating budget of at least \$500,000. “Health facility” shall not include Christian Science sanitariums operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional or group of health professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment, or a health care facility licensed or to be licensed as a community residence facility, or an Assisted Living Residence as defined by § 44-102.01.

(11) “Health Maintenance Organization” (“HMO”) means a private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO pursuant to rules issued by the SHPDA in accordance with this chapter.

(12) “Health service” means any medical or clinical related service, including services that are diagnostic, curative or rehabilitative, as well as those related to alcohol abuse, drug abuse, inpatient mental health services, home health care, hospice care, medically supervised day care, and renal dialysis. “Health service” shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

(13) “Health Systems Plan” (“HSP”) means the comprehensive health plan prepared by the SHPDA and the SHCC in accordance with this chapter.

(14)(A)(i) “Major medical equipment” means:

(I) Equipment used for the provision of medical or other health services which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a health care facility, or by or on behalf of any private group practice of diagnostic radiology or radiation therapy, and which has a fair market value in excess of \$1,500,000; or

(II) A single piece of diagnostic or therapeutic equipment which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician or group of physicians (excluding those referenced in sub-subparagraph (I) of this paragraph), or an independent owner or operator of the equipment, and for which the cost or value is in excess of \$250,000.

(ii) The SHPDA may, by rule, adjust the thresholds specified in sub-subparagraph (I) of this paragraph annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor.

(iii) The term “major medical equipment” shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and meets the requirements of § 1861(s)(10) and (11) of the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)).

(B) In determining whether medical equipment has a fair market value in excess of the amount specified in subparagraph (A) of this paragraph, the cost of studies, surveys, designs, plans, working drawings, specifications, site preparation, construction, related equipment, and other activities essential to the acquisition of the equipment shall be included.

(15) “New institutional health service” means:

(A) The construction, development, or other establishment of:

(i) A health care facility;

(ii) A home health or home nursing service;

(iii) Any new health service; or

(iv) A change in the licensed bed capacity of a facility by 10 beds or 10%, whichever is less, within a 2-year period.

(B) Any health service offered by or on behalf of a HCF and which was not offered on a regular basis by the HCF within the 12-month period prior to the time the service would be offered or which involves an operating budget of at least \$600,000 in direct costs for the first year of operation, except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the medical care component of the Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, or which results in a capital expenditure in any amount.

(16) “Person” means an individual, a trust, or estate, a partnership, or a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency, subdivision, or instrumentality of the District government.

(17) “Social Security Act” means the Social Security Act, approved August 14, 1935, as amended (49 Stat. 520; 42 U.S.C. 301 et seq.)

(18) “Statewide Health Coordinating Council” (“SHCC”) means the Statewide Health Coordinating Council established by § 44-403 to advise the State Health Planning and Development Agency on certain health planning functions as specified in this chapter.

(19) “State Health Planning and Development Agency” (“SHPDA”) means the agency for the District of Columbia within the Commission of Public Health responsible for carrying out the District government's health planning and development program established by § 44-402.

(20) “Uncompensated care” means the cost of health care services rendered to patients for which the health care facility does not receive payment. The term “uncompensated care” includes bad debt and charity care, but does not include contractual allowances.

**§ 44-402. State Health Planning and Development Agency; establishment and responsibilities.**

(a)(1) There is established, in the Commission on Public Health, a State Health Planning and Development Agency (“SHPDA”).

(2) Revenues, not to exceed fees collected pursuant to § 44-420, shall be utilized to fund 4 staff positions to administer SHPDA (Project Review Division--Certificate of Need Division Chief; 2 Public Health Analysts; and Secretary). Additional staff may be funded, as necessary, in accordance with § 44-420.01.

(b) The SHPDA shall be responsible for health systems development in the District. The SHPDA's responsibilities for health systems development shall include:

(1) The establishment and administration of a health systems plan development and implementation program in accordance with § 44-404;

(2) The establishment of a health data and information program in accordance with § 44-405;

(3) The administration, operation, and enforcement of the certificate of need program in accordance with this chapter;

(4) The monitoring of compliance by health care facilities with the requirements of this chapter; and

(5) Establishing, by rule, requirements and standards regarding the amount of uncompensated care provided to residents of the District of Columbia by all health care facilities that receive a certificate of need, including an annual mechanism for monitoring the provision of that uncompensated care by the health care facilities.

(b-1)(1) The Director of the Department of Health shall convene a working group to develop recommendations to re-engineer the data collection, analysis, and certificate of need functions performed by SHPDA. The working group shall consist of the following:

(A) Two representatives from the Department;

(B) The Chairman of the Council, or his or her designee;

- (C) The Chairman of the Council's Committee on Human Services, or his or her designee;
- (D) One representative from the Department of Mental Health;
- (E) The Chairman of the Statewide Health Coordinating Council;
- (F) The Chairman of the Mayor's Health Policy Council;
- (G) One representative from the DC Hospital Association;
- (H) One representative from the Nursing Home Association;
- (I) One representative from the DC Primary Care Association;
- (J) Two public representatives to be appointed by the Director of the Department of Health; and
- (K) The Deputy Mayor for Children, Youth, Families and Elders, or his or her designee.

