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0228 Certificate of Public Necessity

**REPORT TO THE GOVERNOR
AND THE GENERAL ASSEMBLY:**

CERTIFICATE OF PUBLIC NECESSITY



**REPORT OF THE COMMITTEE ON
CERTIFICATE OF PUBLIC NECESSITY**

**RESEARCH PUBLICATION NO. 228
COLORADO LEGISLATIVE COUNCIL**

DECEMBER, 1977

CERTIFICATE OF
//
PUBLIC NECESSITY

1. cert. [unclear] [unclear] [unclear]

Final Report
of the
Special Committee on
Certificate of
Public Necessity

Denver, Colorado
December 15, 1977

LETTER OF TRANSMITTAL

December 15, 1977

Honorable Richard D. Lamm, Governor
Members of the 51st General Assembly

Pursuant to House Bill 1580, adopted in the 1977 session of the General Assembly, the special Committee on the Certificate of Public Necessity submits this report with recommendations for amendments to Colorado's Certificate of Public Necessity Act (Part 5 of Article 3 of Title 25, Colorado Revised Statutes, 1973, as amended). The committee recommends that this item be placed on the Governor's agenda for the 1978 Session.

Committee members, the organizations which they represent, and the appointing authorities follow:

| <u>Member</u> | <u>Representing</u> | <u>Appointing Authority</u> |
|--|----------------------------------|-----------------------------------|
| Representative Frank Traylor, Chairman | House of Representatives | Speaker, House of Representatives |
| Mary Gittings Vice-Chairman | Health Systems Agency 1 | Governor |
| Senator William Hughes | Senate | President, Senate |
| Senator Harvey Phelps | Senate | President, Senate |
| Representative Douglas Wayland <u>1/</u> | House of Representatives | Speaker, House of Representatives |
| Max Brown, Jr. | Health Maintenance Organizations | Governor |
| Alice Bryant | Office of the Governor | Governor |
| Frank Casias | Health Systems Agency 3 | Governor |

1/ Appointed to replace former Representative Wellington Webb, October, 1977.

| <u>Member</u> | <u>Representing</u> | <u>Appointing Authority</u> |
|------------------------|--|-----------------------------|
| Fred E. Graham | Health Systems Agency 2 | Governor |
| Gerald Kopel | Health Care Consumer | Governor |
| Dr. Joe Pickle, Ph. D. | Health Care Consumer | Governor |
| Michael Schonbrun | State Department of Health | Governor |
| David Sheehan | Non-profit Hospital & Health Service Corporation | Governor |
| William F. Smith | Nursing Home Industry | Governor |
| Carol Tempest | Hospital Industry | Governor |
| John M. Wood, M.D. | Medical Profession | Governor |

The National Health Planning and Resources Development Act of 1974, Public Law 93-641 (42 U.S.C. §§ 300k to 300t), enacted January 4, 1975, requires that all states establish certificate of need (CN) programs by 1980 or be subject to the loss of substantial amounts of federal health funds. The final CN regulations, with which all state statutes and programs are to comply, were published in the January 21, 1977, Federal Register (42 Fed. Reg. 4002), with amendments published on April 8, 1977.

Colorado was one of the first states to voluntarily adopt, in 1973, a certificate of public necessity law, and did so prior to the enactment of PL 93-641. Because Colorado already had a state certificate of need statute, the committee's primary objective was to identify those areas in which Colorado's law did not comply with PL 93-641.

The bill recommended in this report has been prepared to comply with all of the requirements of the federal statute, PL 93-641, and the final regulations. The only substantive amendments which are recommended are necessitated by the federal regulations and technical changes are made to conform with the substantive amendments.

The bill is presented with comments which refer to variances between present Colorado law and the federal statutes and regulations. Citations to the federal law and regulations are noted wherein amendments to Colorado's law would be required. The title of the bill appears in brackets because at the time of this writing the final bill title had not been determined.

Honorable Richard D. Lamm, Governor
Members of the 51st General Assembly
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The committee was assisted in its deliberations by Mr. William B. Twine, Public Health Advisor, Department of Health, Education and Welfare, who attended all meetings to respond to questions on compliance of Colorado's statute with the federal law and to explain the intent of the federal law and regulations.

Staff services for the committee were provided by Joyce Emerson and Denise Jones of the Legislative Council staff, and by Sue Burch of the Legislative Drafting Office.

Respectively submitted,

/s/ Representative Frank Traylor
Chairman,
Special Committee on Certificate
of Public Necessity

FT/vjk

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TEXT

COMMENTS

1 [CONCERNING AMENITMENTS TO THE "COLORADO CERTIFICATE OF PUBLIC
1a NECESSITY ACT']

Bill Summary

Makes numerous amendments to the "Colorado Certificate of Public Necessity Act" in order to bring its provisions into compliance with P.L. 93-641 and the regulations issued pursuant thereto. Includes numerous technical amendments necessitated by the substantive amendments.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. Part 5 of article 3 of title 25, Colorado
4 Revised Statutes 1973, as amended, and as further amended by
5 Session Laws of Colorado 1977, is REPEALED AND REENACTED, WITH
6 AMENDMENTS, to read:

7 PART 5

8 CERTIFICATE OF PUBLIC NECESSITY

9 25-3-501. Short title. This part 5 shall be known and
10 may be cited as the "Colorado Certificate of Public Necessity
11 Act".

12 25-3-502. Legislative declaration. (1) The general
13 assembly finds that the construction or modification of health

Legislative Intent

Language in the intent section clearly reflects the objectives of P.L. 93-641, and restates goals and objectives of the Colorado certificate of need program.

1 care facilities is a factor in the cost of care and the
2 financial ability of the public to obtain necessary medical
3 services and that the inappropriate increase in the number of
4 health care facilities, services, and equipment adds
5 unnecessarily to the cost of health care.

6 (2) The general assembly hereby finds that the health
7 facilities review council is an agency of state government.

(2) This language makes it clear that the Colorado Health Facilities Review Council is an agency of state government with characteristics of a state agency such as final decision-making authority on certificate of need applications, subject to appeal to the State Board of Health, and clearly definable duties and functions.

