

[Cal. Health & Safety Code §§ 127125 through 127300.]

§ 127125 of Health Planning

As used in this chapter, “office” means the Office of Statewide Health Planning and Development and “office director” means the director of the office.

Any reference in this chapter to the State Department of Health, the department, the state department, or the Director of Health shall be deemed a reference to the office in the Health and Welfare Agency.

§ 127130 of Health Planning

For the purposes of this chapter:

(a) “Health maintenance organization” or “HMO” means a public or private organization, organized under the laws of this state, that:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage.

(2) Is compensated (except for copayments) for the provision of basic health care services listed in paragraph (1) to enrolled participants on a predetermined periodic rate basis.

(3) Provides physician services primarily (i) directly through physicians who are either employees or partners of the organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(4) Is not a corporation organized or operating pursuant to Section 10810 of the Corporations Code.

(b) “Health maintenance organization for which assistance may be provided under Title XIII” means an HMO that is qualified under Section 1310(d) of Title XIII of the federal Public Health Service Act, or an HMO that the Secretary of Health, Education and Welfare determines, upon the basis of an application and the submission of any information and assurance that he or she finds necessary, may be eligible for assistance under Title XIII of the act.

§ 127135 of Health Planning

Any reference in any code to the Health Planning Council, the Health Review and Program Council, or the State Board of Public Health, with respect to functions thereof that are advisory, shall be deemed a reference to the Advisory Health Council.

§ 127140 of Health Planning

(a) In order to effectively implement this chapter, the Legislature finds that it is indispensable that providers

of health care be free to engage in voluntary, cooperative efforts with consumers, government, or other providers of health care to fulfill the purposes of the health planning laws.

(b) Approved plans and projects undertaken in compliance with those plans, as provided in Sections 437.20, 437.21, 437.22, and 437.23 are exempt from Chapter 1 (commencing with Section 16600), Chapter 2 (commencing with Section 16700), Chapter 3 (commencing with Section 16900), and Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(c) In the case of a project that, on or before January 1, 1987, is included in the Tulare County countywide long-range capital investment plan, that is contained in the "April 1983 Multi-Hospital Capital Investment and Master Plan," as amended by the April 1986 update, the exemptions set forth in subdivision (b) shall apply even though the project is not undertaken until after January 1, 1987.

§ 127145 of Health Planning

(a) The Advisory Health Council, with the recommendation of the department, shall approve the statewide health facility and services plan adopted pursuant to subdivision (b) of Section 127155.

(b) The Advisory Health Council shall advise the department in the conduct of its health planning activities and in the setting of priorities in accordance with the statewide health facility and services plan adopted pursuant to subdivision (b) of Section 127155.

(c) Public agencies shall furnish to the Advisory Health Council, upon request, data on health programs pertinent to effective planning and coordination.

(d) The Advisory Health Council shall act as the appeals body pursuant to Section 127250 regarding applications for a certificate of need filed pursuant to this chapter.

§ 127150 of Health Planning

(a) The office director shall adopt regulations for the implementation of this chapter.

(b) Notwithstanding any other provision of this chapter to the contrary, the office director may suspend the operation of any or all of the following provisions or requirements of this chapter:

(1) The administrative appeals process for certificate-of-need applications established by Sections 127250 to 127270, inclusive. Nothing in this section shall be construed, however, to limit the availability of judicial review of a decision of the office director or of the Advisory Health Council as provided in Section 127275.

(2) The notification of intent required by Section 127225.

(c) It is the intent of the Legislature that the office and the area health planning agencies shall not implement the requirements of subdivisions (g) and (h) of Section 1513 of the Public Health Service Act. To the extent required by federal law, the office and area health planning agencies shall request from the Secretary of the United States Department of Health and Human Services a waiver from those requirements.

(d) The Governor shall not execute an agreement with the Secretary of the United States Department of Health and Human Services pursuant to Section 1122 of Public Law 92-603 as the section existed on January 1, 1981.

§ 127155 of Health Planning

The Advisory Health Council shall evaluate and shall designate annually no more than one area health planning agency for any area of the state designated by the council. An area health planning agency shall be incorporated as a nonprofit corporation and controlled by a board of directors consisting of a majority representing the public and local government as consumers of health services with the balance being broadly representative of the providers of health services and the health professions, or alternatively be a health systems agency established pursuant to Public Law 93-641. The functions of area health planning agencies are all of the following:

- (a) To review information on utilization of hospitals and related health facilities.
- (b) To develop area plans to be used for the determination of community need and desirability of projects specified in Section 127170, consistent with the regulations adopted by the office pursuant to Section 127160. Each plan shall become effective upon a determination by the council that the plan is in conformance with regulations adopted pursuant to Section 127160. The council shall integrate all area plans into a single Statewide Health Facilities and Services Plan that shall become effective upon formal adoption by the council.
- (c) To conduct public meetings where providers of health care and consumers will be encouraged to participate.
- (d) Area health planning agencies shall comply with all of the following requirements:
 - (1) The governing body of the agency shall, to the extent feasible, be composed of individuals representative of the major social, economic, linguistic, and racial populations, and geographic areas, within the area served by the agency.
 - (2) The agency shall hold public meetings and hearings only after reasonable public notice. This notice shall, to the extent feasible, be publicized directly to those who, as determined by the director, are medically underserved and are in other ways denied equal access to good medical care.
 - (3) The agency shall file with the Advisory Health Council an affirmative action employment plan approved by the office.

Area health planning agencies may divide their areas into local areas for purposes of more effective health facility planning, with the approval of the Advisory Health Council. These local areas shall be of a geographic size and contain adequate population to ensure a broad base for planning decisions. Each local area shall contain a local health planning agency that shall meet the requirements of this section.

An organization that meets the requirements of this section may make application to its area health planning agency for designation as a local health planning agency for a designated area. Within 45 days after a complete application for designation has been received, the area agency shall reach a decision concerning the application.

Each area health planning agency existing on the operative date of amendments to this section enacted during the 1976 portion of the 1975–76 Regular Session of the Legislature shall continue to function as an area planning agency pursuant to this chapter, until one or more designated health systems agencies are fully operational, as determined by the Advisory Health Council in the area served, or formerly served, by the respective area health planning agency.

If the Advisory Health Council determines that an area health planning agency approved under this section is dissolved or unable to carry out the functions required by this chapter, the office shall fulfill the responsibilities of an area health planning agency pursuant to this chapter in the area until another area health planning agency is designated by the Advisory Health Council for the area and becomes fully operational.

Adoption of regulations setting forth administrative procedures for area and local area health planning agencies shall be made by the office pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 127160 of Health Planning

The office shall adopt regulations setting forth statewide policies for area health planning agencies in the performance of their responsibilities under Section 127155.

