

HOUSE BILL No. 5623

March 5, 1992, Introduced by Rep. Bennane and referred to the Committee on Public Health.

A bill to amend sections 22215, 22221, 22225, 22226, 22230, 22231, 22232, 22237, 22239, and 22241 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," sections 22215, 22221, 22225, 22230, 22231, 22232, 22237, 22239, and 22241 as added by Act No. 332 of the Public Acts of 1988 and section 22226 as added by Act No. 331 of the Public Acts of 1988, being sections 333.22215, 333.22221, 333.22225, 333.22226, 333.22230, 333.22231, 333.22232, 333.22237, 333.22239, and 333.22241 of the Michigan Compiled Laws; and to repeal certain parts of the act on a specific date.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 22215, 22221, 22225, 22226, 22230,
2 22231, 22232, 22237, 22239, and 22241 of Act No. 368 of the
3 Public Acts of 1978, sections 22215, 22221, 22225, 22230, 22231,

1 22232, 22237, 22239, and 22241 as added by Act No. 332 of the
2 Public Acts of 1988 and section 22226 as added by Act No. 331 of
3 the Public Acts of 1988, being sections 333.22215, 333.22221,
4 333.22225, 333.22226, 333.22230, 333.22231, 333.22232, 333.22237,
5 333.22239, and 333.22241 of the Michigan Compiled Laws, are
6 amended to read as follows:

7 Sec. 22215. (1) Pursuant to the requirements of this part,
8 the commission shall do all of the following:

9 (a) ~~Upon submission by the department and the office,~~
10 ~~approve, disapprove, or revise~~ DETERMINE the designation of cov-
11 ered clinical services and covered medical equipment in addition
12 to the covered clinical services and covered medical equipment
13 listed in section 22203. ~~Also, upon submission by the depart-~~
14 ~~ment and the office, the~~ THE commission ALSO shall ~~approve,~~
15 ~~disapprove, or revise~~ DETERMINE the deletion or revision of cov-
16 ered clinical services and covered medical equipment listed in
17 section 22203. ~~Before final action is taken by the commission~~
18 ~~under this subdivision, the commission shall seek the advice and~~
19 ~~counsel of the department and the office.~~

20 (b) ~~Upon submission by the department and the office,~~
21 ~~approve, disapprove, or revise~~ DETERMINE certificate of need
22 review standards that establish, for purposes of section 22225,
23 the need, if any, for the initiation of new services, acquisition
24 of covered medical equipment, acquisition or initiation of new
25 health facilities, making changes in bed capacity, or making cov-
26 ered capital expenditures, including conditions, standards,
27 assurances, or information that must be met, demonstrated, or

1 provided by a person who applies for a certificate of need. A
2 certificate of need review standard may also establish ongoing
3 quality assurance requirements including any or all of the
4 requirements specified in section 22225(2)(c). The statewide
5 health coordinating council may perform the duties of the commis-
6 sion under this subdivision, only until all members of the com-
7 mission are appointed and confirmed, or ~~5 months after the~~
8 ~~effective date of this part~~ UNTIL MARCH 1, 1989, whichever is
9 sooner. ~~Before final action is taken by the commission or the~~
10 ~~statewide health coordinating council under this subdivision, the~~
11 ~~commission or the statewide health coordinating council shall~~
12 ~~seek the advice and counsel of the department and the office.~~

13 (c) Direct the department and the office to prepare and
14 submit recommendations regarding commission duties and functions
15 that are of interest to the commission including, but not limited
16 to, specific modifications of proposed actions considered under
17 this section, AND LANGUAGE FOR PROPOSED CERTIFICATE OF NEED
18 REVIEW STANDARDS TO REFLECT THE RECOMMENDATIONS OF THE AD HOC
19 ADVISORY COMMITTEES APPOINTED UNDER SUBDIVISION (M).

20 (d) ~~Upon submission by the department and the office,~~
21 ~~approve~~ APPROVE, disapprove, or revise proposed data reporting
22 requirements under section 22209(2) AND SECTION 22237 and
23 ESTABLISH criteria for determining health facility viability
24 under section ~~22225~~ 22225(2)(D). ~~Before final action is taken~~
25 ~~by the commission under this subdivision, the commission shall~~
26 ~~seek the advice and counsel of the department and the office.~~

1 (e) Annually assess the operations and effectiveness of the
2 certificate of need program based on periodic reports from the
3 department, PUBLIC TESTIMONY, and other information available to
4 the commission.

5 (f) ~~Four years following the effective date of this part~~
6 BY OCTOBER 1, 1992, and every 5 years after ~~that fourth year~~
7 OCTOBER 1, 1992, make recommendations to the standing committees
8 in the senate and the house that have jurisdiction over matters
9 pertaining to public health regarding statutory changes to
10 improve the certificate of need program, including, but not
11 limited to, threshold levels for capital expenditures, the role
12 of the commission, certificate of need review standards, and the
13 need for the certificate of need program.