-2-

8 (3) (a) In enacting this part 5, it is the intent of the
9 general assembly to promote comprehensive health planning as
10 contemplated by federal or state law; to assist in providing
11 the highest quality of health care at the lowest possible cost;
12 to avoid unnecessary duplication by ensuring that only those
13 health care facilities that are needed will be built or
14 modified; to provide an orderly method of resolving questions
15 concerning the necessity of construction or modification of
16 facilities and manpower whenever possible; to reduce or
17 eliminate existing duplication and shortages of health care

1 facilities and manpower whenever possible; to provide an
2 orderly method for the replacement of nonconforming beds, as
3 specified in section 25-3-506 (1) (d), with new beds in
4 localities where they are needed; and finally, to recognize
5 that the coordinated development of health care facilities and
6 services, of desirable size and location, which are responsive
7 to the legitimate needs of consumers, providers, and
8 governments and the encouragement of more efficient,
9 economical, and effective system for organizing, financing, and
10 providing health care are worthy goals.

11. (b) In addition, the general assembly intends that the
12 enactment of this part 5 will promote the development of
13 multiinstitutional systems that will coordinate and consolidate
14 the delivery of institutional health care and
15 multiinstitutional arrangements for the sharing of support
16 services to provide appropriate alternatives to long-term
17 institutional health care and the development of the capacity
18 to provide various levels of care on a geographically
19 integrated basis. This part 5 therefore sets forth review
20 criteria and procedures to evaluate the need for new and

1 expanded health care facilities and equipment, including
2 criteria to control the purchase of expensive equipment and
3 services, that will ensure that health care services are
4 provided at a fair and reasonable cost and to ensure that
5 hospital facilities and equipment are most efficiently and
6 effectively utilized, that unnecessary duplication and
7 fragmentation of health care services and facilities are
8 minimized, and that health care services and facilities meet
9 high quality standards.

10 25-3-503. Definitions. As used in this part 5, unless
11 the context otherwise requires:

12 (1) "Council" means the Colorado health facilities review
13 council created by section 25-3-504.

14 (2) "Department" means the department of health.

15 (3) "Health care facility" means any facility required to
16 be licensed by part 1 of this article or to have a certificate
17 of compliance by section 25-1-107 (1) (1) (II) and includes but
18 is not limited to ambulatory surgical facilities, as such
19 facilities are defined by Public Law 93-641 or regulations
20 issued pursuant thereto.

Definitions

(1) Defines the "Colorado Health Facilities Review Council" (presently operating under the name "Colorado Health Facilities Advisory Council").

The definition of "Health care facility" determines what services are subject to CN review (at least under minimum federal criteria - 123.401). Covered facilities would include the minimum requirement of hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facility, intermediate care facility, ambulatory surgical facility, and kidney disease treatment centers. The definition, by reference, would include all facilities presently requiring licenses or certificates from the Department of Health.

1 (4) "Health maintenance organization" means a public or
2 private organization organized under the laws of this state
3 which provides or otherwise makes available to enrolled
4 participants health care services, including at least usual
5 physicians' services, hospitalization, laboratory, X-ray,
6 emergency and preventive services, and out-of-area coverage; is
7 compensated, except for copayments, for the provision of the
8 basic health care services specified in this subsection (4) by
9 enrolled participants on a predetermined periodic rate basis;
10 and provides physicians' services primarily directly through
11 physicians who are either employees or partners of such
12 organization or through arrangements with individual physicians
13 or one or more groups of physicians, organized on a group
14 practice or individual practice basis.

15 (5) "Health systems agency" means a conditionally or
16 fully designated health systems agency designated pursuant to
17 section 1515 of the federal "Public Health Service Act" and 42
18 CFR Part 122.

19 (6) "Health service area" means an area designated by the
20 secretary of health, education, and welfare pursuant to section

(4) Definition of "health maintenance organization" is based on federal definition. A separate definition of IMO, as distinguished from "health care facility", is provided in order to clearly identify sections of the CN program which apply to IMO's.

1 1511 of the federal "Public Health Service Act", 42 U.S.C. 201
2 et seq.

3 (7) "Predevelopment certificate" means the certificate
4 required by section 25-3-507 for predevelopment activities
5 costing more than one hundred fifty thousand dollars.

6 25-3-504. Colorado health facilities review council
7 created. (1) (a) There is hereby created the Colorado health
8 facilities review council which shall direct the department of
9 health in carrying out the purposes of this part 5 and shall
10 advise the department regarding the state plans developed to
11 carry out Public Law 93-641. The council shall consist of
12 eighteen members appointed by the governor who shall be
13 representatives of organizations, groups, and consumers.

14 (b) Each member shall hold office for a term of three
15 years, except that any member appointed to fill a vacancy
16 occurring prior to the expiration of the term for which his
17 predecessor was appointed shall be appointed for the remainder
18 of such term. The terms of office of the members first taking
19 office shall expire as designated by the governor at the time
20 of appointment, six at the end of the first year, six at the

Colorado Health Facilities
Review Council I/

(1)(a) Colorado Health Facilities Review Council is created as the state agency responsible for the CN program. References in current law to responsibilities for other federal programs have been stricken as laws have been superseded by P.L. 93-641.

No change in present composition of council.

(b) No change in present terms of members.

I/ Formerly the "State Advisory Hospital and Mental Retardation Facilities and Community Mental Health Centers Council" (Section 25-3-402).

1 end of the second year, and six at the end of the third year
2 after the appointment.

3 (c) Council members, while serving on business of the
4 council, shall receive no compensation but shall be reimbursed
5 for their actual and necessary traveling and subsistence
6 expenses while serving away from their places of residence.

7 (d) The council shall select its own officers from among
8 the members of the council and establish bylaws, rules, and
9 regulations for its own procedure.

10 (2) The council shall meet as often as necessary on call
11 of the chairman or of three members and shall direct the
12 department in carrying out the purposes of this part 5.

13 (3) The executive director of the department shall
14 employ, with the prior approval of the council, subject to the
15 provisions of section 13 of article XII of the state
16 constitution, such technical and clerical staff as may be
17 necessary to assist the council in the discharge of its duties
18 pursuant to this article.

