

STUDY OF STATUTES REQUIRING APPROVAL
BY DEPARTMENT OF HUMAN RESOURCES
OF CERTAIN MEDICAL PROJECTS



Bulletin No. 87-10

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

August 1986

STATUTES REQUIRING APPROVAL BY DEPARTMENT OF HUMAN RESOURCES
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STATE OF NEVADA

AUGUST 1986

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Assembly Concurrent Resolution No. 41—Committee on Health and Welfare

FILE NUMBER.103.

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study the effect on the cost of medical services of the requirement of approval by the department of human resources of certain medical projects.

WHEREAS, It is necessary to the welfare of the state to ensure that its citizens receive medical services of high quality at a reasonable cost; and

WHEREAS, In an effort to control that cost, the legislature has enacted a law requiring the approval of the director of the department of human resources for certain medical projects; and

WHEREAS, It is not clear what effect that requirement has had in controlling the cost of medical services; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the legislative commission is hereby directed to study the effect on the cost of medical services of the requirement of approval by the director of the department of human of certain medical projects on the cost of medical services; and be it further

RESOLVED, That the results of the study and any recommendations for legislation be reported to the 64th session of the legislature.

19  25

REPORT OF THE LEGISLATIVE COMMISSION
TO THE MEMBERS OF THE 64TH SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 41 of the 63rd session of the Nevada legislature. Assembly Concurrent Resolution No. 41 directed the legislative commission to study the statutes requiring approval by the department of human resources of certain medical projects.

In order to conduct the study, the legislative commission, under the auspices of the joint committee on human resources, appointed a subcommittee with the following members:

Senator Helen A. Foley, Chairman
Assemblyman Robert G. Craddock, Vice Chairman
Assemblyman James J. Banner

This report represents the subcommittee's recommendations as they were approved by the legislative commission. All supporting documents and minutes of meetings are on file with the legislative counsel bureau.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
August 1986

* * * * *

LEGISLATIVE COMMISSION

Assemblyman Louis W. Bergevin, Chairman
Assemblyman Bob L. Kerns, Vice Chairman

Senator James H. Bilbray	Assemblyman Robert M. Sader
Senator Helen A. Foley	Assemblyman James W. Schofield
Senator Lawrence E. Jacobsen	Assemblyman Danny L. Thompson
Senator Kenneth K. Redelsperger	Assemblyman Barbara A. Zimmer
Senator Sue Wagner	

SUMMARY OF RECOMMENDATIONS

The legislative commission's subcommittee reviewing statutes requiring approval by the department of human resources of certain medical projects recommends that the 64th session of the Nevada legislature:

1. Exempt from review capital expenditures which are not directly related to patient services. This exemption could include expenditures for:
 - a. Costs associated with facility maintenance;
 - b. Data processing and communication systems;
 - c. Energy conservation systems;
 - d. Land acquisition;
 - e. Parking structures;
 - f. Renovation costs necessary to comply with life safety, licensure, certification or accreditation standards; and
 - g. Other elements which are determined by the department of human resources not to relate directly to patient services.
- (BDR 40-154)
2. Exempt from review replacement of medical equipment.
(BDR 40-153)
3. Exempt from review all new services which do not involve new beds or exceed capital and equipment thresholds except:
 - a. Burn units;
 - b. Neonatal intensive care units;
 - c. Open heart surgery units; and
 - d. Transplant units.
- (BDR 40-155)
4. Raise the threshold above which new technological equipment must be approved before it is purchased from \$400,000 to \$1 million. (BDR 40-152)
5. Raise the capital expenditure level to \$2 million.
(BDR 40-151)

REPORT TO THE 64TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY STATUTES REQUIRING APPROVAL BY DEPARTMENT
OF HUMAN RESOURCES OF CERTAIN MEDICAL PROJECTS

I. INTRODUCTION

The 1985 legislature adopted Assembly Concurrent Resolution No. 41 which directed the legislative commission to study the effect that the Certificate of Need (CON) process has on the cost of medical services. The legislative commission's subcommittee to study statutes requiring approval by the department of human resources of certain medical projects, which conducted the study, held three meetings.

The first two meetings, held jointly with the legislative commission's subcommittee to study restraining costs of medical care (Senate Bill 460, chapter 645, Statutes of Nevada, 1985) were designed to gather information and take testimony from expert witnesses and the public at large. The third meeting was a work session to analyze the data collected, consider alternative courses of action and adopt recommendations. Input for the study was taken from a variety of sources including the American Association of Retired Persons, the general public, government officials, the health care industry, legal and research staff of the legislative counsel bureau, the medical professions and private consultants.

II. BACKGROUND

Certificate of need (CON) is a capital expenditure review program administered by a state for the purpose of regulating capital expenditures for health care facilities, new institutional health services, and acquisition of major medical equipment. The concept grew out of the voluntary health planning movement which typically was composed of local health planning councils made up of lay community leaders and hospital administrators.