(2) The recommendations of the working group shall be submitted to the Council by no later than February 1, 2003.

(c) All regulations, rules, and procedures of the predecessor Office of Health System Development shall remain in effect until the adoption of superseding replacement of those regulations, rules and procedures.

**§ 44-403. Statewide Health Coordinating Council; establishment and responsibilities.**

(a) The SHPDA shall establish a Statewide Health Coordinating Council ("SHCC"), which shall consist of 15 members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia.

(b) The SHCC shall:

- (1) Assist the SHPDA in the development of the HSP;
- (2) Review and make recommendations to the SHPDA on the HSP; and
- (3) Make recommendations to the SHPDA on an application for a certificate of need.

(c) The members appointed to the SHCC shall include:

- (1) Four consumers of health care services in the District who are not affiliated with any health care provider or facility;
- (2) Three public members;
- (3) Two representatives of incorporated associations of health care facilities in the District;
- (4) One physician representing an incorporated association of professional physicians in the District;

- (5) One nurse representing an incorporated association of professional nurses in the District;
  - (6) One representative of an incorporated association of the health care insurance industry in the District;
  - (7) Repealed;
  - (8) Repealed; and
  - (9) The Director of the Department of Mental Health, or his or her designee.
- (d) Nongovernment members of the SHCC shall serve for a term of 3 years, except that of the nongovernment members initially appointed, 4 shall be appointed for a term of 3 years, 4 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of one year from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. Government representatives shall serve for the duration of their service in the positions stated in subsection (c)(6) and (7) of this section.
- (e) A member of the SHCC may be reappointed, except that a member of the SHCC who is reappointed shall not serve more than 2 consecutive terms. A person may be reappointed to the SHCC following an absence of one year.
- (f) Whenever a vacancy occurs as a result of a resignation, disability, death, more than 3 consecutive absences from regularly scheduled meetings, or for other reasons in an unexpired term on the SHCC, the Mayor shall appoint a replacement to fill that unexpired term in the same manner specified in subsections (a), (b), and (c) of this section. A member appointed to fill an unexpired term shall only serve for the remainder of that term. The completion of the unexpired term shall not constitute a full term for the purposes of subsection (e) of this section.
- (g) Every 2 years, the SHCC shall elect one of its members to serve as chairman, and may elect any other officers it requires. The SHCC may adopt rules of organization and procedure which it deems necessary and are not inconsistent with this chapter, in accordance with subchapter I of Chapter 5 of Title 2.
- (h) Members of the SHCC shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties in accordance with § 1-611.08.
- (i) The powers, duties and functions of the predecessor Health Advisory Committee established by § 44-2003, are transferred to the SHCC established by this chapter. The by-laws, regulations, and procedures of the predecessor Health Advisory Committee established by § 44-2003 shall continue in force until new by-laws, rules, regulations, or procedures are issued by the SHCC established pursuant to this chapter.

**§ 44-404. Health systems plan; development, publication, updating, and implementation.**

- (a) The SHPDA, with the advice and recommendation of the SHCC, shall develop a proposed HSP, which shall be adopted in accordance with rules issued pursuant to § 44-421, to guide health policy in the District of Columbia. The HSP shall present data collected pursuant to § 44-405 to:
- (1) Articulate issues with respect to maintaining and improving the health of District of Columbia residents;
  - (2) Demonstrate health care trends over multi-year periods;
  - (3) Identify health needs of District of Columbia residents;

(4) Identify needs of the health care delivery system; and

(5) Prioritize health care issues.

(b) Where applicable, the SHPDA shall use the federal Healthy People 2010 Plan development guidelines, and subsequent federal Healthy People Plan guidelines, to develop the HSP of subsection (a) of this section and to address the health status and health systems goals of the Department of Health and data needs required to administer the SHPDA's certificate of need responsibilities under §§ 44-409 and 44-410.

(c) In carrying out its duties for the development of the HSP, the SHPDA shall:

(1) Provide for public involvement in and evaluation of the development and implementation of the HSP, which shall include at least one public hearing;

(2) Develop an Annual Implementation Plan ("AIP") for the implementation of the HSP;

(3) Conduct informational and educational activities concerning the HSP and the AIP; and

(4) Coordinate all health planning within the District of Columbia.

(d) Upon completion and promulgation of the final HSP, the SHPDA shall publish a notice of its completion and issuance in the District of Columbia Register and forward a copy of the final HSP to the District of Columbia Public Library.