19 (4) The general assembly shall appropriate annually to
20 the department for the activities of the council a sum

(2) The council would have final decision-making authority on CN applications, subject to appeal to Board of Health. The Council's responsibilities would not extend to other functions such as licensure.

(3) Requires the Executive Director of the Department of Health to hire staff for the council.

1 sufficient to provide for the operation of the council.

2 25-3-505. Duties of the council. (1) In addition to the
3 duties prescribed elsewhere in this part 5, the council shall:

4 (a) Publish initially the scope of coverage of the
5 state's certificate of public necessity in one or more
6 newspapers of general circulation in this state and any change
7 in such scope and disseminate such information to all health
8 care facilities and health maintenance organizations;

9 (b) Issue an annual report containing the review of
10 applications in progress and the status of each such review,
11 the reviews completed since the last published report, and a
12 general statement of the findings and decisions made in the
13 course of such reviews.

14 25-3-506. Certificate of public necessity required -
15 when. (1) A certificate of public necessity from the council
16 shall be required for:

17 (a) The construction, development, or other establishment
18 of any new health care facility or health maintenance
19 organization, excepting therefrom any facility whose primary
20 purpose relates to residential care;

Duties of Council

(a) Federal regulation 123.404 (c) re-
quires publication of scope of program.
Paragraph (a) would require the initial
publication of the scope of coverage and
subsequent publication of modifications
in the scope.

Activities Which Require a Certificate of Public Necessity

(a) Federal regulation (123.404
(a)(1)) requires a certificate for "con-
struction, development, or other establish-
ment" of a new health care facility or HMO.

1 (b) Any capital expenditure of one hundred thousand
2 dollars or more by or on behalf of a health care facility or
3 health maintenance organization, including acquisition by lease
4 or donation which would have required a certificate of public
5 necessity had such acquisition been by purchase but excluding
6 expenditures for site acquisition;

7 (c) Any real property leasing expenditure or any
8 equipment lease expenditure of ten thousand dollars or more per
9 year;

10 (d) The replacement of beds or bed facilities not
11 conforming to federal, state, or local standards with beds or
12 bed facilities so conforming;

(b) The federal minimum requires review of all capital expenditures, except for site acquisition, by or on behalf of an HFC or HFO which exceeds \$150,000 (123.404 (a) (2)). Current state law includes a \$100,000 threshold which is linked to other conditions, one of which must exist in order for the law to be applicable (25-3-503 (1) (b) (I) through (V)).

The committee bill establishes an independent threshold for a capital expenditure of \$100,000 or more, excluding expenditures for site acquisition.

Federal regulation 123.404 (a) (2) includes "acquisitions by lease or donation, which would have required review had they been by purchase". The committee bill would require a certificate for acquisition by lease or donation valued at \$100,000 or more.

(c) Current law includes real property or equipment leases of \$10,000 per year or more or a modification or lease of health care facilities which exceeds \$100,000 and one of five factors 25-3-503 (1) (b) (I) through (V).

The committee bill establishes an independent threshold for review of a real property lease or equipment lease valued at \$10,000 or more.

(d) Requires review of replacement of nonconforming beds without regard to expenditure.

1 (e) A change in licensure category;

2 (f) Utilization of any existing health care facility for
3 provision of health care services, which facility currently is
4 not licensed or certified by the department;

5 (g) A change in health care service or the offering of a
6 new health care service in or through a health care facility or
7 health maintenance organization, except home health care
8 services, irrespective of the capital expenditures or lease
9 limitations of paragraph (c) of this subsection (1);

10 (h) A change in the bed capacity of a health care
11 facility or health maintenance organization which increases
12 such capacity (or distributes beds among various categories or
13 relocates such beds from one physical facility or site to
14 another) by more than ten beds or more than ten percent of the
15 existing bed capacity, whichever is less, over a period of two
16 years;

17 (i) The purchase, lease, or acquisition of a single piece
18 of diagnostic or therapeutic equipment by any person or
19 persons, except health care facilities, for the purpose of
20 providing health care, involving a capital expenditure of, or

(e) Requires reviews of a change in licensure category without regard to expenditure.

(f) Current law

(g) Federal regulation 123.404 (a) (4) requires reviews of new services even if they involve no or minimal capital expenditures. Home health care is exempted.

(h) Federal regulation 123.404 (a) (3) (April 8, 1977 amendment) defines a "substantial bed change" as more than 10 beds or more than 10 percent, whichever is less, over a two-year period.

(i) Current law

1 the lease of equipment valued at, two hundred thousand dollars
2 or more;

3 (j) The sale, lease, or other transfer of ownership of a
4 controlling interest of a health care facility, but the
5 certificate of public necessity for such sale, lease, or
6 transfer of ownership of a controlling interest shall be
7 required only for those prospective purchasers or lessors of
8 hospitals, skilled nursing care facilities, or intermediate
9 care facilities upon a determination by the council, within
10 sixty days after the application therefor pursuant to section
11 24-4-105, C.R.S. 1973, that said purchaser or lessor has
12 provided an inferior quality of care or that the sale or other
13 transfer of ownership of equipment used in providing health
14 care in such a hospital or care facility, which sale or
15 transfer of ownership involves a market value of, a capital
16 expenditure of, or a lease of equipment valued at one hundred
17 thousand dollars or more. This paragraph (j) shall not apply
18 to licensed general hospitals.

19 25-3-507. Predevelopment certificate required - when.

20 (1) A predevelopment certificate from the council shall be

(j) Current law

Predevelopment Certificates

Federal regulation 123-404 (b)
includes an independent threshold for

1 required for health care facilities and health maintenance
2 organizations for predevelopment activities requiring an
3 expenditure of more than one hundred fifty thousand dollars and
4 for any arrangement or commitment for financing the offering or
5 development of a new institutional health service. Such
6 certificate shall be granted for a period of up to one year and
7 may be renewed at the council's discretion. For the purposes
8 of this section, "predevelopment activities" include the
9 preparation of architectural designs, plans, working drawings,
10 and specifications.

11 (2) The criteria to be used for predevelopment
12 certificate review shall be substantially the same as for
13 certificate of public necessity review, subject to the relation
14 of such criteria to the predevelopment phase. The procedure
15 for application for a predevelopment certificate shall conform
16 with the procedures provided in sections 25-3-508 and 25-3-509.