14 (g) ~~Upon submission by the department and the office,~~
15 ~~approve, disapprove, or revise~~ DETERMINE standards to be used by
16 the department in designating a regional certificate of need
17 review agency, pursuant to section 22226. ~~Before final action~~
18 ~~is taken by the commission under this subdivision, the commission~~
19 ~~shall seek the advice and counsel of the department and the~~
20 ~~office.~~

21 (h) ~~Upon submission by the department and the office,~~
22 ~~approve, disapprove, or revise~~ DETERMINE THE certificate of need
23 review standards governing the acquisition of new technology.
24 ~~Before final action is taken by the commission under this subdi-~~
25 ~~vision, the commission shall seek the advice and counsel of the~~
26 ~~department and the office.~~

1 (i) In accordance with section 22255, ~~approve, disapprove,~~
2 ~~or revise~~ DETERMINE proposed procedural rules for the
3 certificate of need program. ~~Before final action is taken by~~
4 ~~the commission under this subdivision, the commission shall seek~~
5 ~~the advice and counsel of the department and the office.~~

6 (j) If determined by the commission to be consistent with
7 the purposes of this part, modify the 100 licensed bed limitation
8 set forth in section 22210. ~~Before final action is taken by the~~
9 ~~commission under this subdivision, the commission shall seek the~~
10 ~~advice and counsel of the department and the office.~~

11 (k) Consider the recommendations of the department and the
12 department of attorney general as to the administrative feasibil-
13 ity and legality of proposed actions under ~~subdivisions (a),~~
14 ~~(b), and (c)~~ THIS SECTION.

15 (l) Consider the impact of a proposed restriction on the
16 acquisition of equipment or availability of services on the qual-
17 ity, availability, and cost of health services in this state.

18 (M) ASSIST IN THE DEVELOPMENT OF A PROPOSED CERTIFICATE OF
19 NEED REVIEW STANDARD UNDER SUBDIVISIONS (A) AND (B) AND FOR THE
20 PURPOSE OF IMPLEMENTING SECTION 22225(2)(D), APPOINT AD HOC
21 ADVISORY COMMITTEES TO DEVELOP RECOMMENDATIONS. THE COMMISSION
22 SHALL SELECT THE MEMBERS OF EACH AD HOC ADVISORY COMMITTEE FROM
23 NOMINEES OF APPROPRIATE GROUPS TO INCLUDE ALL OF THE FOLLOWING:

24 (i) EXPERTS IN THE SUBJECT MATTER OF THE PROPOSED STANDARD,
25 WHO SHALL CONSTITUTE A MAJORITY OF THE AD HOC ADVISORY
26 COMMITTEE.

1 (ii) REPRESENTATIVES OF HEALTH CARE PROVIDER ORGANIZATIONS
2 CONCERNED WITH LICENSED HEALTH FACILITIES OR LICENSED HEALTH
3 PROFESSIONS.

4 (iii) REPRESENTATIVES OF ORGANIZATIONS CONCERNED WITH HEALTH
5 CARE CONSUMERS OR THE PURCHASERS OR PAYERS OF HEALTH CARE
6 SERVICES.

7 (2) THE COMMISSION MAY ALSO APPOINT ADVISORY COMMITTEES TO
8 ASSIST IT IN THE FULFILLMENT OF ITS DUTIES.

9 (3) ~~-(2)-~~ The commission shall exercise its POWERS AND FUL-
10 FILL ITS duties under this part to promote ~~both~~ ALL of the
11 following:

12 (a) The availability of quality health services at reason-
13 able cost.

14 (b) The general health objectives in the state health plan.

15 (C) APPROPRIATE DIFFERENTIAL CONSIDERATION OF THE HEALTH
16 CARE NEEDS OF RESIDENTS IN ISOLATED OR UNDERSERVED AREAS IN WAYS
17 THAT DO NOT COMPROMISE THE QUALITY AND AFFORDABILITY OF HEALTH
18 CARE SERVICES FOR THOSE RESIDENTS.

19 (4) ~~-(3)-~~ Before final action is taken by the commission
20 under subsection (1)(a), (b), (d), (g), (h), or (j), the commis-
21 sion shall conduct a public hearing on the matter. In addition,
22 not less than 30 days before final action is taken by the commis-
23 sion under subsection (1)(a), (b), (d), (g), (h), or (j), the
24 commission shall submit the proposed final action for comment to
25 the standing committees in the senate and house of representa-
26 tives with jurisdiction over public health matters. Before a
27 final commission approval under subsection (1)(a), (b), (d), (g),

1 (h), or (j) is effective, the commission shall submit the
2 proposed action to the governor and the standing committee of
3 each house of the legislature having jurisdiction over public
4 health matters. The governor or the legislature may disapprove
5 the proposed action within 45 days after the date of submission.
6 If the legislature is not in session at the time of submission of
7 the proposed action, or is in recess, the 45 days shall commence
8 on the first day the legislature reconvenes. The 45 days shall
9 include not less than 9 legislative session days. Legislative
10 disapproval shall be expressed by concurrent resolution which
11 shall be adopted by each house of the legislature. The concur-
12 rent resolution shall state specific objections to the proposed
13 action. A proposed commission action under subsection (1)(a),
14 (b), (d), (g), (h), or (j) shall not become effective if it has
15 been disapproved under this subsection. If the proposed action
16 is not disapproved under this subsection, it shall be effective
17 and binding on all persons affected by this part upon the expira-
18 tion of the 45-day period or on a later date specified in the
19 proposed action. As used in this subsection, "legislative ses-
20 sion day" means each day in which a quorum of either the house of
21 representatives or the senate, following a call to order, offi-
22 cially convenes in Lansing to conduct legislative business.