(e) The HSP shall be reviewed annually, and amended as necessary, except that a new HSP shall be issued every 5 years. Upon the completion and promulgation of any new HSP, or any annual amendment to the HSP, the SHPDA shall submit copies to the Council and the District of Columbia Public Library, and shall publish a notice of its completion and issuance in the District of Columbia Register.

**§ 44-405. Reporting, analysis, and publication of utilization, financial, and other health-related data; regulations, reporting periods, format, and forms.**

(a) The SHPDA shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, as necessary for the development of the HSP, the SHPDA shall require each health care facility to submit, in writing or other uniform media, data related to the utilization, management, and financing of health services, including data on utilization of health services, cost of services, charges of services, patient demographic and characteristic information, and assurances of its provision of a reasonable volume of uncompensated care through the "annual compliance level" of 3% of its operating costs (total operating expenses of a facility as set forth in an audited financial statement or its equivalent, minus the amount of reimbursement, if any, under Titles XVIII and XIX of the Social Security Act).

(b) The SHPDA shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats. The SHPDA may require HCFs to submit data in the absence of rules or in addition to submissions required by regulation upon the determination by the SHPDA that the data are reasonably necessary to enable the SHPDA to carry out the mission of this chapter. HCFs shall be given written notice of the data requirements. The notice shall include the basis upon which the requirements have been established.

(c) Submission of data by HCFs shall be in the form and format prescribed by the SHPDA and shall utilize forms which may be prescribed by the SHPDA.



(d) The SHPDA shall coordinate with public and private entities that collect data of the type described in this section in order to maximize the use of existing data sources and to minimize the duplication of data collection efforts.

(e) The SHPDA shall analyze data submitted and acquired and may publish data, analyses, and findings which identify major health policy issues.

(f) No application for a certificate of need shall be complete and no certificate of need shall be issued if the applicant has not submitted data as required.

(g) The SHPDA is authorized to establish a fee schedule for certain data, analyses, and reports available through SHPDA.

**§ 44-406. Certificate of need requirements.**

(a) Except as provided in § 44-407, all persons proposing to offer or develop in the District a new institutional health service, or to obligate a capital expenditure to obtain an asset to be located in the District shall, prior to proceeding with that offering, development, or obligation, obtain from the SHPDA a certificate of need that demonstrates a public need for the new service or expenditure. Only those institutional health services or capital expenditures that are granted a certificate of need shall be offered, developed, or obligated within the District.

(b) Before there is a capital expenditure to acquire, either by purchase or under a lease or comparable arrangement, of an existing HCF or part of a HCF (“Transaction”), the person or persons acquiring control (“Proposed Owner”) shall obtain a certificate of need from SHPDA. Subject to the provisions of paragraphs (5), (6), (7) and (8) of this subsection, SHPDA shall waive the procedures and review criteria set forth under § 44-409 and shall grant a certificate of need if all of the following conditions are met:

(1) The Proposed Owner shall provide written notification to SHPDA at least 60 days before the Transaction. The notification shall include the following:

(A) The names of the current owner(s) of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(B) The names of the Proposed Owner of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(C) The location(s) of the corporate office(s) of the Proposed Owner;

(D) The proposed governance structure and, if investor-owned, a description of the mechanism for ensuring community involvement in policy matters;

(E) A summary of the agreement setting forth the terms of the proposed Transaction, including the cost and means of financing the Transaction and a reasonably estimated projection of the impact of the transaction cost on charges for services to be provided;

(F) A description of any capital expenditures contemplated as a part of the Transaction;

(G) A reasonable projection of utilization and financial results for the HCF to include any expected material changes in the number of beds or services, inpatient admissions, and outpatient visits, total facility revenues, and

expenses for the two-year period following the Transaction; and

(H) A reasonably estimated projection of uncompensated care (bad debt and charity) and the nature of any proposed changes to admission policies and hours of operations over the two-year period following the Transaction.

(2) The Proposed Owner shall certify in writing, as part of the notification required in subsection (b)(1) of this section, that:

(A) For the five-year period following the Transaction, the percentage of uncompensated care (charity and bad debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the two fiscal years immediately preceding the acquisition;

(B) The Proposed Owner agrees to abide by all applicable conditions contained in certificates of need issued to the HCF, for such time and to such extent as those conditions would be applicable to the current owners in the absence of the Transaction; and

(C) All existing financial and admission policies affecting access to the HCF based upon a patient's ability to pay for services or treatment will be maintained for 2 years following transaction and will be consistent with existing law.

(3) If SHPDA determines that the notification is incomplete with respect to the information required under subsection (b)(1) and (2) of this section, SHPDA shall have 10 days from the filing of the notification to inform the Proposed Owner that the notification is incomplete, otherwise the information shall be deemed complete on the 11th day. The Proposed Owner must file the additional information within 15 days of such notification from SHPDA, provided that the initial filing date shall be deemed the filing date of the notification for all purposes of computation of time under this section.