17 (3) The council shall make written findings regarding its
18 decision on an application for a predevelopment certificate,
19 and appeal from a decision of the council may be taken in
20 accordance with the procedure provided in section 25-3-512.

"predevelopment activities in excess of \$150,000 (or a lesser amount as specified) and arrangements and commitments for financing". Current law does not require an applicant to obtain a certificate for predevelopment activities.

Establishes a separate certificate for "predevelopment activities" requiring an expenditure of more than \$150,000 and for arrangements or commitments for financing the offering or development of a new institutional health service. Certificates would be granted for a one-year period and are renewable at the council's discretion.

Includes in the definition of predevelopment activity: expenditures for architectural designs, plans, working drawings, and specifications.

(2) Establishes criteria and a system for review similar to regular CN process.

(3) Provides for written findings on the application and an appeal procedure similar to the appeal procedure established for the regular CN process.

1 25-3-508. Application for certificate of public
2 necessity. An application for a certificate of public
3 necessity shall be submitted to the council. Upon receipt of
4 an application the council shall send a copy of the application
5 to the appropriate health systems agency for review and
6 recommendation.

7 25-3-509. Recommendation of health systems agency - time
8 limit. Within sixty days after receiving the application, the
9 health systems agency shall make its recommendation to the
10 council. If the health systems agency holds a public hearing on
11 the application, either on its own initiative or pursuant to
12 the request of any interested party, it shall make its
13 recommendation within said sixty-day time period. The health
14 systems agency shall either recommend that the council approve
15 or deny the issuance of a certificate of public necessity. The
16 reasons for the recommendation shall be set forth in detail.
17 Failure of the health systems agency to act within the required
18 time shall be deemed a recommendation for approval of the
19 application.

Application - Procedures

Applications, upon receipt by the council, would be sent to HSA for review and recommendation.

HSA - Time Limit

The state program requires an HSA to complete its review in 45 days and that the CN process be completed in 90 days. Federal regulation 123.407 (a) (2) allows 60 days for the HSA to complete review. Language is similar to current 25-3-506.

25-3-510. Contents of application - minimum requirements.

(1) Every application for a certificate of public necessity shall include at least the following information:

(a) The general geographic area to be served;

(b) The population to be served, as well as projections of population growth;

(c) The anticipated demand for the facility or service to be provided by the proposal;

(d) A description of the construction or modification in reasonable detail, including:

(I) The capital expenditures contemplated;

(II) The estimated annual operating cost, including the anticipated salary cost and numbers of new staff anticipated by the proposal;

(e) So far as is known, the relationship of the proposal to any priorities which have been established for the area to be served;

(f) The availability and manner of financing the proposal including the specific source of funding for contemplated capital expenditures and the time at which any such funding is committed and the estimated date of commencement and completion of the project;

Contents of Application

Federal regulation 123.407 (a) (3) permits the state agency to determine the format and content of applications. Language in committee bill is similar to current law.

1 (g) Cost per patient day by type of care at various
2 levels of occupancy and a comparison of such costs with
3 facilities in use;

4 (h) Other information that may be required under Public
5 Law 93-641.

6 (2) The health systems agency serving the geographic area
7 in which the applicant for a certificate of public necessity is
8 located shall make available to the applicant such information
9 as it may have.

10 (3) Information submitted in any application for a
11 certificate of public necessity shall be supported by relevant,
12 specific, empirical data and statistics, at least to the extent
13 such data and statistics are generally available to the health
14 care industry.

15 25-3-511. Determination by council. (1) To the extent
16 practicable not less than sixty nor more than ninety days
17 following the receipt of the application, the council shall
18 review the application and make one of the following decisions:

19 (a) To approve the issuance of a certificate of public
20 necessity;

Determination by Council

(1) Under federal regulations for schedule of reviews (123.407 (a) (2)), "no review must take longer than 90 days". Extensions are possible, if the state agency adopts criteria for extensions. (See subsection (3)).

1 (b) To reject the application for a certificate of public
2 necessity.

3 (2) Failure of the council to comply with the time
4 limitations prescribed in subsection (1) of this section shall
5 be deemed disapproval of the application, and a certificate of
6 public necessity shall not be issued.

7 (3) The council shall adopt criteria for determining when
8 it would not be practicable to complete a review within ninety
9 days.

10 (4) The council shall make detailed written findings
11 which state the basis for all final decisions and such findings
12 shall be sent to the applicant and the appropriate health
13 systems agency. If the decision of the council is inconsistent
14 with the recommendation of the health systems agency, the
15 council shall set forth in detail the reasons for the
16 inconsistency with said recommendation.

17 (5) Within ten days after the expiration of any time
18 period prescribed for action by the council, the council shall
19 notify the applicant and the health systems agency in writing
20 of the decision or lack of decision on the application for a

(2) Federal regulation 123.407 (a) (15) specifies that when a state agency fails to make a decision within the specified time period, the proposal is deemed "not to be needed".

This provision is not in current state law. In fact, if a decision is not made within the specified time, a project is automatically approved (25-3-507 (3)).

(4) Federal regulation 123.407 (a) (5) requires that written findings be sent to applicant and the HSA. Section 123.407 (a) (9) requires the state agency to set forth in writing reasons for inconsistency with an HSA recommendation.

(5) Current law

1 certificate of public necessity and shall issue a certificate
2 of public necessity for applications approved.

3 25-3-512. Appeal. (1) A decision of the council to
4 approve the issuance of or denial of a certificate of public
5 necessity may be appealed to the state board of health within
6 thirty days after receipt of notice of such decision by:

7 (a) The applicant for the certificate who is aggrieved by
8 an order to deny such certificate;

9 (b) The health systems agency if the decision of the
10 council is contrary to the recommendation of the health systems
11 agency; or

12 (c) Any person aggrieved by the council's failure to act
13 as provided in section 25-3-511 (2). If appeal is taken
14 pursuant to this paragraph (c), the state board of health shall
15 direct the council to hold a hearing on the application within
16 thirty days or at the next regular meeting of the council,
17 whichever period is longer.