In adopting the regulations, the office shall, with the advice of the Advisory Health Council, consider the following factors, and may consider other factors not inconsistent with the following:

- (a) The need for health care services in the area and the requirements of the population to be served, including evaluation of current utilization patterns.
- (b) The availability and adequacy of health care services in the area's existing facilities that currently conform to federal and state standards.
- (c) The availability and adequacy of services in the area such as preadmission, ambulatory or home care services that may serve as alternatives or substitutes for care in health facilities.
- (d) The possible economies and improvement in service that may be derived from the following:
 - (1) Operation of joint, cooperative, or shared health care resources.
 - (2) Maximum utilization of health facilities consistent with the appropriate levels of care, including, but not limited to, intensive care, acute general care, and skilled nursing care.
 - (3) Development of medical group practices, especially those providing services appropriately coordinated or integrated with institutional health service, and development of health maintenance organizations.
- (e) The development of comprehensive services for the community to be served. These services may be either direct or indirect through formal affiliation with other health programs in the area, and include preventive, diagnostic, treatment and rehabilitation services. Preference shall be given to health facilities that will provide the most comprehensive health services and include outpatient and other integrated services useful and convenient to the operation of the facility and the community.
- (f) The needs or reasonably anticipated needs of special populations, including members of a comprehensive group practice prepayment health care service plan, members of a religious body or denomination who desire to receive care and treatment in accordance with their religious conviction, or persons otherwise contracted or enrolled under extended health care arrangements, including life-care agreements pursuant to Chapter 10 (commencing with Section 1770), Division 2 of the Health and Safety Code.
- (g) The special needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas where the entities are located. These

entities may include medical and other health professional schools, multidisciplinary clinics, and specialty centers.

With respect to the determination of unmet need in the community or the adverse effect of new or expanded surgical clinics on the utilization of operating rooms in hospitals, it is not the intent of the Legislature to limit the expansion of surgical clinics when the hospitals have not made efforts to fully utilize their ambulatory operating capacity and to provide ambulatory surgical services at a reasonable cost to the community.

§ 127165 of Health Planning

(a) The basis for decisions by the office on applications for certificates of need filed pursuant to this chapter shall be:

(1) The Statewide Health Facilities and Services Plan specified in subdivision (b) of Section 127155.

(2) The statewide policies developed pursuant to Section 127160.

(b) The office shall annually update the statistical information used in the determination of resource requirements in the Statewide Health Facilities and Services Plan and shall update this statistical information more frequently when new data is available. These data updates shall include, but not be limited to, population estimates, utilization data, changes in the inventory, and other statistical information used in the determination of resource requirements. This data shall be incorporated into the Statewide Health Facilities and Services Plan by operation of law and without the necessity of following the procedures set forth in Chapter 3.5 (commencing with Section 11340) of Title 2 of Division 3 of the Government Code.

§ 127170 of Health Planning

Except as otherwise exempted by any other provision of law, projects requiring a certificate of need issued by the office are the following:

(a) Construction of a new health facility, relocation of a health facility or specialty clinic on a site that is not the same site or adjacent thereto, the increase of bed capacity in an existing health facility, the conversion of an entire existing health facility from one license category to another, or the conversion of a health facility's existing beds from any bed classification set forth in Section 1250.1 to skilled nursing beds, psychiatric beds, or intermediate care beds, and the conversion of skilled nursing beds, psychiatric beds, or intermediate care beds to any other bed classification set forth in Section 1250.1, except for skilled nursing beds or intermediate care beds licensed as of March 1, 1983, as part of a general acute care hospital. The conversion may not exceed during any three-year period 5 percent of the existing beds of the bed classification to which the conversion is made.

A health facility may use beds in one bed classification that, pursuant to the facility's license, have been designated in another bed classification, if all of these bed classification changes do not at any time exceed 5 percent of the total number of the facility's beds as set forth by the facility's license and if this use meets the requirements of Chapter 2 (commencing with Section 1250) of Division 2. In addition, a facility may use an additional 5 percent of its beds in this manner if the director finds that seasonal fluctuations justify it.

For purposes of this subdivision, "adjacent," means real property within a 400-yard radius of the site where a health facility or specialty clinic currently exists.

(b) Establishment of a new specialty clinic, as defined in paragraphs (1) and (3) of subdivision (b) of Section 1204, a project by a health facility for expanded outpatient surgical capacity, the conversion of an existing primary care clinic to a specialty clinic, or the conversion of an existing specialty clinic to a different category of specialty-clinic licensure. It does not constitute a project and no certificate of need is required for the establishment of a primary care clinic, as defined in subdivision (a) of Section 1204, the conversion of an existing specialty clinic to a primary care clinic, or the conversion of an existing primary care clinic to a different category of primary-care-clinic licensure. Any capital expenditure involved in the establishment of a primary care clinic also does not constitute a project, except as provided in subdivision (d).

(c) The establishment of a new special service delineated in subdivision (a), (b), (c), (e), (f), (g), or (h) of Section 1255, or the establishment by a specialty clinic, as defined in paragraphs (1) and (3) of subdivision (b) of Section 1204, of a new special service identified by or pursuant to Section 1203.

(d) The initial purchase or lease by a clinic subject to licensure under Chapter 1 (commencing with Section 1200) of Division 2, of diagnostic or therapeutic equipment with a value in excess of one million dollars (\$1,000,000) in a single fiscal year, or where the cumulative cost exceeds this amount in more than one fiscal year. For purposes of this subdivision, the purchase or lease of one or more articles of functionally related diagnostic or therapeutic equipment, as determined by the office, shall be considered together.

(e) (1) Any project requiring a capital expenditure for a specialty clinic, as defined in paragraphs (1) and (3) of subdivision (b) of Section 1204, or for the services, equipment or modernization of a specialty clinic in excess of one million dollars (\$1,000,000) in the current fiscal year or cumulation to an expenditure of one million dollars (\$1,000,000) in the same fiscal year or subsequent fiscal years for a single project.

(2) The threshold exemptions from certificate-of-need requirements provided for in this subdivision do not apply to projects for expanded outpatient surgical capacity.

(3) For the purposes of this subdivision, “capital expenditure” means any of the following:

(A) An expenditure, including an expenditure for a construction project undertaken by the specialty clinic as its own contractor, that under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and that exceeds one million dollars (\$1,000,000). The cost of studies, surveys, legal fees, land, offsite improvements, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the physical plant and equipment for which the expenditure is made shall be included in determining whether the cost exceeds one million dollars (\$1,000,000). Where the estimated cost of a proposed project, including cost escalation factors appropriate to the area where the project is located, is, within 60 days of the date that the obligation for the expenditure is incurred, certified by a licensed architect or engineer to be one million dollars (\$1,000,000) or less, that expenditure shall be deemed not to exceed one million dollars (\$1,000,000) regardless of the actual cost of the project. However, in any case where the actual cost of the project exceeds one million dollars (\$1,000,000) the specialty clinic on whose behalf the expenditure is made shall provide written notification of the cost to the office not more than 30 days after the date that the expenditure is incurred. The notification shall include a copy of the certified estimate.

(B) The acquisition, under lease or comparable arrangement, or through donation, of equipment for a specialty clinic, the expenditure for which would have been considered a capital expenditure if the person had acquired it by purchase. For the purposes of this paragraph, “donation” does not include a bequest.

(C) Any change in a proposed capital expenditure that meets the criteria set forth in this subdivision.

