

SENATE BILL No. 724

February 25, 1988, Introduced by Senators SCHWARZ, IRWIN, SHINKLE, MACK, EHLERS, ARTHURHULTZ and BARCIA and referred to the Committee on Health Policy.

A bill to amend sections 22113, 22131, and 22136 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 22131 as amended by Act No. 252 of the Public Acts of 1984, being sections 333.22113, 333.22131, and 333.22136 of the Michigan Compiled Laws; and to add sections 22109 and 22133.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 22113, 22131, and 22136 of Act No. 368
2 of the Public Acts of 1978, section 22131 as amended by Act
3 No. 252 of the Public Acts of 1984, being sections 333.22113,
4 333.22131, and 333.22136 of the Michigan Compiled Laws, are
5 amended and sections 22109 and 22133 are added to read as
6 follows:

1 SEC. 22109. "SHORT TERM NURSING CARE" MEANS NURSING CARE
2 PROVIDED IN A HOSPITAL TO A PATIENT WHO HAS BEEN DISCHARGED FROM
3 AN ACUTE CARE BED.

4 Sec. 22113. (1) Except as provided by this part and rules
5 promulgated under this part, a person shall not begin operation
6 of a new health facility, make a change in bed capacity, make a
7 change in service, ADD BEDS TO A SHORT TERM NURSING CARE PROGRAM
8 THAT ARE IN ADDITION TO THE BEDS AUTHORIZED BY A CERTIFICATE OF
9 NEED GRANTED UNDER SECTION 22133(1), or undertake a capital
10 expenditure for the construction, conversion, addition to, or
11 modernization ~~in excess of \$150,000.00~~ of a health facility or
12 make a commitment for financing the offering or development of a
13 new institutional health service without first obtaining a cer-
14 tificate of need which documents a demonstrated need and grants
15 permission for the proposed project.

16 (2) A PERSON SHALL NOT ESTABLISH A SHORT TERM NURSING CARE
17 PROGRAM WITHOUT FIRST OBTAINING A CERTIFICATE OF NEED.

18 (3) ~~(2)~~ Except as provided in section 22102(4)(b), a cer-
19 tificate of need is not required for a health facility to reduce
20 its scope of services or bed capacity.

21 (4) ~~(3) Recommendations made by the health systems agency~~
22 ~~and decisions~~ DECISIONS made by the department under the certif-
23 icate of need program shall specify approval of the application,
24 disapproval of the application, or approval of the application
25 with conditions, if the conditions are explicit and the condi-
26 tions specify a time, not to exceed 1 ~~years~~ YEAR, by which the
27 conditions shall be met. ~~Before issuing a certificate of need~~

~~1 with conditions, the department shall provide the appropriate~~
~~2 health systems agency with a list of the proposed conditions for~~
~~3 review.~~

4 (5) ~~(4)~~ A certificate of need shall not be required for a
5 change in service in a TERTIARY HEALTH CARE SERVICE facility.
6 ~~defined in section 22108(3).~~

7 Sec. 22131. (1) In making determinations and conducting
8 reviews for certificates of need, EXCEPT FOR A CERTIFICATE OF
9 NEED GRANTED UNDER SECTION 22133(1), the department and a health
10 systems agency shall apply at least the following criteria:

11 (a) The relationship of the health care facilities or serv-
12 ices being reviewed to the health systems plan and annual imple-
13 mentation plan, if any, for all health services areas to be
14 served.

15 (b) The relationship of the health care facilities or serv-
16 ices being reviewed to the long-range development plan, if any,
17 of the person providing or proposing the facility or service.

18 (c) The need of the population served or to be served for
19 the health care facilities or services being reviewed.

20 (d) The feasibility and availability of less costly alterna-
21 tives or more effective methods of providing the health care
22 facilities or services being reviewed.

23 (e) The relationship of the health care facilities or serv-
24 ices being reviewed to the existing health care system of the
25 health services areas in which the facilities or services are
26 provided or proposed, including the probable impact on the costs
27 of providing health services in the areas served.

1 (f) In the case of health care facilities or services
2 proposed under a certificate of need or other application, the
3 availability or the potential availability of resources, includ-
4 ing health personnel, management personnel, and funds for capital
5 and operating needs for the provision of the facilities or serv-
6 ices, and the potential for alternative uses of those resources
7 for the provision of other health care services.