(4) SHPDA shall call an information hearing, which shall be completed within 50 days following the filing of the notification provided under subsection (b)(1) of this section and after the Proposed Owner files additional information pursuant to subsection (b)(3) of this section. The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to subsection (b)(2) of this section, and receipt of testimony from affected persons.

(5) Except as otherwise provided in this subsection, SHPDA shall issue a certificate of need for the change in effective control no later than 60 days after the date of the initial filing with SHPDA of the notification required under subsection (b)(1) of this section by the Proposed Owner unless SHPDA finds, based upon clear and convincing evidence, the following:

(A) The Proposed Owner has not filed the notification described in subsection (b)(1) and (2) of this section;

(B) The Proposed Owner has not participated in the hearing required by subsection (b)(3) of this section;

(C) The notification is not reasonably consistent with the most current state health plan adopted in final form by SHPDA after April 9, 1997, or with any annual implementation plan for such state health plan;

(D) The notification is not reasonably consistent with the record of review;

(E) In the case of an investor-owner Proposed Owner, the mechanisms for local input in policy matters are not

reasonable, except that such mechanisms shall not be required to be greater than those imposed upon comparable HCFs subject to CON review;

(F) The Proposed Owner is not financially sound or does not have the financial and management capability to operate the HCF being acquired; or

(G) The acquisition costs and projected operational costs would substantially and negatively impact the Proposed Owner's ability to comply with the certifications required under subsection (b)(2) of this section.

(6) SHPDA shall notify the Proposed Owner of any deficiency in the notification or of any proposed negative finding. If, by the 60th day, the Proposed Owner has not provided the required notification or addressed SHPDA's proposed negative findings, SHPDA shall, upon request by the Proposed Owner, provide the Proposed Owner a reasonable opportunity to provide additional information to SHPDA, to participate in the required hearing, or to complete its required notice in order to cure any negative finding. SHPDA shall act upon such additional submission within 15 days. If the Proposed Owner does not respond to the SHPDA notice of deficiency within 6 months of the notification from SHPDA, SHPDA shall close the proceeding. If, following submission by the Proposed Owner, SHPDA finds by clear and convincing evidence that any one or more of these standards is not met, SHPDA shall require that the Proposed Owner obtain a certificate of need in accordance with the provisions of § 44-409, except that the letter of intent and public hearing requirements shall be waived. If no action is taken by SHPDA within the initial prescribed 60-day time frame, the certificate of need shall be deemed to be issued and approved on the 61st day following the filing of the notification required in subsection (b)(1) of this section. If no action is taken by SHPDA within the additional 15-day time frame provided following an additional submission by the Proposed Owner under subsection (b)(5) of this section, the certificate of need shall be deemed to be issued and approved on the 16th day following the filing of the additional submission under this subsection (b)(5) of this section.

(7) In granting a certificate of need under this subsection, SHPDA shall impose no application or process requirements, apply any review criteria, or impose any conditions except as provided in subsection (b) of this section.

(8) The Office of Attorney General for the District of Columbia may seek injunctive relief from a court of competent jurisdiction if it determines that a person is operating an HCF in violation of the certifications made under this subsection.

(9) The requirements of this subsection shall be effective without adoption by SHPDA of implementing regulations.

(c) Any person proposing to close permanently or to terminate operation of a HCF or health service shall notify the SHPDA of the intention to close or terminate operation no later than 90 days prior to the proposed closing, and obtains its approval, and shall provide the SHPDA with any information that may be requested as established in the rules promulgated to implement the provisions of this chapter. The information shall include, but not be limited to, the reasons for the closure or termination of operation, the number of patients to be affected by the closure, and the provisions being made to provide for their continuing care. When notice of closure of a HCF or health service is received, the SHPDA shall provide assistance for an orderly transition of the patient load to the extent possible.

(d) A conversion or acquiring of effective control, as defined in § 44-401(1), of a nonprofit HCF shall not be approved by the Attorney General for the District of Columbia unless charitable assets of the HCF have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997.

**§ 44-407. Activities exempt from certificate of need review.**

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the SHPDA a letter of notice in accordance with rules promulgated pursuant to § 44-421.

(b) The following projects are exempt from certificate of need review:

(1) The upgrading, maintenance, or correction of facility deficiencies that may be in violation of federal and District of Columbia fire, building, and safety codes, or that will improve patient safety related to a pending violation of federal or District of Columbia fire, building, or safety codes;

(2) The correction of deficiencies identified by private national accrediting associations and District government licensing agencies;

(3) Nonpatient care projects requiring the obligation of a capital expenditure of less than \$8 million;

(4) The acquisition of the same or similar medical equipment to replace, upgrade, or expand the capacity of the equipment for which a certificate of need has been granted, if the replaced equipment is removed from service;

(5) The acquisition of major medical equipment to be used solely for research, new institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research. This provision shall not preclude a HCF from seeking reasonable reimbursement for health care services provided under this exemption;

(6) Repealed.