- (4) “Capital expenditure” includes the total cost of the proposed project as certified by a licensed architect or engineer based on preliminary plans or specifications and concurred in by the state department.
- (5) For the purposes of this subdivision, “project” does not include the purchase of real property for future use or the transfer of ownership, in whole or part, of an existing specialty clinic or the acquisition of all or substantially all of the assets or stock thereof, or the construction, modernization, purchase, lease, or other acquisition of parking lots or parking structures, telephone systems, and nonclinical data-processing systems.
- (6) For the purposes of this subdivision, “modernization” means the alteration, expansion, repair, remodeling, replacement, or renovation of existing buildings, including initial equipment thereof, and the replacement of equipment of existing buildings.
- (f) Except as provided in subdivision (g), only those projects where 25 percent or less of the patients are covered by prepaid health care.
- (g) Projects otherwise subject to review under subdivision (a) that are for the addition of new licensed skilled nursing beds by construction or conversion, regardless of the percentage of patients served who are covered by prepaid health care.
- (h) (1) Except as provided in paragraph (2), the office shall annually adjust the dollar thresholds set forth in subdivisions (d) and (e) to reflect changes in the cost of living, as determined by the Department of Finance, using 1981 as the base year.
- (2) Notwithstanding the amount of the dollar thresholds specified in paragraph (1), in the event Congress increases or repeals the amount or amounts of the thresholds, the dollar thresholds set forth in subdivisions (d) and (e) shall be the highest amount or amounts permitted by Public Law 93-641, as amended, or one million dollars (\$1,000,000), whichever is less, on the date congressional action is effective.
- (i) This section is not applicable to an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing.

§ 127175 of Health Planning

- (a) The office shall exempt from Sections 127210 to 127275, inclusive, and shall issue a certificate of exemption for those projects that were not previously subject to review under Section 127155 prior to the effective date of this section where the applicant has shown and the office director has found all of the following:
- (1) The applicant has, prior to the effective date of this section, committed or incurred a financial obligation, including any obligation payable by force account, that is certified by a licensed architect or engineer to be 10 percent of the cost of the total project, or seventy-five thousand dollars (\$75,000), whichever is less.
- (2) The project cannot be terminated without substantial economic loss to the applicant.
- (3) Except with respect to projects set forth in subdivision (d) of Section 127170, the project was commenced prior to the effective date of this section and is being diligently pursued to completion.
- (4) The applicant has filed a notice of the project with the office on forms supplied by the office within 60 days of the effective date of this section.

For the purposes of this subdivision, “project” shall mean any project set forth in Section 127170, and the term “financial obligation” shall include cost factors set forth in the definition of “capital expenditure” in Section 127170.

Within 120 days of the effective date of this section, the office shall determine in public hearing the applications that are entitled to an exemption under this subdivision.

(b) In addition, the office shall exempt from Sections 127210 to 127275, inclusive, and shall issue a certificate of need for those projects where the applicant has shown and the office director has found one of the following:

(1) The project is necessary solely to replace health care services that are no longer available at the facility because of a disaster or other emergency.

(2) The project is solely for the purpose of complying with requirements of law or regulations.

(3) The project was the subject of an application submitted to an area health planning agency prior to the effective date of this section. These applications shall be processed and decided in the manner prescribed by this chapter as it existed immediately prior to the operative date of this section, except that any petition for appeal of a decision or lack of decision the area health planning agency rendered after the effective date of this section shall be made directly to the Advisory Health Council.

(4) The project is to add not more than 10 percent of licensed bed capacity or 10 beds, whichever is less, to an existing general acute care hospital, an existing acute psychiatric hospital, an existing special hospital, an existing general acute care/rehabilitating hospital, or an existing chemical dependency recovery hospital, where the applicant has shown and the office director has found that:

(A) The applicant hospital has not been granted a certificate of exemption pursuant to this provision or pursuant to Section 437.112, as Section 437.112 existed on January 1, 1982, within the last preceding 24 months.

(B) The applicant hospital has had an occupancy rate for the classification of beds to be added, and for the facility as a whole, for the preceding 12-month period, of not less than 85 percent.

(C) The facility is accessible to persons for whom the cost of care is reimbursed under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code. In the case of an acute psychiatric hospital, the showing required by this subparagraph shall be limited to those categories of patients for whom acute psychiatric hospitals are eligible to receive reimbursement under Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(5) The project is to add not more than five beds to an existing skilled nursing facility that is operated as a distinct part of a primary health service hospital, as defined in Section 1339.9 that participates in Medi-Cal programs, provided that all of the following conditions exist:

(A) At the time of the application, the Statewide Health Facility and Services Plan indicates a need for the proposed number of beds, taking into account the number of approved beds in the health facilities planning area where the project is located including beds approved pursuant to this subdivision.

(B) The applicant skilled nursing facility has had at least a 95 percent occupancy rate for existing beds for the 12 months preceding the submission of an application.

(C) The applicant facility has not been issued within the 12 months preceding application a citation for a class A violation or more than one class B violation, as defined in Section 1424, that is one of the following:

- (i) Uncontested.
- (ii) Contested, but not adjudicated.
- (iii) Contested, but sustained upon adjudication.

In determining the current number of approved beds in the health facilities planning area where the project is located, the office shall count the number of beds for which applications for a certificate of need have been deemed complete pursuant to Section 127220, before the effective date of the amendments to this section enacted by the Statutes of 1983.

The project shall not require a capital expenditure that exceeds ten thousand dollars (\$10,000), and only one project may be approved for a facility in a 12-month period. However, no facility shall receive approval pursuant to this section for more than two projects. The office shall annually adjust this capital expenditure threshold to reflect changes in the cost of living as determined by the Department of Finance, using 1981 as the base year.

Any certificate issued for projects shall expire if the applicant does not complete the project within 12 months after issuance unless the office, for good cause shown, extends the certificate.

(c) A certificate of exemption issued pursuant to this section or Section 1268 shall, for all purposes, have the same effect as a certificate of need issued pursuant to this chapter.

§ 127180 of Health Planning

(a) In addition to the exemption required by Section 127175, the office director shall exempt Sections 127210 to 127275, inclusive, and shall issue a certificate of exemption for those projects where the applicant has shown, and the office director has found, all of the following:

(1) The conversion of a freestanding skilled nursing facility to a chemical dependency recovery hospital, as defined in Section 1250.3, where the project was commenced on or before September 15, 1981, and provided that the person or entity proposing the project was, prior to June 1, 1981, operating in this state a health facility, or distinct part thereof, that provided 24 hours' chemical dependency recovery hospital in-patient services as enumerated in Section 1250.3 under a direction of a medical director, and that the person or entity was the owner or lessee of the facility to be converted prior to June 1, 1981. As used in this paragraph, "person" or "entity" shall include collectively a corporation and any wholly owned subsidiaries thereof. "Commencement" means the submission of drawings for the project to the local government having jurisdiction containing substantially sufficient detail for the issuance of a building permit or permits as required and submission of a written declaration of intent for the project to the department on or before September 15, 1981.