18 (2) Not more than thirty days after the filing of a
19 notice of appeal, the state board of health shall set a time
20 (which time shall not be more than sixty-five days after the

Appeal

(1) Identifies potential appel-
lant as: the applicant who is aggrieved;
the health systems agency; or any per-
son who is aggrieved because the council
failed to act on the application result-
ing in a denial of the application.

(c) If an appeal is filed for
"no action", the state board shall
direct the council to hold a hear-
ing on the application within a
specified time period.

(2) Federal regulations re-
quire that an appeal must be re-
quested within 30 days of the state
agency decision and initiated within
30 days of receipt of request.

1 filing of notice of appeal) and place (which place shall be set
2 at the approximate location of the proposed construction,
3 expansion, or modification for which the certificate of public
4 necessity has been requested) for a public hearing on the
5 application. Every hearing shall be conducted in conformity
6 with the provisions of article 4 of title 24, C.R.S. 1973.

7 (3) Within forty-five days after the conclusion of such
8 hearing, the state board of health shall make written findings
9 stating the basis for its decision.

10 (4) The decision of the state board of health on such
11 appeal or of the council if there is no appeal shall be final,
12 subject to the provisions of section 24-4-106, C.R.S. 1973.

13 25-3-513. Expiration of certificate - extensions -
14 grievances. (1) A certificate of public necessity shall expire
15 if the construction or modification is not commenced within
16 twelve months following the issuance of such certificate or is
17 not completed within twelve months of the estimated time for
18 completion of construction or modification as shown in the
19 application; except that the council may grant an extension of
20 a certificate of public necessity if good cause is shown why

(3) Federal regulations require
written findings within 45 days after
the conclusion of hearing.

(4) The state Board of Health
is final authority on appeal sub-
ject to judicial review.

Extensions

(1) No change.

1 the proposed construction or modification has not commenced or
2 been completed.

3 (2) (a) The holder of a valid certificate of public
4 necessity issued under this part 5, at the end of each
5 ninety-day period after being granted a certificate of public
6 necessity, in written letter format, shall notify the council
7 of the status of the project for which such certificate was
8 granted. Such notification is intended to be only an informal
9 communication to insure that the council is kept aware of the
10 progress of the project for which such certificate was granted.

11 If the holder of such certificate desires an extension of such
12 certificate, he shall file an application for an extension with
13 the council at least three months prior to the expiration of
14 the certificate; except that an application for an extension of
15 a certificate may be filed less than three months prior to
16 expiration if the proposed construction or modification cannot
17 be commenced or completed due to an emergency, including a
18 natural disaster, labor dispute, or other situation beyond the
19 applicant's control.

1 (b) Upon receipt of an application for extension, the
2 council shall send a copy to the health systems agency for
3 review and recommendation within thirty days.

4 (3) No less than thirty nor more than sixty days after
5 receiving an application for an extension, the council shall
6 make one of the following decisions:

7 (a) To grant an extension of the certificate of public
8 necessity for an additional specified time period of up to
9 twelve months; or

10 (b) To deny an extension of the certificate of public
11 necessity.

12 (4) A decision of the council to approve or deny an
13 application for an extension of a certificate of public
14 necessity may be appealed by the applicant who is aggrieved by
15 such decision or by the appropriate health systems agency to
16 the state board of health within forty-five days after receipt
17 of notice of such decision.

18 (5) Not more than forty-five days after the filing of a
19 notice of appeal, the state board of health shall set a time
20 (which time shall not be more than sixty-five days after the

(b) Establishes a timetable for health systems agency to review and make a recommendation on an application for extension.

(3) Allows 30 days for HSA review and requires council action after 30 days of receipt of application and within 60 days.

1 filing of notice of appeal) and place (which place shall be set
 2 at the approximate location of the proposed construction,
 3 expansion, or modification for which the certificate of public
 4 necessity has been requested) for a public hearing on the
 5 application for extension. Every hearing shall be conducted in
 6 conformity with the provisions of article 4 of title 24, C.R.S.
 7 1973.

8 (6) The decision of the state board of health on such
 9 appeal or of the council if there is no appeal shall be final,
 10 subject to the provisions of section 24-4-106, C.R.S. 1973.

11 (7) The holder of a valid certificate of public necessity
 12 pursuant to this part 5 who desires to substantially change the
 13 information in the original application for which such
 14 certificate was issued shall file a request for amendment with
 15 the council. The request shall be processed as provided in
 16 paragraph (b) of subsection (2) and subsections (3) to (6) of
 17 this section.

18 25-3-514. Development of general principles to govern
 19 agencies - factors. (1) The council shall develop, after
 20 consulting with the health systems agencies and the state

Factors to consider

Federal regulations require the state agency to adopt and utilize, as appropriate, specific criteria for conducting certificate of need reviews

1 health planning agency, general principles to govern health
2 systems agencies and the council in the performance of their
3 duties concerning review of applications for certificates of
4 public necessity. These principles shall provide for the
5 consideration of the following factors and may provide other
6 guidelines not inconsistent herewith:

7 (a) The need of the population in the area for health
8 care facilities and services;

9 (b) Maximum and minimum health care facility bed ratios
10 per one thousand inhabitants of the area, subject to
11 differences in requirements of the various designated areas;

12 (c) The location of existing health care facilities
13 within the area and the relation of such location to the
14 distribution of population within the area;

15 (d) The projected growth and movement of population in
16 the area and the impact of such projections on the proximity of
17 existing health care facilities to projected population
18 distribution in the area;

(123.409). The minimum criteria are these:

1. The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513 (b) (2) and (3), respectively, of the Act (123.409 (a) (1)). (See (1) (i) of committee bill.)

2. The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services (123.409 (a) (2)). (See (1) (o) of committee bill.)

3. The need that the population served or to be served by such services has for such services (123.409 (a) (3)). (See (1) (a) of committee bill.)

4. The availability of less costly or more effective alternative methods of providing such services (123.409 (a) (4)). (See (1) (k) of committee bill.)

5. The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health

services by the person proposing the new institutional health services (123.409 (a) (5)). (See (1) (p) of committee bill.)