23 (5) ~~(4)~~ Every 5 years following ~~the effective date of~~
24 ~~this part~~ OCTOBER 1, 1988, the standing committees of the senate
25 and the house of representatives having jurisdiction over public
26 health matters shall make findings and recommendations regarding
27 any changes in, or the continuation of, the certificate of need

1 program established under this part considered appropriate by
2 those committees after consideration of the recommendations sub-
3 mitted by the commission pursuant to subsection (1)(f).

4 (6) ~~(5)~~ If the reports received under section 22221(1)(e)
5 indicate that the certificate of need application fees collected
6 under section 20161(2) have not been within 10% of 1/2 the cost
7 to the department of implementing this part, the commission shall
8 make recommendations ~~under subsection (1)(f)~~ TO THE GOVERNOR
9 AND THE LEGISLATURE regarding the revision of those fees so that
10 the certificate of need application fees collected equal approxi-
11 mately 1/2 of the cost to the department of implementing this
12 part.

13 Sec. 22221. (1) The department shall do all of the
14 following:

15 (a) ~~Develop~~ IN CONJUNCTION WITH THE OFFICE, DEVELOP rules
16 authorized by this part ~~in conjunction with the office~~ FOR
17 REVIEW, MODIFICATION, AND APPROVAL BY THE COMMISSION, PURSUANT TO
18 SECTIONS 22215(1)(I) AND 22255.

19 (b) Report to the commission not less than 3 times each year
20 on the performance of the department's duties under this part.

21 (c) ~~Develop, in~~ IN conjunction with the office, DEVELOP
22 FOR SUBMISSION TO THE COMMISSION proposed certificate of need
23 review standards ~~for submission~~ to IMPLEMENT THE RECOMMENDA-
24 TIONS OF AD HOC ADVISORY COMMITTEES APPOINTED BY THE COMMISSION
25 UNDER SECTION 22215(1)(M) AND RESPOND TO THE DIRECTION OF THE
26 COMMISSION PURSUANT TO SECTION 22215(1)(D). THE DEPARTMENT SHALL
27 INDICATE TO THE COMMISSION IF ITS VIEWS DIFFER FROM THE

1 RECOMMENDATIONS OF AN AD HOC ADVISORY COMMITTEE OR FROM THE
2 DIRECTION OF the commission.

3 (d) Administer and apply certificate of need review
4 standards.

5 (e) Following the first state fiscal year after the enact-
6 ment of this part, and annually thereafter, report to the commis-
7 sion regarding the costs to the department of implementing this
8 part and the certificate of need application fees collected under
9 section 2016(2) in the immediately preceding state fiscal year.

10 (2) ~~In the development of a proposed certificate of need~~
11 ~~review standard under subsection (1)(c), the~~ THE department
12 shall ~~appoint~~ PROVIDE ALL NECESSARY PROFESSIONAL AND CLERICAL
13 STAFF SUPPORT TO an ad hoc advisory committee ~~which shall assist~~
14 ~~in the development of the proposed standard and shall have the~~
15 ~~opportunity to~~ APPOINTED BY THE COMMISSION UNDER SECTION
16 22215(1)(M). THE DEPARTMENT MAY review and comment on the propos-
17 als submitted to the commission, BUT THE DEPARTMENT SHALL NOT
18 REVISE OR AMEND THE PROPOSALS IN ANY WAY. ~~The composition of~~
19 ~~the ad hoc advisory committee shall include all of the~~
20 following:

21 (a) ~~Experts in the subject matter of the proposed standard,~~
22 ~~who shall constitute a majority of the ad hoc advisory~~
23 ~~committee.~~

24 (b) ~~Representatives of health care provider organizations~~
25 ~~concerned with licensed health facilities or licensed health~~
26 ~~professions.~~

1 ~~(c) Representatives of organizations concerned with health~~
2 ~~care consumers and the purchasers and payers of health care~~
3 ~~services.~~

4 (3) THE DEPARTMENT SHALL DESIGNATE ADEQUATE STAFF TO ASSIST
5 HOSPITALS WITH LESS THAN 100 LICENSED BEDS IN PREPARING CERTIFI-
6 CATE OF NEED APPLICATIONS.