(2) The project does not meet the construction standards established by law or regulation for general acute care hospitals.

(3) The applicant has filed a notice of the project with the office director on or before September 15, 1981.

(4) The applicant has filed a notice of the project with the office director on forms supplied by the office director within 90 days of the effective date of this section. The office director shall inform the applicant in writing of his or her determination as to eligibility of the application for a certificate of exemption under this section within 60 days of receipt of a complete application.

(b) A certificate of exemption issued pursuant to this section shall for all purposes have the same effect as a certificate of need issued pursuant to this chapter.

§ 127185 of Health Planning

(a) In addition to the exemption required by Section 127175, the office director shall exempt from Sections 127210 to 127275, inclusive, and shall issue a certificate of need for those projects where the applicant has shown and the office director has found all of the following:

(1) The project is for either of the following:

(A) The conversion of a skilled nursing or community care facility, or acute psychiatric hospital or a county funded institution-based alcoholism program, certified by the State Department of Health Care Services pursuant to Section 11831 as a residential treatment program, to a chemical dependency recovery hospital as defined in subdivision (a) of Section 1250.3, and provided that the facility to be converted has, prior to June 1, 1981, and continuously thereafter, been used exclusively to provide 24-hour residential chemical dependency recovery services, including the basic services enumerated in Section 1250.3 under the direction of a medical director.

(B) The construction and licensure of a chemical dependency recovery hospital where the project was commenced prior to June 1, 1981, and is being diligently pursued to completion, and provided that the person or entity proposing the facility was, prior to June 1, 1981, operating in this state a skilled nursing or community care facility used exclusively for 24-hour residential chemical dependency recovery services, including the basic services enumerated in Section 1250.3, under the direction of a medical director. As used in this paragraph, “commencement of the project” means acquisition of the site where the facility is to be located and submission of drawings for the project to the local government having jurisdiction containing substantially sufficient detail for the issuance of a building permit or permits.

(2) The project could not meet the construction standards established by law or regulation for general acute care hospitals.

(3) The applicant has filed a notice of the project with the office director on forms supplied by the office director within 90 days of the effective date of this section.

The office director shall inform the applicant in writing of his or her determination as to eligibility of the application for a certificate of need under this subdivision within 60 days of receipt of a complete application.

(b) In addition to the exemption required by Section 127175, the office director shall exempt from Sections 127210 to 127275, inclusive, and shall issue a certificate of need for a project for the conversion of a portion of the authorized bed capacity of a general acute care hospital in the classifications listed in Section 1250.1 to chemical dependency recovery beds as provided in subdivision (h) of Section 1250.1, or for the conversion of a skilled nursing facility to a chemical dependency recovery hospital as defined in subdivision (a) of Section 1250.3, where the applicant has shown and the office director has found all of the following:

(1) Commencement of the project began prior to August 10, 1981, and is being diligently pursued to completion.

(2) The facility proposing a conversion was, prior to June 1, 1981, operating an alcoholism treatment program, including all the basic services enumerated in Section 1250.3, under the direction of a medical director, or the facility had obtained, prior to June 1, 1981, the services of a medical director and contracted with program professionals for the conversion of the facility.

As used in this subdivision, “commencement of the project” means a written declaration by the governing body or administration of a hospital of the intention to convert beds of other licensed categories to usage as chemical dependency beds pursuant to subdivision (f) of Section 1250.3 as it existed on August 10, 1981, or a written declaration by the governing body or administration of a skilled nursing facility of the intention to convert to a chemical dependency recovery hospital. The written declaration shall be transmitted to the director by August 17, 1981.

(c) Construction or remodeling necessary to enable a facility exempted under this section to comply with applicable licensing regulations shall be deemed to be eligible for exemption under paragraph (2) of subdivision (b) of Section 127175.

(d) A certificate of exemption issued pursuant to this section shall, for all purposes, have the same effect as a certificate of need issued pursuant to this chapter.

§ 127190 of Health Planning

Notwithstanding any other provision of this chapter, the office shall exempt from Sections 127210 to 127275, inclusive, and shall issue a certificate of need for, any health care project of a health facility that agrees to provide free health care services to indigents over a period of at least five years at a dollar value equal to the dollar value of the exempted project at completion. The annual dollar value of the free care shall be at a level equal to at least 10 percent of the project value as determined in the agreement. The free health care services shall be furnished in the form of direct service or by reimbursement of costs incurred by other facilities if an insufficient number of patients, as determined in the agreement, are referred or present themselves for treatment to account for the minimum 10 percent requirement.

The provision of free care pursuant to this section shall be in accordance with an agreement executed between the health facility granted an exemption and the office. If the health facility does not meet the terms of the agreement, the department shall suspend the license or special permit associated with the exempted project until compliance with the terms is obtained. The obligations imposed by the agreement shall not be discharged by virtue of transfer of ownership, but shall be assumed by a new owner as a condition of transfer.

“Free care,” as used in this section, does not include either of the following:

- (a) Bad debt unless the debtor makes specific application for relief as an indigent.
- (b) Contractual allowances.

§ 127195 of Health Planning

Projects for freestanding outpatient surgery units that only perform cataract surgery under the Medi-Cal program or a program that provides over 25 percent of its services to patients covered by prepaid health care are exempt from the certificate-of-need requirement of this chapter.

As used in this section and in paragraphs (f) and (g) of Section 127170, patients are covered by prepaid health care if they are members of federally qualified health maintenance organizations.

§ 127200 of Health Planning

Taking into consideration the basis for decision set forth in Section 127165:

(a) The office may, in individual cases, grant certificates of need for projects when it determines that one of the following is applicable:

(1) The applicant has provided evidence that the project will meet the needs or reasonably anticipated needs of a special population including members of a religious body or denomination who desire to receive care and treatment in accordance with their religious convictions.

(2) The applicant has provided evidence that the project is or will be necessary to meet the health needs or reasonably anticipated health needs of adult residents of a nonprofit community care facility, as defined by subdivision (a) of Section 1502, that is owned by the applicant.

(3) The applicant has provided evidence that, as a health facility, it has developed community support for its services as indicated by its current utilization patterns, and has provided health care services for at least five years.

(4) The applicant has provided evidence, when the project is for a new health facility or an increase in bed capacity, that there will be an equal or greater reduction in bed capacity in other health facilities in the area.

(5) The applicant has provided evidence that it will deliver the service proposed to be offered as a result of the project in an innovative and more competitive manner, or at a lower cost than the service is provided by other facilities in the area, and has provided evidence that the quality of care offered will be comparable to that offered by other facilities in the area; or that as a health facility, it serves a disproportionate volume of publicly funded patients, or patients for whom the cost of health care is uncompensated. The office director shall, as he or she deems appropriate, ensure fulfillment of the requirements of this subdivision through conditions mutually agreed upon by the applicant and the office. This paragraph does not apply to projects for the addition of licensed skilled nursing beds by construction or conversion.

If an applicant is requesting the exercise of discretion by the office director pursuant to this paragraph, prior to granting a certificate of need, the office director shall receive an evaluation from the department assessing the potential negative financial impact upon any county owned or operated general acute care hospital. If there is a significant negative potential financial impact, a certificate of need shall not be granted.