6. The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided (123.409 (a) (6)). (See (1) (j) of committee bill.)

7. The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services (123.409 (a) (7)). (See (1) (q) of committee bill.)

8. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services (123.409 (a) (8)). (See (1) (r) of committee bill.)

9. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions, schools, multidisciplinary clinics

1 (e) When an application contemplates adding or replacing
2 beds, the capital expenditures contemplated per new or
3 substituted bed;

4 (f) When an application contemplates adding or replacing
5 beds, the anticipated operating cost per bed per diem;

6 (g) When an application contemplates adding or replacing
7 beds, and the applicant has been operating an existing health
8 care facility in the area, the applicant's operating cost per
9 bed per diem over its last three fiscal years or whatever part
10 of such period such applicant has been operating, which shall
11 be substantiated, to the extent available;

12 (h) The possible economies and improvement in service
13 that may be derived from operation of joint, cooperative, or
14 shared health care resources;

15 (i) The relationship of the proposed construction,
16 modification, or health care services to overall plans for the
17 development of the area including, but not limited to, such
18 state and areawide plans as have been developed pursuant to
19 Public Law 93-641;

20 (j) The availability and adequacy of the area's existing
21 health care facilities and health maintenance organizations

and specialty centers (123.409 (a) (9)). (See (1) (s) of committee bill.)

10. The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of the Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the State Agency pursuant to this subparagraph shall be consistent with standards and procedures established by the Secretary under section 1306 (c) of the Act (see 42 CFR 110.204) (123.409 (a) (10)). (See (1) (t) of committee bill.)

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

1 currently conforming to state and federal standards to meet
2 each of the wide variety of medical needs of the community;

3 (k) The benefits to the community from increasing the
4 availability and adequacy of other health care services in the
5 area such as outpatient, ambulatory, or home care services
6 which may serve as a possible substitution for inpatient care
7 while at the same time providing high quality health care at a
8 lower cost;

9 (l) The development of comprehensive health care services
10 for the community to be served. Such services may be either
11 direct or indirect through formal affiliation with other health
12 programs in the area and may include preventive, diagnostic,
13 treatment, and rehabilitation services. Preference shall be
14 given to health care facilities which will provide the most
15 comprehensive health care services and will include outpatient
16 and other integrated services useful and convenient to the
17 operation of the facility and the community.

18 (m) The gains that may be anticipated from innovative
19 measures proposed by the applicant for improving the
20 organization and provision of health care;

1 (n) Information that may be obtained from the state
2 program established for the purpose of providing for the review
3 and approval of hospital budgets, revenues, or financial
4 requirements, as provided in article 43.9 of title 12, C.R.S.
5 1973;

6 (o) The relationship of the health care services being
7 reviewed to the long-range development plan of the person
8 providing or proposing such services;

9 (p) The immediate and long-term financial feasibility of
10 the proposal as well as the probable impact of the proposal on
11 the costs of and charges for providing health care services by
12 the person proposing the new institutional health services;

13 (q) The availability of resources, including health
14 manpower, management personnel, and funds for capital and
15 operating needs, for the provision of the health care services
16 to be provided and the availability of alternative uses of such
17 resources for the provision of other health care services;

18 (r) The relationship, including the organizational
19 relationship, of the health care services proposed to be
20 provided to ancillary or support services;

offer special advantages (123.409
(a) (11)). (See (1) (u) of committee
bill.)

12. In the case of a con-
struction project --

(i) the costs and methods of
the proposed construction, in-
cluding the costs and methods of
energy provision; and

(ii) the probable impact of
the construction project re-
viewed on the costs of provid-
ing health services by the per-
son proposing such construction
project. (123.409 (a) (12)). (See (1)
(v) of committee bill.)

1 (s) Special needs and circumstances of those entities
2 which provide a substantial portion of their services or
3 resources, or both, to individuals not residing in the health
4 service areas in which the entities are located or in adjacent
5 health service areas. Such entities may include medical and
6 other health professions schools, multidisciplinary clinics,
7 and specialty centers.

8 (t) The special needs and circumstances of health
9 maintenance organizations. Such needs and circumstances
10 include the needs of and costs to members and projected members
11 of the health maintenance organization in obtaining health care
12 services and the potential for a reduction in the use of
13 inpatient care in the community through an extension of
14 preventive health care services and the provision of more
15 systematic and comprehensive health care services. The
16 consideration of a new institutional health service proposed by
17 a health maintenance organization shall also address the
18 availability and cost of obtaining the proposed new
19 institutional health service from the existing providers in the
20 area that are not health maintenance organizations. The

1 criteria established by the council pursuant to this paragraph
2 (t) shall be consistent with standards and procedures
3 established by the secretary of health, education, and welfare
4 under section 1306(c) of the federal "Public Health Service
5 Act",

6 (u) The special needs and circumstances of biomedical and
7 behavioral research projects which are designed to meet a
8 national need and for which local conditions offer special
9 advantages;

10 (v) The costs and methods of proposed construction,
11 including the costs and methods of energy provision, and the
12 probable impact of the construction project reviewed on the
13 costs of providing health care services by the person proposing
14 such construction project.

15 (2) The council shall not grant a certificate of public
16 necessity to a proposed new institutional health service for
17 inpatients unless:

18 (a) It makes written findings as to:

19 (I) The efficiency and appropriateness of the use of
20 existing inpatient facilities providing inpatient services
21 similar to those proposed;

These factors in (1) are merely guidelines to be considered in conducting the review. No affirmative or negative finding is required. Paragraphs (b), (c), (d), (e), (f), (g), (h), (l), (m), and (n) are existing language.

Subsection (2) is a mandatory affirmative finding prior to granting a certificate. This subsection applies to proposed new construction of inpatient facilities and is required by section 123.410 (April 8, 1977 amendment). Current state law requires a rejection of an application upon an affirmative finding of certain specified factors.