7 Sec. 22225. (1) In order to be approved under this part, an
8 applicant for a certificate of need shall demonstrate to the sat-
9 isfaction of the department that the proposed project will meet
10 an unmet need in the area proposed to be served. The need for a
11 proposed project shall be demonstrated by credible documentation
12 of compliance with the applicable certificate of need review
13 standards or, if ~~none~~ THERE ARE NO APPLICABLE CERTIFICATE OF
14 NEED REVIEW STANDARDS, by credible documentation that the pro-
15 posed project will be geographically accessible and efficiently
16 and appropriately utilized in light of the type of proposed
17 project and the existing health care system, including approved
18 projects that are not yet operational, proposed projects under
19 appeal from a final decision of the department, or proposed
20 projects that are pending final department decision.

21 (2) If, and only if, the requirements of subsection (1) are
22 met, in order for an application to be approved under this part,
23 an applicant shall also demonstrate to the reasonable satisfac-
24 tion of the department all of the following:

25 (a) With respect to the method proposed to meet the unmet
26 need identified under subsection (1), that each of the following
27 is met:

1 (i) The project utilizes the most efficient and effective
2 feasible methods that are available to the health care industry.

3 (ii) In the case of a project proposing physical plant
4 expansion, that the project is the most efficient and effective
5 expansion alternative after consideration of at least new con-
6 struction, modernization, lease, or purchase.

7 (iii) In the case of proposed new construction, the project
8 is the most appropriate construction option.

9 (b) With respect to the financial aspects of the proposed
10 project, that each of the following is met:

11 (i) The proposed project, in terms of capital costs, is the
12 least costly project, in light of available alternatives.

13 (ii) The proposed project represents the least costly alter-
14 native of providing the health facility, service, or equipment.

15 (iii) Funds are available to meet the capital and operating
16 needs of the proposed project.

17 (iv) The proposed project utilizes the least costly method
18 of financing, in light of available alternatives.

19 (v) In the case of a construction project, the applicant
20 stipulates that the applicant will competitively bid covered cap-
21 ital expenditures among qualified contractors, or alternatively,
22 the applicant presents evidence satisfactory to the department
23 that the applicant is proposing an alternative to competitive
24 bidding that will result in the least costly method for imple-
25 menting the project.

26 (c) The proposed project will be delivered in compliance
27 with applicable operating standards and quality assurance

1 standards approved under section 22215(1)(b), including 1 or more
2 of the following:

3 (i) Mechanisms for assuring appropriate utilization of the
4 project.

5 (ii) Methods for evaluating the effectiveness of the
6 project.

7 (iii) Means of assuring delivery of the project by qualified
8 personnel and in compliance with applicable safety and operating
9 standards.

10 (iv) Evidence of the current and historical compliance with
11 federal and state licensing and certification requirements in
12 this state by the applicant or the applicant's owner, or both, to
13 the degree determined appropriate by the commission in light of
14 the subject of the review standard.

15 (v) Other criteria approved by the commission as appropriate
16 to evaluate the quality of the project.

17 (d) The health services proposed in the project will be
18 delivered in a health facility that meets the criteria, if any,
19 established by the commission for determining health facility
20 viability, pursuant to this subdivision. ~~The criteria shall be~~
21 ~~proposed by the department and the office, and approved or disap-~~
22 ~~proved by the commission.~~ At a minimum, the criteria shall spec-
23 ify, to the extent applicable to the applicant, that an applicant
24 shall be considered viable by demonstrating at least 1 of the
25 following:

26 (i) A minimum percentage occupancy of licensed beds.

1 (ii) A minimum percentage of combined uncompensated
2 discharges and discharges under title XIX of the social security
3 act in the health facility's planning area.

4 (iii) A minimum percentage of the total discharges in the
5 health facility's planning area.

6 (iv) Evidence that the health facility is the only provider
7 in the health facility's planning area of a service that is con-
8 sidered essential by the commission.

9 (v) An operating margin in an amount determined by the
10 commission.

11 (vi) Other criteria approved by the commission as appropri-
12 ate for statewide application to determine health facility
13 viability.

14 (e) In the case of a nonprofit health facility, the health
15 facility is in fact governed by a body composed of a majority
16 consumer membership broadly representative of the population
17 served. In the case of a health facility sponsored by a reli-
18 gious organization, or if the nature of the nonprofit health
19 facility is such that the legal rights of its owners or sponsors
20 might be impaired by a requirement as to the composition of its
21 governing body, an advisory board with majority consumer member-
22 ship broadly representative of the population served may be con-
23 strued by the department to be equivalent to the governing board
24 described in this subdivision, if the advisory board meets all of
25 the following requirements:

26 (i) The role assigned to the advisory board is meaningful,
27 as determined by the department.

1 (ii) The functions of the advisory board are clearly
2 prescribed.

3 (iii) The advisory board is given an opportunity to influ-
4 ence policy formulation by the legally recognized governing body,
5 as determined by the department.

6 (F) THAT THE PROPOSED PROJECT WILL PARTICIPATE IN AND BE
7 AVAILABLE TO RECIPIENTS OF BENEFITS UNDER TITLE XIX AND WILL PRO-
8 VIDE SERVICES WITHOUT REGARD TO THE AMOUNT OR SOURCE OF PAYMENT.
9 AS USED IN THIS SUBDIVISION, "TITLE XIX" MEANS TITLE XIX OF THE
10 SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO
11 1396g AND 1396i TO 1396u.