Nothing in this subdivision requires the office to grant certificates of need as authorized by this section in any of the above categories.

(b) In the case of a project for a service to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII, the office shall grant a certificate of need for the project unless the office director finds that the project is not needed by the enrolled or reasonably anticipated new members of the HMO or proposed HMO or the beds or services to be provided are available from non-HMO providers or other HMO's in a reasonable and cost-effective manner that is consistent with the basic method of operation of the HMO.

For the purposes of subdivision (b), beds or services shall not be considered available if they are any of the following:

- (1) Dispersed in more than one facility when the HMO's basic method of operation is to provide services through medical centers that consist of a hospital and medical offices at the same site.
- (2) Not available under a contract of at least five years' duration, with an option to extend the contract for an additional time period as is reasonably necessary for the HMO to obtain a certificate of need and to construct and equip and begin operating alternative beds or service, in the event the non-HMO provider or other HMO gives notice that it intends to terminate the contract.
- (3) Not available under circumstances that would grant full and equal staff privileges to an adequate number of physicians associated with the HMO in appropriate specialties, or otherwise not conveniently accessible through physicians and other health care professionals associated with the HMO.
- (4) Not available in a manner that is administratively feasible to the HMO.
- (5) More costly than if the services were provided by the HMO.

In order to qualify under this section, a project that is proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII, and that consists of or includes the construction, development, or establishment of a new inpatient health care facility, shall be a facility that the office determines will be utilized by members of the health maintenance organization for at least 75 percent of the projected annual inpatient days, as determined in accordance with the recommended occupancy levels under the applicable health systems plan.

(c) In the case of a project for a service to be provided by or through an HMO, the office shall not deny a certificate of need with respect to the service (or otherwise make a finding that the service is not needed) in those cases (1) when the office has granted a certificate of need that authorized the development of the service, or expenditures in preparation for the offering or development (or has otherwise made a finding that the development or expenditure is needed), and when the offering of this service will be consistent with the basic objectives, time schedules, and plans of the previously approved application. However, the office may impose a limitation on the duration of the certificate of need that shall expire at the end of this time unless the health service is offered prior thereto, or (2) solely because there is an HMO of the same type in the same area, or solely because the services are not discussed in the applicable health systems plan, annual implementation plan, state health plan, or state medical facilities plan.

(d) A project for a service to be provided by, or through, an HMO that is subject to review under this chapter shall remain subject to that review, unless the federal law states that an approved state program shall not require a certificate of need for the project.

The office shall establish uniform procedures and criteria for approving applications under this section.

§ 127205 of Health Planning

(a) It is the intent of the Legislature that projects for a general acute care hospital designated as a sole community provider and licensed for less than 100 beds, projects for the establishment or expansion of skilled nursing facilities or intermediate care facilities, and projects for skilled nursing beds or intermediate care beds in health facilities other than skilled nursing or intermediate care facilities be processed as expeditiously as possible, consistent with the purposes of this chapter.

(b) In reviewing an application for projects for a general acute care hospital designated as a sole community provider and licensed for less than 100 beds, a project for a skilled nursing facility, a project for an intermediate care facility, or a project for skilled nursing beds or intermediate care beds in health facilities, the office director shall consider only need, expected utilization and financial feasibility, compliance with applicable laws and regulations, and whether the proposed facility will enhance access to the population to be served.

(c) The following exceptions to the procedural provisions of this chapter shall apply to applications for projects for a general acute care hospital designated as a sole community provider and licensed for less than 100 beds, projects for the establishment or expansion of skilled nursing facilities or intermediate care facilities, or a project for skilled nursing beds or intermediate care beds in health facilities other than skilled nursing or intermediate care facilities:

(1) The notification of intent specified in Section 127225 shall not be required prior to the filing of an application.

(2) Upon a determination that an application is complete pursuant to Section 127220, the office shall promptly publish notice in a newspaper of general circulation in the geographical area to be served by the project. The notice shall describe the project and provide that any affected person may request, in writing, that the office hold a public hearing in the course of its review. The notice shall state the address where the request shall be made and the time period when it shall be made. The written request shall be based upon the applicable review criteria and shall specify the review criteria.

(3) No hearing need be held by the office in the course of its review unless ordered by the office within 30 calendar days after the application is determined to be complete. In those cases when no hearing is required to be held, the office shall, within 30 calendar days after the application is determined to be complete, issue a decision approving the project in its entirety or with modifications or conditions as have been agreed to in writing by the office and the applicant.

(d) The office shall amend its regulations and application forms as may be necessary to effectuate the purposes of this section.

§ 127210 of Health Planning

Applicants for a certificate of need for a project specified in Section 127170 shall submit an application to the department on the official forms provided by the department, that may include, but need not be limited to, the following information:

(a) The site of the facility in the geographic area to be served.

- (b) The population to be served, categorized by age, income, and sex, as well as projections of population growth, by age, income, and sex.
- (c) The anticipated demand for the health care service or services to be provided.
- (d) A description of the service or services to be provided.
- (e) Utilization of existing programs within the area to be served offering the same or similar health care services.
- (f) The benefit to the community that will result from the development of the project as well as the anticipated impact on other institutions offering the same or similar services in the area.
- (g) A schedule for the commencement and completion of the project.
- (h) Reasonable assurance that adequate financing is available for the completion of the project within the time period stated in the application.

§ 127215 of Health Planning

Each application for a certificate of need shall contain all of the information required by the office and, except as otherwise provided in this chapter, shall be accompanied by a fee. The fee shall be determined annually by regulation of the office director and shall be set forth in a schedule differentiating by type and cost of project, as determined by the office director. The office director shall establish fees so that in the aggregate they will defray costs of processing certificate of need applications that are not otherwise defrayed by the special fees charged pursuant to Section 127280. However, the application fee for a certificate of need shall not in any event exceed five thousand dollars (\$5,000).

§ 127220 of Health Planning

- (a) The office, within 15 days of its receipt of an application for a certificate of need submitted pursuant to Section 127210, shall make a determination as to whether the application is complete. If the office determines that the applicant has not submitted an application that adequately addresses the information requirements of the application form, it shall provide to the applicant a written notification of incompleteness specifying the additional information required to render the application complete. After receipt of this additional information, the office, within 15 days, shall make a determination as to whether the application is complete.
- (b) If, after review of additional information pursuant to subdivision (a), the office determines that the application is still incomplete, it shall provide to the applicant a written notification of incompleteness, advising the applicant of the additional information needed and the options available to the applicant to render the application complete. Following receipt of notification, the applicant shall exercise one of the following options:
 - (1) Submit the additional information required by the office.
 - (2) Request in writing, with or without submitting the additional information, that the review commence notwithstanding the determination of incompleteness.

Upon receipt of a written statement requesting that the review commence, the application shall be deemed complete on the fifth business day following receipt unless the office determines, and notifies the applicant in

writing, by the fifth business day, that the lack of information is so material that it would render meaningful analysis of the application impossible and that the application is therefore incomplete. This determination shall be based solely on the failure to provide information specifically requested by the application form.