8 (g) The special needs and circumstances of institutional
9 health care facilities and other entities which provide a sub-
10 stantial part of their services or resources to individuals not
11 residing in the health service areas in which the facilities or
12 other entities are located or in adjacent areas. The entities
13 may include medical and other health professional schools, multi-
14 disciplinary clinics, and specialty centers.

15 (h) The special needs and circumstances of health mainte-
16 nance organizations, including all of the following:

17 (i) The availability of the proposed service from a provider
18 of health care other than the health maintenance organization on
19 a long-term basis, at reasonable terms, and in a cost-effective
20 manner consistent with the health maintenance organization's
21 basic method of operation.

22 (ii) The long-term needs of the health maintenance organi-
23 zation, and its current and expected future membership.

24 (iii) The long-term impact of the proposed service on health
25 care costs in the health maintenance organization's service
26 area.

1 (i) In the case of a construction project proposal, the
2 costs and methods of financing the proposed project; the probable
3 impact of the project reviewed on the costs of providing health
4 services by the applicant; and the specific requirements of law
5 for building, zoning, fire, and safety standards and other per-
6 mits and inspections applicable to the project.

7 (j) The degree to which the residents and physicians of the
8 immediate community and region affected are provided access to
9 the services and programs of the health facility applying for the
10 certificate of need.

11 (k) The special needs and circumstances of biomedical and
12 behavioral research projects which are designed to meet a state
13 need and for which local conditions offer special advantages.

14 (l) That the health facility does not discriminate because
15 of race, religion, color, national origin, age, or sex in its
16 operations including employment, patient admission and care, room
17 assignment, and professional or nonprofessional selection and
18 training programs, and that the health facility governing body
19 does not discriminate in its selection and appointment of indi-
20 viduals to the physician staff of the health facility or its
21 training programs on the basis of licensure or registration or
22 professional education as doctors of medicine, osteopathic medi-
23 cine and surgery, or podiatry.

24 (m) That in the case of a nonprofit health facility, the
25 facility is in fact governed by a body composed of a majority
26 consumer membership broadly representative of the population
27 served.

1 (n) When an application is made for a certificate of need to
2 construct or expand an osteopathic or allopathic facility, the
3 need for that facility on the basis of the need and availability
4 in the community for services and facilities for osteopathic and
5 allopathic physicians, other licensed health care professionals,
6 and their patients and the impact of the application for a cer-
7 tificate of need on existing and proposed institutional training
8 programs for doctors of medicine and osteopathy and other
9 licensed health care professionals at the student, internship,
10 and residency training level. This subdivision shall not be con-
11 strued to dictate a departure from good health planning princi-
12 ples or to mandate unnecessary duplication of services or
13 facilities.

14 (2) In order for a certificate of need to be granted to a
15 health facility the following findings shall be made in writing
16 by the department and the health systems agency:

17 (a) As to the efficiency and appropriateness of the use of
18 existing inpatient facilities providing inpatient services simi-
19 lar to those proposed.

20 (b) As to the capital and operating costs, and their poten-
21 tial impact on patient charges, efficiency, and appropriateness
22 of the proposed new institutional health service.

23 (c) That superior alternatives to inpatient services in
24 terms of cost, efficiency, and appropriateness do not exist and
25 that the development of those alternatives is not practical.

26 (d) That in the case of new construction, such as
27 modernization or sharing arrangements, alternatives to new

1 construction have been considered and have been implemented to
2 the maximum extent practicable.

3 (e) That patients will experience serious problems in terms
4 of cost, availability, or accessibility, or other problems iden-
5 tified by the reviewing agency in obtaining inpatient care of the
6 type proposed in the absence of the proposed new service.

7 (f) That in the case of a proposal for the addition of beds
8 for the provision of skilled nursing or intermediate care, the
9 relationship of the addition to the plan of other agencies of the
10 state responsible for providing and financing long-term care has
11 been considered.

12 (3) In case of a church-sponsored health facility or if the
13 nature of the nonprofit health facility is such that the legal
14 rights of its owners or sponsors might be impaired by a require-
15 ment as to the composition of its governing body, an advisory
16 board with majority consumer membership broadly representative of
17 the population served may be construed to be equivalent to the
18 governing board described in subsection (1)(m) if the role
19 assigned to the advisory board is meaningful, its functions are
20 clearly prescribed, and it is given an opportunity to influence
21 policy formulation by the legally recognized governing body.