12 Sec. 22226. (1) The ~~department and the office shall~~
13 ~~jointly develop standards for the~~ designation by the department
14 of a regional certificate of need review agency for each review
15 area to develop advisory recommendations for proposed projects
16 ~~. The standards~~ shall be based on the requirements for a
17 regional certificate of review agency set forth in
18 subsection (3). The standards ~~developed under this subsection~~
19 shall be approved by the commission before implementation by the
20 department.

21 (2) The department, with the concurrence of the commission,
22 shall designate a person to be a regional certificate of need
23 review agency for a specific review area, according to procedures
24 approved by the commission, if the person meets the standards
25 approved under subsection (1), and if a regional certificate of
26 need review agency has not already been designated for that
27 specific review area.

1 (3) A regional certificate of need review agency shall meet
2 all of the following requirements:

3 (a) Be an independent nonprofit organization that is not a
4 subsidiary of, or otherwise controlled by, any other person.

5 (b) Be governed by a board that is broadly representative of
6 consumers, providers, payers, ~~and~~ OR purchasers of health care
7 in the review area, with a majority of the board being consumers,
8 payers, and purchasers of health care.

9 (c) Demonstrate a willingness and ability to conduct reviews
10 of all proposed projects requiring a certificate of need that
11 would be located within the review area served by the regional
12 certificate of need review agency.

13 (d) Avoid conflict of interest in its review of all applica-
14 tions for a certificate of need.

15 (e) Provide data to the department to enable the department
16 to evaluate the regional certificate of need review agency's
17 performance. The data provided under this subdivision shall be
18 reviewed at periodic meetings between the department and the
19 regional certificate of need review agency.

20 (f) Not receive more than a designated proportion of its
21 financial support from health facilities and health profession-
22 als, as determined by the commission.

23 (g) Meet other requirements established by the commission
24 that are relevant to the functions of a regional certificate of
25 need review agency, pursuant to this part.

26 (4) The designation of a regional certificate of need review
27 agency shall be operative for a period of time approved by the

1 commission, but not for more than 24 months. The designation of
2 a regional certificate of need review agency may be terminated by
3 the department at any time for noncompliance with the standards
4 approved under subsection (1). In addition, the designation may
5 be terminated by the regional certificate of need review agency
6 upon the expiration of 60 days after the department receives
7 written notice of the termination.

8 (5) A local certificate of need review agency that was des-
9 ignated pursuant to a designation agreement authorized under
10 former section 22124 and effective on ~~the effective date of this~~
11 ~~part~~ OCTOBER 1, 1988 is designated as the regional certificate
12 of need review agency for its review area until the expiration of
13 1 year after the date of final approval of the standards devel-
14 oped under subsection (1), unless the designation is terminated
15 by either the department or the regional certificate of need
16 review agency before that time.

17 (6) A person applying for a certificate of need under this
18 part shall simultaneously provide a copy of any letter of intent,
19 application, or additional information required by the department
20 to the regional certificate of need review agency designated by
21 the department for the review area in which the proposed project
22 would be located, unless the regional certificate of need review
23 agency determines that it will not review the application or
24 other information, and notifies both the applicant and the
25 department in writing of its determination. The regional certif-
26 icate of need review agency may review the application and submit
27 its recommendations to the department. If the regional

1 certificate of need review agency determines that it will not
2 review the application, then the regional certificate of need
3 review agency shall notify both the applicant and the department
4 in writing of its determination. In developing its recommenda-
5 tions, the regional certificate of need review agency shall uti-
6 lize the review procedures and time frames specified for health
7 systems agencies or regional certificate of need review agencies
8 in the rules continued or promulgated under this part, and shall
9 also utilize certificate of need review standards, statutory cri-
10 teria, and forms identical to those used by the department.

11 (7) Before developing a proposed decision on an application,
12 the department shall review the recommendations of the regional
13 certificate of need review agency for the review area in which
14 the proposed project would be located, if the recommendations are
15 submitted to the department within the time frames required under
16 subsection (6). If the director makes a final decision that is
17 inconsistent with the recommendations of the regional certificate
18 of need review agency, the department shall promptly provide the
19 regional certificate of need review agency with a detailed state-
20 ment of the reasons for the director's decision. The statement
21 shall address each instance in which the director's decision is
22 inconsistent with the recommendation of the regional certificate
23 of need review agency regarding a specific certificate of need
24 review standard or criterion.

25 (8) A regional certificate of need review agency may convene
26 consumers, providers, purchasers, or payers of health care, or
27 representatives of all of those groups, related to activities in

1 its review area for the purpose of achieving the objectives of
2 this part.

3 (9) In the review of certificate of need applications, the
4 department shall consider relevant written communications from
5 any person.

6 (10) Before developing a recommendation on a certificate of
7 need application, a regional certificate of need review agency
8 shall hold a public hearing on the proposed project. If a
9 regional certificate of need review agency has not been desig-
10 nated for the review area in which the proposed project will be
11 located, the department may hold a public hearing on the proposed
12 project, if the department determines that local interest merits
13 a public hearing.