(7) Any proposal to offer or develop a new institutional health service or obligate a capital expenditure which would otherwise be subject to this section, if the purpose of the service or expenditure is to accommodate a resident to be transferred from D.C. Village;

(8) The voluntary permanent reduction in the number in licensed bed capacity where a request for exemption is made 60 days before the reduction and the SHPDA finds that the reduction in bed capacity would not be inconsistent with the HSP;

(9) For a period of one year, commencing on December 18, 2001, any increase in the licensed psychiatric bed capacity by a private general hospital, psychiatric hospital, other specialty hospital or rehabilitation facility holding a certificate of need to operate psychiatric beds. The health care facility shall provide the Department of Mental Health with a copy of the letter of notice required by SHPDA for projects exempt from certificate of need review;

(10) The acquisition of major medical equipment or establishment of new institutional health services determined by the Department to be necessary for a declared public health purpose or deemed necessary by the Department to provide health care services under contract to or grant from a District of Columbia or federal agency. Participation in programs under Titles XVIII and XIX of the Social Security Act does not qualify as a District of Columbia or federal contract for purposes of this exemption;

(11) District of Columbia public, chartered, and private schools for any health care service offered or developed for students with special needs in compliance with the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 et seq.), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1092; 29 U.S. C. § 701 et seq.), or the Early and Periodic Screening, Diagnosis, and Treatment Program under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or any other federal or District of Columbia legal requirements; and

(12) The acquisition, prior to October 1, 2003, of any single piece of diagnostic or therapeutic equipment which was

acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician, a group of physicians, a private group practice of diagnostic radiology or radiation therapy, or a diagnostic health care facility, or the replacement of such equipment, so long as the equipment to be replaced is removed from service.

(13) Upon October 20, 2005, any increase in the licensed psychiatric bed capacity by a private general hospital, psychiatric hospital, or other specialty or rehabilitation hospital holding a certificate of need to operate psychiatric beds; provided, that the Department of Mental Health has requested such expansion specific to a reduction in psychiatric acute care services offered by Saint Elizabeths Hospital. The facility shall provide the Department of Mental Health with a copy of the letter of notice required by SHPDA for projects exempt from the certificate of need review.

(c) An HMO, or combination of HMOs, shall be exempt from certificate of need requirements if it meets the following requirements:

(1) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(2) At least 75% of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO or combination of HMOs.

(d) The District government is exempt from certificate of need requirements until January 1, 1998.

(e) Any proposal to offer or develop a new institutional health service, obligate a new capital expenditure, or reduce or terminate a health service that would otherwise be subject to certificate of need requirements, by a health care entity that has contracted with the District of Columbia Financial Responsibility Management Assistance Authority, or with the Mayor pursuant to § 7-1405, to provide new health care services shall be exempt from certificate of need requirements only for the purpose of maintaining the same level of care and services provided by the District of Columbia Health and Hospitals Public Benefit Corporation (“Public Benefit Corporation”). The exemptions granted by this subsection shall be for a period of 225 days from July 12, 2001, except that proposals to develop trauma I capability to match the levels existing at D.C. General Hospital as of January 1, 2001, shall be exempt from certificate of need requirements for a period of 1 year from July 12, 2001.

(f) The Administrator of the Health Care Safety Net Administration (“Administrator”), established pursuant to § 7-1401, shall determine which new institutional health services, capital expenditures, and reductions or terminations of health services qualify as health care services being taken over from the Public Benefit Corporation. The Administrator’s authority to make determinations and the exemptions from certificate of need review pursuant to subsection (e) shall expire 1 year after the date the first contract for health care services entered into pursuant to § 7-1405 is signed.

(g) The District government and the Public Benefit Corporation are exempt from certificate of need requirements for any changes in health care service that may result from the abolishment of the Public Benefit Corporation.

**§ 44-408. Activities subject to expedited administrative certificate of need reviews.**

(a) Proposals for major medical equipment and new institutional health services for which there is an explicit finding of need in the HSP shall be eligible for expedited administrative review without referral to the SHCC, in accordance with rules promulgated pursuant to § 44-421.

(b) Any persons proposing projects subject to expedited administrative review shall file an application with the SHPDA in accordance with rules promulgated pursuant to section 22, provided that the HSP upon which the need is

assessed is no more than 3 years old. If the HSP is more than 5 years old, such proposals shall be subject to standard certificate of need review.

(c) Administrative review decisions shall initially be made the SHPDA staff and shall be appealable to the Director of the SHPDA. The decision by the Director is the final decision of the SHPDA and is subject to appeal to the Board of Appeals and review in accordance with § 44-421.