If the applicant submits the requested additional information and does not submit a written statement requesting the office to commence the review notwithstanding its determination of incompleteness, the office, within 15 days after receipt of the additional information, shall make a determination as to whether the application is complete.

Upon the receipt of any additional notifications of incompleteness, the applicant shall exercise one of the options enumerated in paragraphs (1) and (2). The office, in its second or subsequent completeness inquiry, shall not request information beyond the scope of the preceding request.

(c) If the office does not give the notification of incompleteness within the 15-day period required for review of completeness, the application shall be deemed complete on the 15th day following the receipt of the material submitted and the office shall then proceed with its review.

(d) The office shall publish notice of the commencement of the review promptly after the application review process commences pursuant to subdivision (b) or (c).

(e) A completed application may be amended or withdrawn by the applicant at any time without prejudice, but any amendment to an application, except as the office and the applicant may otherwise agree, shall cause the amended application to be treated as a new application for purposes of the time limits prescribed by this chapter and for the determination of the amount of the fee.

(f) A filed application shall be a public document and shall be available for inspection at the offices of the area health planning agency and the office. A copy of any filed application shall be furnished to any person upon request and payment of a reasonable fee, to be established by the office in an amount sufficient to defray the costs of reproduction.

(g) Applications filed by any state agency or the Board of Regents of the University of California shall be exempt from a filing fee.

§ 127225 of Health Planning

At least 20 calendar days prior to the filing of an application for a certificate of need under Section 127170, the applicant shall notify the office of its intent to apply for a certificate of need. The office may consult with the applicant on the proposed project.

The office may refuse to accept a certificate-of-need application where the applicant has failed to file a notification of intent to apply for a certificate of need pursuant to this section. However, if a certificate of need is issued, it shall not be invalidated on the sole basis of failure of the applicant to notify the office within the time required by this section.

§ 127230 of Health Planning

The office shall transmit a copy of each application for a certificate of need determined by it to be complete, or otherwise deemed complete pursuant to Section 127220, to the appropriate area health planning agency.

The area health planning agency may, at its discretion, informally review the application and provide comment on it at the public hearing held pursuant to Section 127235, if a public hearing is held. If an area health planning agency intends to provide comment on an application at a public hearing, it shall provide notice to the applicant and to the state 20 days in advance of making a comment. The comment shall be deemed to have given the area health planning agency party status.

§ 127235 of Health Planning

(a) Within 45 calendar days of the receipt of the complete application, or an application otherwise deemed complete pursuant to Section 127220, the office shall do one of the following:

(1) Approve the application. The office may approve the application pursuant to this subdivision with modifications or conditions, provided that the applicant agrees in writing to the modifications or conditions.

(2) Order a hearing if the office determines that substantial questions exist as to the eligibility of the proposed project for certificate-of-need approval. Except as otherwise provided in this section, the hearing shall be held in the health service area served by the applicant.

(b) The office shall order a hearing by the service of a copy of the order on the applicant and the Office of Administrative Hearings. The order shall include the intended position of the Division of Certificate of Need of the office. Upon receipt of the order, the Office of Administrative Hearings shall promptly consult with the parties to the hearing in order to determine the time and place of hearing. Except as otherwise agreed by the parties and the Office of Administrative Hearings, the hearing shall commence within 15 days of the date of the order. Upon the scheduling of the hearing, the Office of Administrative Hearings shall promptly serve notice of the date, location, and time of the hearing upon the parties to the hearing. The Office of Administrative Hearings shall also publish a notice of the date, location, and time of the hearing in at least one newspaper of general circulation in the health service area served by the applicant. The notice shall also include the name and address of the applicant, the nature of the proposed project, and other information, deemed relevant by the Office of Administrative Hearings.

(c) The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this chapter. The hearing shall be conducted by a hearing officer assigned by the Office of Administrative Hearings who shall rule on the admission and exclusion of evidence and may exercise all other powers relating to the conduct of the hearing. With the concurrence of the parties to the hearing, law and motion matters pertaining to the hearing may be heard by the hearing officer in a location other than the geographic location of the hearing.

(d) The hearing shall conclude within 45 calendar days after commencement of the hearing unless one of the following occurs:

(1) The applicant agrees to extend the time for conclusion of the hearing.

(2) The hearing is ongoing and continuing during consecutive business days, in which case it shall be concluded as soon as reasonably practicable thereafter.

(e) Within seven days after the conclusion of the hearing, the hearing officer shall render a proposed decision supported by findings of fact, based solely upon the record of the hearing, and conclusions of law. The proposed decision, findings of fact, and conclusions of law shall be served upon the parties to the hearing.

(f) The director shall make a final decision on an application within seven calendar days after issuance of the proposed decision by the hearing officer. The decision shall either approve the application, approve it with modifications, reject it, or approve it with conditions mutually agreed upon by the applicant and the office. The failure of any applicant to fulfill the conditions under which the certificate of need was granted shall constitute grounds for revocation of the certificate of need.

(g) Notice of the substance of the office's decision shall be published in a newspaper of general circulation within the health service area served by the applicant, within 10 calendar days following the decision.

§ 127240 of Health Planning

(a) Notwithstanding subdivision (b), (c), (d), (e), or (f) of Section 127235, if the office orders a hearing on an application, the applicant may request an informal hearing of the matter, described in this section, in lieu of, and in the alternative to, the formal procedures described in subdivisions (b), (c), (d), (e), and (f) of Section 127235.

(b) If an applicant requests an informal hearing and the office concurs with the request, the office shall proceed as follows:

(1) Within five calendar days after receipt of the request for an informal public hearing, the office shall order the informal public hearing by the service of a copy of the order on the applicant. The order shall include the staff report and recommendations prepared by the staff of the office. Except as otherwise agreed by the applicant and the office, the informal public hearing shall commence within 20 days of the date of the order. Upon the scheduling of the hearing, the office shall promptly serve notice of the date, location, and time of the informal public hearing upon the applicant. The office shall also publish a notice of the date, location, and time of the informal public hearing in at least one newspaper of general circulation in the health service area served by the applicant. The notice shall also include the name and address of the applicant, the nature of the proposed project, and other information deemed relevant by the office.

(2) The informal public hearing shall not be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The informal public hearing shall be conducted by an employee of the office designated by the office director. The person conducting the informal public hearing may exercise all powers relating to the conduct of the hearing, including the power to reasonably limit the length of oral presentations by any person who has been allowed to make a statement.

The informal public hearing shall be conducted as follows:

(A) The applicant shall be given an opportunity to present the merits of the project and to address the issues raised by the staff report and recommendations.

(B) The office staff shall be given an opportunity to present their analysis of the project.

(C) Other interested persons shall be given an opportunity to present written or oral statements.

(D) The person conducting the informal public hearing may question any person making a written or oral statement and may give the applicant and office staff an opportunity to question any person who has made a written or oral statement.

(E) The applicant and staff shall be given an opportunity to make closing statements.