14 (11) A regional certificate of need review agency shall con-
15 duct all meetings regarding its activities for the purpose of
16 achieving the objectives of this part in compliance with the open
17 meetings act, Act No. 267 of the Public Acts of 1976, being sec-
18 tions 15.261 to 15.275 of the Michigan Compiled Laws.

19 (12) As used in this section, "review area" means a geo-
20 graphic area established for a health systems agency pursuant to
21 former section 1511 of the public health service act, or a geo-
22 graphic area otherwise established by the commission for a
23 regional certificate of need review agency, after consideration
24 of the recommendations of the department and the office.

25 Sec. 22230. In evaluating applications ~~for a health facil-~~
26 ~~ity as defined under section 22205(1)(c)~~ in a comparative
27 review, the department shall include participation in title XIX

1 ~~of the social security act, 42 U.S.C. 1396 to 1396d, 1396f to~~
2 ~~1396s,~~ as a distinct criterion, weighted as very important, and
3 determine the degree to which an application meets this criterion
4 based on the extent of participation in ~~the medicaid program~~

5 TITLE XIX. AS USED IN THIS SECTION, "TITLE XIX" MEANS TITLE XIX
6 OF THE SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42
7 U.S.C. 1396 TO 1396g AND 1396i TO 1396u.

8 Sec. 22231. (1) The decision to grant or deny an applica-
9 tion for a certificate of need shall be made by the director. A
10 decision shall be proposed to the director by a bureau within the
11 department designated by the director as responsible for the cer-
12 tificate of need program. A decision shall be in writing and
13 shall indicate 1 of the following:

14 (a) Approval of the application.

15 (b) Disapproval of the application.

16 (c) Subject to subsection (2), approval of the application
17 with conditions.

18 (d) If agreed to by the department and the applicant,
19 approval of the application with stipulations.

20 (2) If an application is approved with conditions pursuant
21 to subsection (1)(c), the conditions shall be explicit, shall be
22 related to the proposed project or to the applicable provisions
23 of this part, and shall specify a time, not to exceed 1 year
24 after the date the decision is rendered, within which the condi-
25 tions shall be met.

1 (3) If the department is conducting a comparative review,
2 the director shall issue only 1 decision for all of the
3 applications included in the comparative review.

4 (4) Before a final decision on an application is made, the
5 bureau of the department designated by the director as responsi-
6 ble for the certificate of need program shall issue a proposed
7 decision that individually addresses each of the criteria listed
8 in section 22225 and states with specificity the reasons and
9 authority of the department for the proposed decision. IF THE
10 PROPOSED DECISION IS A DISAPPROVAL, THE PROPOSED DECISION SHALL
11 BE ACCOMPANIED BY A CLEAR AND CONCISE EXPLANATION, NO MORE THAN 2
12 PAGES IN LENGTH, OF THE SPECIFIC REASONS FOR THE RECOMMENDED
13 DISAPPROVAL. If a proposed decision is issued within the applica-
14 tion review period specified in the rules promulgated under
15 former part 221, the department ~~shall be~~ IS in compliance with
16 the review period requirement of those rules. The department
17 shall transmit a copy of the proposed decision to the applicant.

18 (5) The proposed decision shall be submitted to the director
19 on the day the proposed decision is issued, if the proposed deci-
20 sion is an approval without conditions or stipulations.

21 (6) If the proposed decision is other than an approval with-
22 out conditions or stipulations, the proposed decision shall be
23 submitted to the director not more than 16 days after receipt by
24 the applicant of the proposed decision.

25 (7) The director shall review the proposed decision before a
26 final decision is rendered.

1 (8) If a proposed decision is an approval, and if, upon
2 review, the director reverses the proposed decision, the director
3 immediately shall notify the applicant of the reversal. Within
4 15 days after receipt of the notice of reversal, the applicant
5 may request a hearing under section 22232. After the hearing,
6 the applicant may request the director to reconsider the reversal
7 of the proposed decision, based on the results of the hearing.

8 (9) The director shall issue a final decision not later than
9 60 days after the date a proposed decision is submitted to the
10 director under subsection (6) or, if the proposed decision is an
11 approval, not later than 20 days after the proposed decision is
12 submitted to the director.

13 (10) The final decision of the director may be appealed only
14 by the applicant and only on the record directly to the circuit
15 court for the county where the applicant has its principal place
16 of business in this state or the circuit court for Ingham
17 county. Judicial review ~~shall be~~ IS governed by sections 103
18 to 106 of the administrative procedures act of 1969, Act No. 306
19 of the Public Acts of 1969, being sections 24.303 to 24.306 of
20 the Michigan Compiled Laws.