**§ 44-409. Adoption of procedures and criteria for review by the SHPDA governing application and review.**

(a) All applications for a certificate of need shall be reviewed by the SHPDA.

(b) Existing procedures and criteria in effect on April 9, 1997, are valid insofar as they are not inconsistent with this chapter, until new rules of procedures and criteria are adopted.

(c) In accordance with § 44-421 the SHPDA shall establish, adopt, and publish procedures and criteria for the review of certificate of need applications, for new or renewal applications, for expedited administrative review, or for exemptions from review.

(d)(1) An application for a certificate of need shall be considered complete unless the SHPDA determines, within 15 days, excluding Saturdays, Sundays, and legal holidays, after receipt of an application, that the application is not complete and requests additional information which is relevant and necessary for the application to be complete. The application shall be considered complete upon the SHPDA's receipt of the applicant's response to any such request.

(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the review process begins. If the SHPDA cannot issue its determination within that period, the review period may be extended for one additional period of 30 days.

(e) The SHPDA shall provide the applicant, the SHCC, and all previously appearing parties with a detailed explanation of any decision.

(f) The general public shall have access to all applications reviewed by the SHPDA and all other written materials essential to SHPDA's review contained in the SHPDA's files, except that the SHPDA shall establish a procedure to restrict access of the general public from portions of applications or supporting documents which contain detailed descriptions of security systems, medical record systems, controlled storage systems or proprietary financial information. The SHPDA is authorized to charge reasonable fees for the costs of providing to the public documents covered under this subsection.

(g) In issuing a certificate of need, the SHPDA shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The SHPDA shall prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum specified in the certificate of need.

(h) The SHPDA may impose a condition upon the grant of a certificate of need if it is necessary to meet a criterion or standard previously adopted and published by the SHPDA. The SHPDA shall modify or remove a condition upon application at any time by the holder of the certificate of need or other person if the circumstances upon which the condition is premised change and no longer justify the condition, or if the condition, for any other reason, is no longer appropriate.

(i)(1) There shall be no ex parte contacts:

(A) In the case of an application for a certificate of need, between the applicant for a certificate of need, any person in favor of or opposed to the issuance of a certificate of need for the applicant, and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the applicant; or

(B) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of or opposed to the withdrawal and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the application.

(2) In the case where no public hearing on the application has been requested, the period of prohibition of ex parte contacts shall begin upon the adjournment of any meeting convened by the SHCC at which the application is considered. Whether or not a hearing has been held, information presented at such meeting shall not be considered ex parte contacts if the meeting chairperson affords an opportunity for rebuttal. If there is to be no hearing or public meeting, the period of prohibition of ex parte contacts shall begin upon the SHPDA's determination to conduct a type of review for which no public meeting or hearing will be held.

(j) No certificate of need holder shall begin operation of the bed, facility, or health service approved in the certificate of need until the SHPDA has conducted a review to determine compliance with the certificate of need requirements. If the SHPDA does not make a finding of noncompliance within 30 days of receiving notification from the certificate of need holder of its intent to begin operation, the SHPDA shall be deemed to have determined compliance.

(k) SHPDA shall require that all prospective certificate of need applicants certify, in writing, that for the five-year period following the award of the certificate of need the percentage of uncompensated care (charity and bad-debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the 2 fiscal years immediately preceding the review of an application for a certificate of need pursuant to this section.

**§ 44-410. Criteria for review and required findings.**

(a) In order to grant a certificate of need, except for a certificate of need to decrease the bed capacity of a HCF, the SHPDA shall, upon review of an applicant, make a written finding that the proposed HCF, health service, major medical equipment, or capital expenditure meets the requirements of this chapter and any other requirements established by regulations. In addition, the SHPDA shall make the written finding that:

(1) The applicant is in compliance with all assurances made pursuant to § 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c et seq.); and

(2) The applicant, if it operates on a fee-for-service basis and has not given assurances pursuant to § 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the SHPDA and is in compliance with any assurances pursuant to this subsection in a previous certificate of need application.

(b) In adopting rules in accordance with § 44-421, the SHPDA shall adopt comprehensive, detailed rules to ensure that compliance with the assurances given pursuant to subsection (a) of this section is achieved and maintained by the applicant. The SHPDA may adopt identical or separate rules for facilities described in subsection (a) of this section.

(c) In conducting certificate of need review, the SHPDA shall utilize all appropriate criteria adopted by rules.

(d) The SHCC shall, in the performance of its review functions, follow procedures and apply criteria developed and published by the SHPDA and adopted by the SHCC.