(F) The office shall make an audio or video recording of the hearing, and copies of the recording shall be made available at cost upon reasonable notice. However, the applicant shall have a right to bring a certified shorthand reporter to be used in place of the audio or video recording, provided that he or she provides the office with a copy of the transcript.

(c) The informal public hearing shall conclude within 10 calendar days after commencement of the hearing unless one of the following occurs:

(1) The applicant agrees to extend the time for conclusion of the hearing.

(2) The hearing is ongoing and continuing during consecutive business days, in which case it shall be concluded as soon as reasonably practicable thereafter.

(d) Within 10 days after the conclusion of the informal public hearing, the person conducting the hearing shall render a proposed decision supported by findings of fact, based solely upon the record of the hearing. The proposed decision shall be served upon the applicant and the office staff.

(e) The director shall make a final decision on an application within 10 calendar days after issuance of the proposed decision. The decisions shall either approve the application, approve it with modifications, reject it, or approve it with conditions mutually agreed upon by the applicant and the office. The failure of any applicant to fulfill the conditions under which the certificate of need was granted shall constitute grounds for revocation of the certificate of need.

(f) Notice of the substance of the office's decisions shall be published in a newspaper of general circulation within the health service area served by the applicant, within 10 calendar days following the decision.

(g) Whether or not an informal hearing is granted shall be at the discretion of the office.

§ 127245 of Health Planning

(a) The undertaking of a project that requires a certificate of need, as provided in this chapter, without having first obtained a certificate of need shall (1) constitute grounds for revocation or denial of licensure, and (2) shall be deemed a violation of Section 1253.

In addition, the state department may assess and collect a civil penalty from any person undertaking a project without a certificate of need. For projects requiring a certificate of need pursuant to subdivision (a) of Section 127170, the civil penalty shall not be more than five thousand dollars (\$5,000). For projects requiring a certificate of need pursuant to subdivisions (b), (c), (d), or (e) of Section 127170, the civil penalty shall be two thousand five hundred dollars (\$2,500) or 20 percent of the cost of the project, whichever is less.

(b) A certificate of need shall expire 18 months from the date of issuance unless:

(1) The certificate holder has commenced the project covered by the certificate of need and is diligently pursuing the same to completion, as determined by the state department; or

(2) The duration of the certificate of need has been extended by the state department upon a showing of good cause. However, an extension shall not cumulatively exceed a period of 12 months beyond the original expiration date of the certificate of need.

(Added by Stats. 1995, Ch. 415, Sec. 9. Effective January 1, 1996.)

127250. Any decision issued pursuant to Section 127235 shall take effect 30 calendar days following its issuance unless within that time the applicant files a petition for appeal with the Advisory Health Council. The Advisory Health Council shall render a decision on each appeal, and appeal shall be by right. The filing of a petition shall operate to suspend and stay the decision by the office pending the hearing and entry of a final decision.

A petition for appeal shall be filed with the council within 30 calendar days following the date a decision is issued by the office. The petition shall be filed in the form and manner as prescribed by the office. As soon as a petition is filed, the council shall be polled and respond in writing to determine within 30 calendar days whether it will take oral argument on the petition. The council shall order a hearing if at least seven of the members certify in writing that they agree to take oral argument. If the council orders a hearing, the hearing shall be held within 60 calendar days of the date of the council's order. If a hearing is denied, a statement of the reasons for denial shall be issued by the council that shall be sent to the applicant, the office, and persons requesting the statement.

The council shall cause to be published in a newspaper of general circulation in the area where the proposed project is to be located, at least 30 calendar days prior to the appeal hearing, a notice summarizing the application and the office's decision, with particulars as the council may deem necessary, including, but not limited to, the name and address of the applicant, the type of project, and the date, time and place of the appeal hearing. In addition, the council shall send copies of the notice to the applicant, the office, and any person requesting a notice.

Parties to the appeals proceedings may only be the applicant and the office. Any other person shall have the right to appear and be heard at the appeal hearing, but shall not be a party to the proceedings.

The appeal hearing may be held by the council or by a hearing officer, as ordered by the council. If there is a hearing officer, he or she shall rule on the admission and exclusion of evidence. The council shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all powers to the hearing officer. Except as otherwise provided in this chapter, appeal hearings shall conform to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the office may use its own hearing officer.

§ 127255 of Health Planning

Grounds for appeal pursuant to Section 127250 shall be limited to the following:

- (a) The office or the hearing officer violated the review procedures prescribed by this chapter.
- (b) The decision of the office is not supported by substantial evidence.
- (c) The office or hearing officer has otherwise acted in an arbitrary and capricious manner.

§ 127260 of Health Planning

- (a) The Advisory Health Council, upon review of a decision of the department, shall do one of the following:
 - (1) Enter an order affirming the decision of the department if it finds as to the respective basis of review that:

(A) The application was processed and the hearing conducted was consistent with this chapter, or that any inconsistency with respect thereto was immaterial to the decision of the department.

(B) There is substantial evidence in the record supporting the department's decision.

(C) The department has not acted in an arbitrary and capricious manner.

(2) Enter an order remanding the decision of the department if it finds as to the respective basis of review that:

(A) The application was not processed or the hearing conducted was not consistent with this chapter, and this inconsistency was material to the decision rendered by the department.

(B) There is no substantial evidence in the record supporting the decision.

(C) The department has acted in an arbitrary or capricious manner.

(3) Enter an order reversing the decision of the department if it finds as to the respective basis of review that:

(A) The application was not processed or the hearing conducted was not consistent with the provisions of this chapter, and this inconsistency was material to the decision rendered by the department.

(B) There is no substantial evidence in the record supporting the decision.

(C) The department has acted in an arbitrary or capricious manner.

(b) Orders of the council authorized by this section shall be made only upon the affirmative vote of a majority of the council, with at least six of the affirmative votes cast by the following members:

(1) Representative of consumers of services for persons with intellectual disabilities appointed by the Governor.

(2) Representative of consumers of mental health services appointed by the Governor.

(3) Representative of local government appointed by the Governor.

(4) Representatives of the general consumer public appointed by the Governor, Senate Committee on Rules, or Speaker of the Assembly.

(5) Members of the Legislature appointed by the Senate Committee on Rules or Speaker of the Assembly.

§ 127265 of Health Planning

Where the order of the Advisory Health Council remands the decision of the department pursuant to subdivision (b) of Section 127260, the council may direct the department to reconsider the application pursuant to Section 11521 of the Government Code in the light of its order and to take further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department.

If the Advisory Health Council does not adopt a decision within 90 calendar days after the close of the hearing provided for by Section 127250, in the absence of reconsideration on the motion of the department, the decision of the department shall be final.

§ 127270 of Health Planning

An appellant, other than an agency of the state or the Board of Regents of the University of California, who petitions pursuant to Section 127250, shall be responsible for the actual cost to the state for the hearing officers and stenographic assistance, including reproduction of minutes and reports, connected with the appeal, as determined by the Department of General Services. However, when a decision of the department is remanded or reversed by the council, the appellant shall not be required to reimburse the costs.