21 (11) The review and appeal of a certificate of need applica-
22 tion submitted with the required filing fee before ~~the effective~~
23 ~~date of this part~~ OCTOBER 1, 1988 shall be conducted under
24 former part 221 and the rules promulgated under that part. The
25 certificate of need board created by former section 22121(2)
26 shall continue for the purpose of performing the functions vested
27 in it by former part 221, until all appeals lawfully brought

1 under former part 221 are concluded. THE CERTIFICATE OF NEED
2 BOARD AND THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING TO
3 PROMPTLY CONCLUDE ALL APPEALS DESCRIBED IN THIS SUBSECTION:

4 (A) ARRANGE FOR HEARING OFFICERS TO BE ASSIGNED FROM OTHER
5 PRINCIPAL EXECUTIVE DEPARTMENTS. IF AN APPLICANT UNDER FORMER
6 PART 221 DOES NOT PROCEED WITH AN APPEAL AT A HEARING, THE APPLI-
7 CATION IS CONSIDERED TO BE WITHDRAWN.

8 (B) REQUIRE EACH HEARING OFFICER ASSIGNED UNDER SUBDIVISION
9 (A) TO ANNOUNCE THE DATE FOR HEARING A PENDING APPEAL WITHIN 30
10 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
11 THIS SUBDIVISION.

12 (C) REQUIRE EACH HEARING OFFICER ASSIGNED UNDER SUBDIVISION
13 (A) TO COMMENCE THE HEARING FOR A PENDING APPEAL NO LATER THAN 90
14 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
15 THIS SUBDIVISION.

16 (D) REQUIRE EACH HEARING OFFICER TO ACT EXPEDITIOUSLY TO
17 CONCLUDE A HEARING FOR A PENDING APPEAL. A HEARING OFFICER
18 ASSIGNED UNDER SUBDIVISION (A) HAS ALL OF THE POWERS AND DUTIES
19 PRESCRIBED IN SECTION 22232(2).

20 (E) REQUIRE EACH HEARING OFFICER TO PROMPTLY SUBMIT A PRO-
21 POSAL FOR DECISION TO THE CERTIFICATE OF NEED BOARD FOLLOWING THE
22 CONCLUSION OF A HEARING FOR A PENDING APPEAL, BUT NOT MORE THAN
23 30 DAYS AFTER THE FILING BY THE PARTIES OF EXCEPTIONS AND REPLIES
24 AND THE FULFILLMENT OF OTHER HEARING PROCEDURES REQUIRED UNDER
25 THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

26 (F) THE CERTIFICATE OF NEED BOARD SHALL MEET AT LEAST ONCE A
27 MONTH WHEN PROPOSALS FOR DECISIONS SUBMITTED BY HEARING OFFICERS

1 ARE PENDING BEFORE THE BOARD. THE BOARD SHALL ACT PROMPTLY ON
2 ALL PROPOSALS FOR DECISIONS, AND IN ALL CASES SHALL ACT WITHIN 60
3 DAYS AFTER SUBMISSION OF A PROPOSED DECISION BY THE HEARING
4 OFFICER.

5 (G) THE DEPARTMENT SHALL SUBMIT A MONTHLY REPORT ON THE
6 STATUS OF ALL APPEALS PENDING UNDER FORMER PART 221 TO THE COM-
7 MITTEES OF THE LEGISLATURE WITH RESPONSIBILITY FOR HEALTH
8 ISSUES. THE REPORT SHALL INDICATE THE PRECISE STATUS OF EACH
9 PENDING APPEAL, INCLUDING HOW MUCH TIME THE APPEAL HAS BEEN PEND-
10 ING AT EACH STAGE OF THE PROCESS.

11 (12) WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDA-
12 TORY ACT THAT ADDED THIS SUBSECTION, THE GOVERNOR SHALL EITHER
13 REAPPOINT OR REPLACE THE MEMBERS OF THE CERTIFICATE OF NEED BOARD
14 CREATED BY FORMER SECTION 22121(2) WHO HAVE SERVED THEIR FULL
15 DESIGNATED TERMS.

16 (13) ~~-(12)-~~ If the department exceeds the time frames set
17 forth in this section for other than good cause, as determined by
18 the commission, upon the written request of an applicant, the
19 department shall return to the applicant all of the certificate
20 of need application fee paid by the applicant under section
21 20161(2).

22 Sec. 22232. (1) The applicant may, within 15 days after
23 receipt by the applicant of the bureau's proposed decision or
24 receipt of notice of reversal by the director of a proposed deci-
25 sion that is an approval, submit a written request for a hearing
26 to demonstrate to the department that the application filed by

1 the applicant meets the requirements for approval under this
2 part.

3 (2) The department shall appoint a hearing officer for a
4 hearing held under this section. The hearing officer shall
5 establish a schedule for the hearing, control the presentation of
6 proofs, and take such other action determined by the hearing
7 officer to be necessary to ensure that the hearing is conducted
8 in an expeditious manner and completed within a reasonable period
9 of time. The hearing officer shall convene the hearing within 90
10 days after receipt of a request for a hearing under this
11 section. Upon written request by a party, a hearing officer may
12 issue subpoenas requiring the attendance and testimony of wit-
13 nesses and the production of evidence. The department shall
14 establish appropriate qualifications for hearing officers
15 appointed under this section. IF AN APPLICANT DOES NOT PROCEED
16 WITH AN APPEAL AT A HEARING HELD UNDER THIS SECTION, THE APPLICA-
17 TION IS CONSIDERED TO BE WITHDRAWN.