**§ 44-411. Duration, modification, sale, or transfer of a certificate of need.**

(a) A certificate of need shall be effective for the period that the applicant states is necessary to complete the project for which the certificate of need is granted; except that no certificate of need shall be effective for more than 3 years from the original date of issuance. If the applicant is making good faith efforts to meet the schedule, the SHPDA shall extend the certificate of need for an additional period or periods as necessary for the applicant to complete the project. The SHPDA shall adopt rules to define the schedule of performance, including reporting, criteria for evaluating compliance or noncompliance with the schedule, and criteria for determining and reviewing major modifications after a certificate of need has been issued. Any review of major modifications shall be limited to the modifications and shall not affect the underlying certificate of need granted by the SHPDA.

(b) A certificate of need obtained prior to April 9, 1997 shall continue to be valid for the period specified in granting the certificate of need and may be renewed in accordance with subsection (a) of this section.

(c) A current certificate of need may not be sold or transferred. The transfer of effective control over a project for which a current certificate of need has been granted shall cause the certificate of need to be subject to review and approval by the SHPDA. For the purposes of this subsection, the term “effective control” means the ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity which holds a certificate of need, to direct or cause the direction of the management or policies of that corporation, partnership or other entity, and the term “current certificate of need” means a certificate of need granted or deemed to have been granted by the SHPDA.

(d) Any transfer, assignment, or other disposition of 10% of the stock or voting rights thereunder of a corporation or other entity which is the operator of a HCF, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of the corporation which results in the ownership or control of more than 10% of the stock or voting rights thereunder of the corporation, by any person, when that corporation or entity holds a current certificate of need, shall cause the certificate of need to be subject to review and approval by the SHPDA.

**§ 44-412. Reconsideration of review decisions.**

(a) After a decision on an application for a new or renewal certificate of need is made by the SHPDA, the SHPDA shall notify the applicant, the SHCC, all previously appearing parties, and contiguous health planning agencies of the decision. The SHPDA shall give any person, for good cause shown, an opportunity within 30 days of the date of the notice to request reconsideration of a certificate of need decision at a public hearing before the SHPDA, which shall be held without charge. If a request demonstrates good cause, the SHPDA shall conduct a public hearing within 30 days of the request of reconsideration of the decision.

(b) For purposes of this section, the term “good cause” means:

- (1) Presentation of significant and relevant information not previously considered by the SHPDA;
- (2) Demonstration of a significant change in a factor or circumstance relied upon in reaching the decision;
- (3) Demonstration of a material failure to follow SHPDA review procedures; or



(4) Presentation of another basis for a public hearing such as when the SHPDA determines that a hearing is in the public interest.

(c) If the SHPDA reconsiders a decision, it shall notify the persons requesting the hearing, the applicant, the SHCC, and all contiguous health planning agencies, and shall publish a notice of public hearing in at least 1 newspaper of general circulation. Any person may submit testimony at the hearing. Ex parte contact shall be prohibited after the commencement of the reconsideration hearing. A record of the hearing shall be made by the SHPDA and be available to the public upon request.

(d) Upon reconsideration, the SHPDA shall issue finding giving the basis for its decision. The SHPDA may affirm, modify, or reverse its original decision. The SHPDA shall render its final decision in writing by issuing or denying a certificate of need within 15 days following the public hearing. The final decision shall not be reconsidered.

**§ 44-413. Administrative appeal.**

(a) Following reconsideration by the SHPDA, or if the SHPDA denies a request for consideration, or has not granted a request for reconsideration pursuant to § 44-412(a) within 30 days after the request for reconsideration, the final decision of the SHPDA on the application for a certificate of need may be appealed by the SHCC, the applicant, or any previously appearing persons to the Office of Administrative Hearings.

(b) The Office of Administrative Hearings shall review the record and any additional evidence presented on behalf of the parties to the appeal. It shall take due account of the presumption of official regularity, the experience, and specialized competence of the SHPDA, and the purposes of this chapter. The Office of Administrative Hearings must make its written decision within 45 days of the conclusion of its review. The decision must be provided to the applicant, the SHPDA, the person requesting the hearing, and to any other person upon request. The decision of the Office of Administrative Hearings shall be considered the final decision of the SHPDA.

(c) Any contested case hearing required by § 2-509, shall be conducted by the Office of Administrative Hearings.

**§ 44-414. Judicial review of certificate of need decisions.**

Any person who contests the final decision on an application for a certificate of need, or for exemption from certificate of need review under this chapter, after the exhaustion of all administrative remedies, is entitled to judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review pursuant to § 2-510.

**§ 44-415. Certificate of need mandatory condition precedent.**

The issuance of a certificate of need, if required under this chapter, shall be a condition precedent to the issuance of any license, permit, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project.

**§ 44-416. Violations and penalties for noncompliance.**

(a) It shall be unlawful for any person to proceed with any project which under this chapter would require a certificate of need without applying for and obtaining a certificate of need.