1 (II) The capital and operating costs and their potential
2 impact on patient charges, efficiency, and appropriateness of
3 the proposed new institutional health service;

4 (b) It makes written findings that:

5 (I) Superior alternatives to such inpatient services in
6 terms of cost, efficiency, and appropriateness do not exist and
7 the development of such alternatives is not practicable;

8 (II) In the case of new construction, alternatives to new
9 construction, such as modernization or sharing arrangements,
10 have been considered and have been implemented to the maximum
11 extent practicable;

12 (III) Patients will experience serious problems in terms
13 of costs, availability, or accessibility, or such other
14 problems as may be identified by the council, in obtaining
15 inpatient care of the type proposed in the absence of the
16 proposed new service;

17 (IV) In the case of a proposal for the addition of beds
18 for the provision of skilled nursing or intermediate care, the
19 relationship of the addition to the plans of other agencies of

1 the state responsible for providing and financing long-term
2 care, including home health care, have been considered;

3 (V) A significant overcapacity within the state planning
4 and management region in which the new institutional health
5 service is to be located would not exist at the time of
6 completion of the proposed service, excluding therefrom
7 proposed acute inpatient or emergency care facilities located
8 no less than forty-five miles from the closest facility of like
9 nature and health care services proposed to be offered by a
10 health maintenance organization which are not otherwise
11 available to such health maintenance organization in a manner
12 which is cost effective and consistent with the criteria
13 provided in paragraph (t) of subsection (1) of this section;

14 (VI) The project is compatible with applicable standards,
15 plans, or criteria adopted by health systems agencies or the
16 state health planning agency or by the council. Such
17 standards, plans, or criteria shall be developed in conformity
18 with the provisions of subsection (1) of this section.

19 (VII) The proposed capital expenditure is economically
20 feasible and can be accommodated in the patient charge

Paragraphs (V) through (VIII) are
current state law rewritten to fit the
format of the federal regulations.

1 structure of the health care facility or health maintenance
2 organization without unreasonable increases;
3 (VIII) The project will foster cost containment or
4 improved quality of care.

5 (3) (a) In the case of any new institutional health
6 service proposed to be provided by or through a health
7 maintenance organization, the council shall not deny a
8 certificate of public necessity with respect to such service or
9 otherwise make a finding that such service is not needed when
10 the council has granted a predevelopment certificate and the
11 offering of the new institutional health service will be
12 consistent with the basic objectives, time schedules, and plans
13 of the previously approved predevelopment certificate.

14 (b) In considering a certificate of public necessity for
15 health maintenance organizations, the council shall recognize
16 that health maintenance organizations are by nature
17 health-systems oriented and provide comprehensive care while
18 controlling costs. Therefore the council shall give
19 consideration to granting a certificate of public necessity for
20 new health care services to be provided by a health maintenance

(3) Requires granting of certificate to an HMO if a "predevelopment certificate" has been issued as long as there is no change in initial plan (Federal regulation 123.411).

(b) This paragraph (b) gives special recognition to the existence of HMO's as an alternative health system and to their special needs and circumstances. Provides for certain considerations in the review of a proposal of an HMO.

1 organization if it makes findings that such services are not
2 reasonably available from non-health maintenance organization
3 providers in the area. Services shall not be considered
4 reasonably available if:

5 (I) The proposed health care service would not be
6 available for at least a five-year period;

7 (II) The proposed health care service would not be
8 available and conveniently accessible through physicians and
9 other health professionals associated with the health
10 maintenance organization;

11 (III) The alternative service would be dispersed in more
12 than one health care facility for a group practice health
13 maintenance organization of one hundred thousand members or
14 more; or

15 (IV) For any other reason the proposed health care
16 service is not available to the health maintenance organization
17 from non-health maintenance organization providers in a
18 reasonable and cost-effective manner that is consistent with
19 the criteria provided in paragraph (t) of subsection (1) of
20 this section.

1 (4) In applying the general principles to govern review
2 of applications for certificates of public necessity, the
3 health systems agencies and the council shall take into account
4 the extent to which information in any application is supported
5 by relevant, specific, and empirical data and statistics where
6 such data and statistics are available to the industry.

(4) Existing law

7 (5) In reviewing applications for certificates of public
8 necessity, the health systems agencies, the state health
9 planning agency, the council, and the state board of health
10 shall consider only the public need and applicants'
11 capabilities to meet such public need and shall not
12 discriminate against any applicant on the basis of the nature
13 of its ownership.

(5) Existing law

14 25-3-515. Council - additional authority - report. (1)
15 In addition to the other duties of the council specifically set
16 forth in this part 5, the council shall have maximum
17 flexibility in surveying the health care needs of the state and
18 in recommending a program to reduce or eliminate unnecessary
19 duplication of existing health care services and facilities and
20 to encourage the development of health care facilities and

Council - report
Existing law

1 manpower in areas of the state where it determines there is a
2 shortage of such facilities and trained personnel.

3 (2) In carrying out the purposes of this section to
4 recommend a program to reduce or eliminate areas of duplication
5 and shortage of health care facilities and manpower, the
6 council shall solicit and consider the recommendations of the
7 health systems agencies in the areas affected by such
8 duplication or shortage and the state health planning agency.

9 (3) In carrying out its duties under this part 5, the
10 council is empowered to make such investigations and confer
11 with such persons, groups, and agencies as it deems necessary.

12 (4) On or before December 1 of each year, the council
13 shall report to the governor on its activities under this part
14 5 and shall include in such report an analysis of the
15 effectiveness of this part 5 in achieving the legislative
16 purposes set forth in section 25-3-502 and such recommendations
17 as it may have with respect to any legislative changes that may
18 be necessary or desirable.

19 25-3-516. Conflicts of interest - disqualification of
20 vote. (1) Any voting member of the health systems agency or

Conflicts of Interest
Existing law

1 state health planning agency, the council, or the state board
2 of health has the right to vote upon all applications before
3 such member's respective organization and, in so doing, is
4 presumed to act in good faith and in the public interest.

5 (2) Notwithstanding the provisions of subsection (1) of
6 this section, any member of said organizations who has a
7 substantial economic interest which would be affected by said
8 member's vote on an application, or who has a close relative or
9 close economic associate whose interests would be so affected
10 by said member's vote, or who accepts a substantial gift,
11 service, or economic opportunity from a person whose interests
12 would be affected by said member's vote, or who has personal
13 interests which otherwise conflict with the public interest
14 shall declare himself to have a conflict of interests and shall
15 be ineligible to vote upon any application for which a conflict
16 of interests exists.