18 (3) If a hearing is requested under this section, chapter 4
19 of the administrative procedures act of 1969, Act No. 306 of the
20 Public Acts of 1969, being sections 24.271 to 24.287 of the
21 Michigan Compiled Laws, shall ~~govern~~ GOVERNS.

22 (4) FOLLOWING THE CONCLUSION OF A HEARING HELD UNDER THIS
23 SECTION, A HEARING OFFICER APPOINTED UNDER SUBSECTION (2) SHALL
24 PROMPTLY SUBMIT A PROPOSAL FOR DECISION TO THE DEPARTMENT. IN NO
25 CASE SHALL A HEARING OFFICER SUBMIT A PROPOSAL FOR DECISION UNDER
26 THIS SUBSECTION MORE THAN 30 DAYS AFTER THE FILING BY THE PARTIES
27 OF EXCEPTIONS AND REPLIES AND THE FULFILLMENT OF OTHER HEARING

1 PROCEDURES REQUIRED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF
2 1969.

3 (5) THE DEPARTMENT SHALL SUBMIT A BIENNIAL REPORT ON THE
4 STATUS OF ALL APPEALS PENDING UNDER THIS PART TO THE COMMITTEES
5 OF THE LEGISLATURE WITH RESPONSIBILITY FOR HEALTH ISSUES. THE
6 REPORT SHALL INDICATE THE PRECISE STATUS OF EACH PENDING APPEAL,
7 INCLUDING HOW MUCH TIME THE APPEAL HAS BEEN PENDING AT EACH STAGE
8 OF THE PROCESS.

9 Sec. 22237. As a condition precedent to the issuance of a
10 certificate of need, the department may require that ~~a health~~
11 ~~facility~~ AN APPLICANT provide the department with data and sta-
12 tistics determined necessary by the department AND THE COMMISSION
13 to carry out departmental duties required under this part, if the
14 data and statistics have not already been reported to the depart-
15 ment in a usable format.

16 Sec. 22239. A certificate of need ~~shall cease~~ CEASES to
17 be effective if the certificate of need approval was based on a
18 stipulation that the project would participate in title XIX ~~of~~
19 ~~the social security act, 42 U.S.C. 1396 to 1396d, 1396f to~~
20 ~~1396s,~~ and the project has not participated in ~~the medicaid~~
21 ~~program~~ TITLE XIX for not less than 12 consecutive months within
22 the first 2 years of operation. ~~A stipulation described in this~~
23 ~~section is germane only to a proposed hospital project.~~ AS USED
24 IN THIS SECTION, "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECUR-
25 ITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g AND
26 1396i TO 1396u.

1 Sec. 22241. (1) For purposes of this section and sections
2 22243 and 22245, "new technology" means medical equipment that
3 requires, but has not yet been granted, the approval of the fed-
4 eral food and drug administration for commercial use.

5 (2) The period ending 12 months after the date of federal
6 food and drug administration approval of new technology for com-
7 mercial use shall be considered the new technology review
8 period. A person shall not acquire new technology before the end
9 of a new technology review period, unless 1 of the following
10 occurs:

11 (a) The department, with the concurrence of the commission,
12 issues a public notice that the new technology will not be added
13 to the list of covered medical equipment during the new technol-
14 ogy review period. The notice may apply to specific new technol-
15 ogy or classes of new technology.

16 (b) The person complies with the requirements of section
17 22243.

18 (c) The commission approves the addition of the new technol-
19 ogy to the list of covered medical equipment, and the person
20 obtains a certificate of need for that covered medical
21 equipment.

22 (3) To assist in the identification of new medical technol-
23 ogy in the earliest possible stage of its development, the
24 ~~department and the office~~ COMMISSION shall appoint a standing
25 new medical technology advisory committee. ~~THE~~ THE COMMITTEE
26 SHALL BE composed of: ~~representatives~~

1 (A) PERSONS KNOWLEDGEABLE IN MEDICAL TECHNOLOGY, WHO SHALL
2 CONSTITUTE A MAJORITY OF THE COMMITTEE.

3 (B) REPRESENTATIVES of health care provider organizations
4 concerned with licensed health facilities or licensed health
5 professions. ~~and other persons knowledgeable in medical~~
6 ~~technology.~~

7 (C) REPRESENTATIVES OF ORGANIZATIONS CONCERNED WITH HEALTH
8 CARE CONSUMERS.

9 (D) REPRESENTATIVES OF PURCHASERS AND PAYERS OF HEALTH
10 CARE.

11 (4) THE COMMISSION SHALL APPOINT THE NEW MEDICAL TECHNOLOGY
12 ADVISORY COMMITTEE WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF
13 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

14 Section 2. Upon the expiration of 4 years after the effec-
15 tive date of this amendatory act, part 222 of Act No. 368 of the
16 Public Acts of 1978, being sections 333.22201 to 333.22260 of the
17 Michigan Compiled Laws, is repealed.