(b) The Office of Attorney General for the District of Columbia may seek injunctive relief from a court of competent

jurisdiction when it determines that a person is offering, developing, or operating a HCF or service in violation of this chapter.

(c) Any person, including the principal officers or agents of a corporation or association, who violates this chapter, or the rules issued pursuant to this chapter, by the willful failure to obtain a certificate of need, deviates from the provisions of a certificate of need, or beginning or continuing construction or initiating a new or expanded service after expiration of a certificate of need shall, upon conviction, be subject to a fine of not less than \$500 and not more than \$2,500. Each day of a continuing violation shall constitute a separate offense.

(d) Any person, including the principal officers or agents of a corporation or association, who knowingly fails to provide, or knowingly withholds, or intentionally provides misleading information required by this chapter, or the rules issued pursuant to this chapter, upon conviction, shall be subject to a fine of not less than \$500 and not more than \$2,500, or 10 days imprisonment, or both. Each day of a continuing violation shall constitute a separate offense.

(e) The SHPDA may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person which the SHPDA finds has violated any provision of this chapter, or the rules issued pursuant to this chapter, regardless of the initiation of any criminal prosecution, suit for injunctive relief, or imposition of civil fine, penalty, or fee.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter or any rules issued under the authority of this chapter, pursuant to Chapter 18 of Title 2.

(g) The SHPDA shall, by rule, list each type of violation of this chapter which constitutes an infraction as described and shall list the fine, penalty, or fee to be imposed on a person for the first and for each subsequent violation.

**§ 44-417. Immunity from civil liability.**

No member of the SHCC or the SHPDA may be held personally liable in any civil action taken in the course of carrying out his or her official duties and responsibilities as set forth in this chapter or the rules issued pursuant to this chapter.

**§ 44-418. Moratorium on applications.**

The SHPDA may impose a moratorium for up to 120 days on the issuance of certificates of need for any specific type of new institutional health service, if the SHPDA requires additional time to develop and adopt criteria and standards for a new institutional health service. A moratorium may not apply to a certificate of need application which is pending before the SHPDA at the time of the imposition of the moratorium. A particular institutional health services may not be the subject of a moratorium more than once within any 12-month period.

**§ 44-419. Annual report.**

The SHPDA shall prepare and publish annually a report on the status of health systems development in the District, including the health plan development and implementation program, the health data and information program, and the certificate of need program. The report shall include a listing of the certificate of need reviews completed by SHPDA since the last report, a general statement of the finding and decisions made in the course of reviews, and the status of pending reviews.

**§ 44-420. Fees.**

(a) The SHPDA shall collect application fees from persons that request a certificate of need. The fee required for an application shall be the greater of 3% of the proposed capital expenditure or \$5,000, with a maximum of \$300,000. The SHPDA is authorized to establish a fee schedule for certain data, analyses and reports published by the SHPDA from the HPDS. The annual user fee for private hospitals shall be \$4 per inpatient admission, based on the previous calendar year's admission data, to be paid to the SHPDA on a quarterly basis, in lieu of a certificate of need application fee. The certificate of need application fee for any project receiving funds through the Medical Homes DC initiative, as operated by the District of Columbia Primary Care Association, shall be \$5,000. User fees may also be established for other classes of facilities by regulation. SHPDA may adjust a user fee periodically to reflect the change in the Consumer Price Index issued by the Bureau of Labor Statistics, United States Department of Labor.

(b) Notwithstanding the provisions of subsection (a) of this section, the maximum application fee that may be collected from Specialty Hospitals of America, LLC, or certain of its subsidiary entities, for facilities located in Lots 3 and 4, Square 5919, related to the acquisition of Greater Southeast Community Hospital shall be \$300,000.

**§ 44-420.01. Establishment of State Health Planning and Development Fund.**

(a) There is established as a nonlapsing, revolving fund in the Department of Health the State Health Planning and Development Fund ("SHPDA Fund"), to be administered by the Mayor as an agency fund as defined in § 47-373(2)(I), to which all fees, civil fines, and interest relating to the State Health Planning and Development Agency shall be deposited and credited.

(b) Revenues deposited into the SHPDA Fund shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

(c) Subject to the applicable laws relating to the appropriation of District funds, monies received by and deposited in the State Health Planning and Development Fund shall be for the sole use of the State Health Planning and Development Agency and from it shall be paid all salaries and all other expenses necessary in carrying out the duties of the SHPDA, except that annual user fees collected from hospitals pursuant to § 44-420 shall be used only for salaries and expenses necessary for carrying out the certificate of need responsibilities of the SHPDA. The Mayor shall be responsible for the deposit and expenditure of these monies.

(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the State Health Planning and Development Fund. The Mayor's budget request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the State Health Planning and Development Agency.

**§ 44-421. Rules.**

The SHPDA shall, in accordance with subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved.

**§ 44-422. Applicability. [Repealed]**

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