17 25-3-517. Rules and regulations. The council, after
18 consulting with the state health planning agency and the health
19 systems agencies, shall adopt rules and regulations necessary
20 to implement this part 5. Such rules and regulations shall be

Rules and regulations
Existing law, except reference
to HSA.

1 promulgated and published according to the requirements of
2 section 24-4-103, C.R.S. 1973.

3 25-3-518. Injunction. The council shall seek to enjoin
4 the acquisition of equipment, offering or development of new
5 institutional health services, or construction or modification
6 of a health care facility or health maintenance organization
7 for which a certificate of public necessity has not been issued
8 as required by this part 5.

9 25-3-519. Withholding of license and funds - when. (1)
10 The department shall not license or allocate any funds to a
11 newly constructed health care facility or to a health care
12 facility that has modified its facilities if a certificate of
13 public necessity has not been first obtained as required by
14 this part 5.

15 (2) Nothing in this part 5 shall be construed as
16 authorizing any department or agency of this state to withhold
17 funds previously appropriated by the general assembly to
18 purchase health care services based on the fact that such
19 department or agency has concluded that duplication of health
20 care facilities or services exists in the state.

Injunction

Federal law requires adequate sanctions to ensure that only those services, facilities, and organizations found to be needed shall be offered or developed. This section requires enforcement by injunction.

Withholding of license
Existing law

-36-

1 25-3-520. Violation - penalty. Any person who acquires
2 equipment, offers or develops new institutional health
3 services, or constructs or modifies a health care facility
4 without first having obtained a certificate of public
5 necessity, as required by this part 5, is guilty of a class 1
6 misdemeanor and shall be punished as provided in section
7 18-1-106, C.R.S. 1973.

8 25-3-521. Exclusion. (1) The requirements of this part 5
9 shall not apply with respect to the construction of any new
10 health care facility or any modification of a health care
11 facility:

12 (a) For which has been submitted in good faith the
13 preliminary plan as required by departmental rules and
14 regulations pursuant to section 25-1-107 (1) (1) by or on
15 behalf of a health care facility or health maintenance
16 organization prior to May 30, 1973, and which has commenced
17 construction no later than July 1, 1976, and completed
18 construction no later than July 1, 1977; except that the
19 council may grant an extension for projects excluded by this
20 paragraph (a) upon good cause shown;

Violation - penalty

Provides for a penalty, upon conviction, of from 6 months to 24 months imprisonment or \$500 to \$5,000 fine, or both. (Class 1 misdemeanor)

Exclusion

Existing law

1 (b) Operated by religious groups relying solely on
2 spiritual means through prayer for healing.

3 25-3-522. Transfer of certificate. A certificate of
4 public necessity or any right obtained pursuant to any such
5 certificate may be sold, assigned, leased, or otherwise
6 transferred only upon approval of the council. Such approval
7 shall be secured in accordance with the procedures established
8 for application for such certificate.

9 25-3-523. Effect of part 5. (1) Nothing in this part 5
10 shall preclude consideration of the availability of health care
11 facilities, services, or equipment in a state planning and
12 management region contiguous to the state planning and
13 management region in which the proposed certificate of public
14 necessity will be utilized.

15 (2) Nothing in this part 5 shall prevent compliance with
16 federal requirements made to effect implementation of Public
17 Law 93-641 in the state of Colorado.

18 SECTION 2. 12-43.9-106 (1) (j), Colorado Revised Statutes
19 1973, as enacted by chapter 159, Session Laws of Colorado 1977,
20 is amended to read:

Transfer of certificate
Existing law

Effect of part 5
Existing law

Sections 2, 3, and 4
Technical amendments

1 12-43.9-106. Powers and duties of commission. (1)

2 (j) Consult with other designated state agencies under Public
3 Law 93-641 and health systems agencies concerning the
4 development and implementation of health policies of the state,
5 INCLUDING THE HEALTH FACILITIES REVIEW COUNCIL AS PROVIDED IN
6 SECTION 25-3-514 (1) (n), C.R.S. 1973.

7 SECTION 3. 25-3-401, Colorado Revised Statutes 1973, is
8 amended to read:

9 25-3-401. Department of health to administer plan. (1)
10 The department of health is designated as the sole agency for
11 carrying out the purposes of the federal "Hospital Survey and
12 Construction Act", being Public Law 79-725 of the 79th congress
13 of the United States, approved August 13, 1946, or any
14 amendments thereto, AND THE SUCCESSOR PROVISIONS THEREOF OF
15 PUBLIC LAW 93-641, and is authorized to formulate, submit, and
16 administer a state plan for carrying out the provisions thereof
17 and to accept on behalf of the state any funds allotted to the
18 state under the provision of the said federal act ACTS, or any
19 amendments thereto. In carrying out the purposes hereof OF
20 THIS SECTION, the department of health is authorized to make

1 such reports as may be required by the said federal act ACTS,
2 or any amendments thereto, and to do all things that may be
3 required as a condition precedent to the proper application for
4 the receipt of federal grants under the said federal act ACTS,
5 and any amendments thereto and regulations thereof, and to
6 administer and supervise the expenditure of such grants for the
7 purposes hereof OF THIS SECTION.

8 (2) The state plan established under subsection (1) of
9 this section shall provide for adequate hospital facilities for
10 the people residing in the state, without discrimination on
11 account of race, creed, or color, and shall provide for
12 adequate hospital facilities for persons unable to pay
13 therefor. The department of health shall, after consultation
14 with the advisory HEALTH FACILITIES REVIEW council established
15 in section 25-3-402 25-3-504, provide minimum standards for the
16 maintenance and operation of hospitals which receive federal
17 aid under this part 4, and compliance with such standards shall
18 be required in the case of hospitals which have received
19 federal aid under the provisions of said federal act ACTS, or
20 any amendments thereto.

1 SECTION 4. Repeal. 25-3-402, Colorado Revised Statutes
2 1973, is repealed.

3 SECTION 5. Effective date. This act shall take effect
4 July 1, 1978.

5 SECTION 6. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary for
7 the immediate preservation of the public peace, health, and
8 safety.

Section 5
Effective date is July 1, 1978.