22 ~~-(4) As used in this section, "consumer" means a person who~~
23 ~~is not a direct provider as defined in section 1531(3)(A) of~~
24 ~~title xv of the public health services act, 42 U.S.C. 300n.~~

25 SEC. 22133. (1) A HOSPITAL THAT APPLIES TO THE DEPARTMENT
26 FOR A CERTIFICATE OF NEED AND IS ELIGIBLE FOR, AND IN COMPLIANCE
27 WITH, THE SWING-BED PROVISIONS OF SECTION 904 OF SUBPART I OF

1 PART A OF TITLE IX OF PUBLIC LAW 96-499, 42 U.S.C. 1395 tt,
2 EXCEPT FOR THE CERTIFICATE OF NEED REQUIREMENT, SHALL BE GRANTED
3 A CERTIFICATE OF NEED FOR A SHORT TERM NURSING CARE PROGRAM WITH
4 UP TO 10 BEDS. A HOSPITAL THAT IS GRANTED A CERTIFICATE OF NEED
5 UNDER THIS SUBSECTION MAY APPLY FOR A SEPARATE CERTIFICATE OF
6 NEED FOR ADDITIONAL BEDS FOR THE SHORT TERM NURSING CARE
7 PROGRAM.

8 (2) A HOSPITAL THAT IS GRANTED A CERTIFICATE OF NEED FOR A
9 SHORT TERM NURSING CARE PROGRAM UNDER SUBSECTION (1) SHALL COMPLY
10 WITH ALL OF THE FOLLOWING:

11 (A) NOT ALLOW THE LENGTH OF STAY FOR A PATIENT IN THE SHORT
12 TERM NURSING CARE PROGRAM TO EXCEED 20 DAYS FOR EACH HOSPITAL
13 ADMISSION.

14 (B) ADMIT PATIENTS TO THE SHORT TERM NURSING CARE PROGRAM
15 ONLY PURSUANT TO AN ADMISSIONS CONTRACT APPROVED BY THE
16 DEPARTMENT.

17 (C) NOT DISCHARGE A PATIENT FROM AN ACUTE CARE BED AND ADMIT
18 THAT PATIENT TO THE SHORT TERM NURSING CARE PROGRAM UNTIL THE DAY
19 AFTER THE AVERAGE LENGTH OF STAY FOR THE DIAGNOSTIC RELATED GROUP
20 CATEGORY UNDER WHICH THE PATIENT WAS ADMITTED TO THE HOSPITAL.

21 (D) PERMIT ACCESS TO A REPRESENTATIVE OF AN ORGANIZATION
22 APPROVED UNDER SECTION 21764 TO PATIENTS ADMITTED TO THE SHORT
23 TERM NURSING CARE PROGRAM, FOR ALL OF THE PURPOSES DESCRIBED IN
24 SECTION 21763.

25 (E) UPON REQUEST, PROVIDE DATA TO THE DEPARTMENT CONSIDERED
26 NECESSARY BY THE DEPARTMENT TO EVALUATE THE SHORT TERM NURSING

1 CARE PROGRAM. THE DATA MAY INCLUDE, BUT IS NOT LIMITED TO, ALL
2 OF THE FOLLOWING:

3 (i) THE TOTAL NUMBER OF PATIENTS ADMITTED TO THE HOSPITAL'S
4 SHORT TERM NURSING CARE PROGRAM DURING THE PERIOD SPECIFIED BY
5 THE DEPARTMENT.

6 (ii) THE TOTAL NUMBER OF PATIENT DAYS FOR THE PERIOD SPECI-
7 FIED BY THE DEPARTMENT, IDENTIFIED BY BOTH THE LEVEL OF CARE AND
8 THE INDIVIDUAL OR OTHER ENTITY THAT PAID FOR THE SHORT TERM NURS-
9 ING CARE SERVICES.

10 (iii) INFORMATION IDENTIFYING THE TYPE OF CARE TO WHICH
11 PATIENTS IN THE SHORT TERM CARE NURSING PROGRAM ARE RELEASED.

12 Sec. 22136. In applying for a certificate of need, an
13 applicant shall include a statement addressing each of the cri-
14 teria established by section 22131. THIS SECTION DOES NOT APPLY
15 TO AN APPLICATION FOR A CERTIFICATE OF NEED MADE UNDER
16 SECTION 22133(1).