§ 127275 of Health Planning

Judicial review of a decision of the Advisory Health Council affirming the decision of the department pursuant to subdivision (a) of Section 127260 may be had by any party to the proceedings, other than the department, as provided in Section 1094.5 of the Code of Civil Procedure. An appellant desiring to contest an adverse decision of the department need not pursue the appeal procedures prescribed by this chapter, but may elect to pursue direct judicial remedy pursuant to Section 1094.5 of the Code of Civil Procedure. The decision of the council or department shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.

§ 127280 of Health Planning

(a) Every health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, except a health facility owned and operated by the state, shall each year be charged a fee established by the office consistent with the requirements of this section.

(b) Commencing in calendar year 2004, every freestanding ambulatory surgery clinic as defined in Section 128700, shall each year be charged a fee established by the office consistent with the requirements of this section.

(c) The fee structure shall be established each year by the office to produce revenues equal to the appropriation made in the annual Budget Act or another statute to pay for the functions required to be performed by the office pursuant to this chapter, Article 2 (commencing with Section 127340) of Chapter 2, or Chapter 1 (commencing with Section 128675) of Part 5, and to pay for any other health-related programs administered by the office. The fee shall be due on July 1 and delinquent on July 31 of each year.

(d) The fee for a health facility that is not a hospital, as defined in subdivision (c) of Section 128700, shall be not more than 0.035 percent of the gross operating cost of the facility for the provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year.

(e) The fee for a hospital, as defined in subdivision (c) of Section 128700, shall be not more than 0.035 percent of the gross operating cost of the facility for the provision of health care services for its last fiscal year that ended on or before June 30 of the preceding calendar year.

(f) (1) The fee for a freestanding ambulatory surgery clinic shall be established at an amount equal to the number of ambulatory surgery data records submitted to the office pursuant to Section 128737 for encounters in the preceding calendar year multiplied by not more than fifty cents (\$0.50).

(2) (A) For the calendar year 2004 only, a freestanding ambulatory surgery clinic shall estimate the number of records it will file pursuant to Section 128737 for the calendar year 2004 and shall report that number to the office by March 12, 2004. The estimate shall be as accurate as possible. The fee in the calendar year 2004 shall be established initially at an amount equal to the estimated number of records reported multiplied by fifty cents (\$0.50) and shall be due on July 1 and delinquent on July 31, 2004.

(B) The office shall compare the actual number of records filed by each freestanding clinic for the calendar year 2004 pursuant to Section 128737 with the estimated number of records reported pursuant to subparagraph (A). If the actual number reported is less than the estimated number reported, the office shall reduce the fee of the clinic for calendar year 2005 by the amount of the difference multiplied by fifty cents (\$0.50). If the actual number reported exceeds the estimated number reported, the office shall increase the fee of the clinic for calendar year 2005 by the amount of the difference multiplied by fifty cents (\$0.50) unless the actual number reported is greater than 120 percent of the estimated number reported, in which case the office shall increase the fee of the clinic for calendar year 2005 by the amount of the difference, up to and including 120 percent of the estimated number, multiplied by fifty cents (\$0.50), and by the amount of the difference in excess of 120 percent of the estimated number multiplied by one dollar (\$1).

(g) There is hereby established the California Health Data and Planning Fund within the office for the purpose of receiving and expending fee revenues collected pursuant to this chapter.

(h) Any amounts raised by the collection of the special fees provided for by subdivisions (d), (e), and (f) that are not required to meet appropriations in the Budget Act for the current fiscal year shall remain in the California Health Data and Planning Fund and shall be available to the office in succeeding years when appropriated by the Legislature in the annual Budget Act or another statute, for expenditure under the provisions of this chapter, Article 2 (commencing with Section 127340) of Chapter 2, and Chapter 1 (commencing with Section 128675) of Part 5, or for any other health-related programs administered by the office, and shall reduce the amount of the special fees that the office is authorized to establish and charge. In no event, however, shall those amounts be used for programs administered by the office pursuant to Sections 127676, 127679, 127681, 127683, and 127685, that become effective on or after January 1, 2019.

(i) (1) No health facility liable for the payment of fees required by this section shall be issued a license or have an existing license renewed unless the fees are paid. A new, previously unlicensed, health facility shall be charged a pro rata fee to be established by the office during the first year of operation.

(2) The license of any health facility, against which the fees required by this section are charged, shall be revoked, after notice and hearing, if it is determined by the office that the fees required were not paid within the time prescribed by subdivision (c).

(j) This section shall become operative on January 1, 2002.

§ 127280.1 of Health Planning

Notwithstanding any other provision of law, up to two hundred thousand dollars (\$200,000) of the moneys collected pursuant to Section 127280 may be used by the State Department of Health Services for data collection on, analysis of, and reporting on, maternal and perinatal outcomes, if funds are appropriated in the Budget Act.

§ 127285 of Health Planning

(a) Health facilities and clinics, except for chronic dialysis clinics as defined in subdivision (b) of Section 1204, shall annually report to the office all of the following information on forms supplied by the office:

(1) A current inventory of beds and services.

(2) Utilization data by bed type and service.

(3) Acquisitions of diagnostic or therapeutic equipment during the reporting period with a value in excess of five hundred thousand dollars (\$500,000).

(4) Commencement of projects during the reporting period that require a capital expenditure for the facility or clinic in excess of one million dollars (\$1,000,000).

(b) With respect to chronic dialysis clinics, the office may annually obtain this information to the extent it is available from the Federal End Stage Renal Disease Network.

§ 127290 of Health Planning

(a) The department shall contract with agencies approved pursuant to Section 127155 for the purpose of providing agencies with funds to assist them to perform the duties required of them by this chapter. The Advisory Health Council shall review and make recommendations to the department upon all contracts to be entered into under this section. The department shall prepare contracts upon information submitted by agencies in the form required by the department.

(b) Pending final approval by the department of the contracts, the department may advance funds to those area health planning agencies that the director determines require emergency assistance to carry out their functions under this chapter. This emergency funding authority shall expire July 1, 1977. After determining the emergency funding available to each area health planning agency, the department shall immediately notify the administrative body of each area health planning agency of the amount and the conditions governing its availability.

§ 127295 of Health Planning

The Legislature finds that funds available to the office, the health systems agencies, and the area health planning agencies for the implementation of this chapter may prevent the office, the health systems agencies and the area health planning agencies from fully complying with their statutorily mandated functions.

In the event that the health systems agencies lose all, or substantially all, federal funding that is not replaced by other funding at a level that allows them to fulfill their major responsibilities under this chapter and in order to ensure continuity of the certificate-of-need process, the Governor is hereby authorized to request that the Secretary for Health and Human Services eliminate federal designation and funding of some or all health systems agencies located within the state and to terminate some or all duties assigned to area health system planning agencies and to assign the office to conduct some or all functions heretofore designated to the health systems agencies and area health planning agencies.

§ 127300 of Health Planning

Notwithstanding any other provision of law, on and after January 1, 1987, the requirement that health facilities and specialty clinics apply for, and obtain, certificates of need or certificates of exemption is indefinitely suspended.