Governmental involvement in health planning first began on a national level when Congress passed the Hill-Burton Act in 1946. The Hill-Burton Act required states to develop plans for funding hospital construction and public health centers and established federal/state grants in aid for that purpose. The Hill-Burton Act was responsible for the building of thousands of hospitals nationwide. Many of these new hospitals were in rural areas that were greatly in need of health care facilities.

Along with the proliferation of hospitals came a philosophy biased toward inpatient care, justifying a need for more beds. The Hill-Burton Act had another important effect on the hospital industry--the need for more regulation to oversee the expenditure of public moneys and to set minimum standards for quality of care.

The movement for uniform planning continued to grow into the 1960's and 1970's with the implementation of the Regional Medical Program (RMP) and the Comprehensive Health Planning Act (CHPA). Both of these federal programs, however, maintained the voluntary nature of health planning. While eligibility for public grants was tied to the state or regional planning agencies, the institutions themselves were not otherwise bound by their decisions.

Although federal efforts provided the funding and offered standards for statewide or regional health planning, the lack of "teeth" or sanctions for noncompliance undermined those efforts. It became apparent that unenforceable, voluntary planning was not curbing the rapidly rising inflation of health care costs.

New York became the first state to move to compulsory planning and enacted the first CON law in 1964. Similar regulations were subsequently adopted by California, Connecticut, Maryland, and Rhode Island. Laws of this type generally provided that any new capital expenditures above a certain dollar threshold, and substantial changes in service offerings, were subject to review and approval by a designated state agency.

After a number of states enacted CON laws, Congress passed Public Law (P.L.) 93-641, the National Health Planning and Resource Development Act of 1974. Public Law 93-641 created a network of health service areas and health systems agencies (HSA's) to direct allocation of health resources within the states. The HSA's determine local health capital and service needs and recommend approval or denial to the state agency that administers the CON program.

State CON programs were established through state legislation in a majority of states after 1974.

Over the past 3 years, Congress has indicated a desire to allow states more autonomy in health planning by prohibiting the imposition of sanctions for states that are not in compliance with P.L. 93-641. In addition, Congress appears to want to allow states to return to a voluntary rather than mandatory participation in federal legislation. Consequently, since 1983, a number of states have either modified CON laws, raised thresholds and/or exempted certain types of facilities or equipment, or have abolished CON altogether.

Nevada

Nevada's CON law (chapter 439A of Nevada Revised Statutes [NRS]) was initially established in 1971 when Senate Bill 326 was passed by the legislature and approved by the governor. Senate Bill 326 provided for regulatory approval by a state agency for any projects proposing additional beds, capital expenditures, or services by health facilities. The program is currently administered by the department of human resources (DHR). The director of DHR has ultimate authority for approval of any project covered under CON.

In 1977, the legislature amended chapter 439A of NRS to be in compliance with P.L. 93-641. Since that time, the CON statutes have been amended several times, most recently by the 1985 legislature.

As described in the 1985-1989 Nevada State Health Plan, the purpose and function of the Nevada CON program is as follows:

1.2.1.2. Purpose of the CON Program

The CON program is intended to implement health planning by:

- (1) Reviewing proposals that would increase health facility bed capacity either by expansion of existing or construction of new facilities;
- (2) Reviewing proposals that would increase existing services or establish new services in health facilities; and
- (3) Reviewing proposals to acquire major medical equipment or initiate capital expenditure projects by health facilities.

[The details of the foregoing review process are delineated in chapter 439A of the Nevada Administrative Code (NAC).]

1.2.1.3. Function of the CON Program

The CON program, by means of its regulatory authority, exercises a degree of control over the growth of health facility bed capacity and services in the State. The principal function of the program is to avoid unnecessary and costly duplication of health facilities, services and equipment. This is accomplished by determining whether proposed projects address goals and meet criteria set forth in the State and/or local health plans. Recommendations of affected health planning

agencies are considered in making determinations, in addition to evaluation of the financial aspects of the projects.

III. DISCUSSION OF ISSUES AND RECOMMENDATIONS

The subcommittee received testimony from a wide variety of sources during its meetings. The issues and recommendations which arose as a result of this testimony were compiled by legislative staff. The subcommittee reviewed and considered these topics in workshop format at its meeting on June 11, 1986 (see Appendix B for workshop document).

The following is an overview of the major topics and the subcommittee's recommendations. The bills drafted to implement these recommendations are contained in Appendix C.

TOPIC - SCOPE OF CERTIFICATE OF NEED REVIEW

General Discussion

In the two public hearings a great deal of testimony was presented regarding the scope of CON review necessary in Nevada. Ideas for recommendations ranged from abolishing CON to exempting certain equipment or expenditures and targeting other specific areas for CON review. The major issue was "whether Nevada should abolish CON regulation or retain it"; and if it is to be retained, to what degree.

The committee received and reviewed information from states that have abolished CON entirely (Arizona, California, and Utah) and states that have modified their CON regulations (Maryland, Oregon, and Wisconsin).

Finding

The consensus of the subcommittee was that current CON statutes in Nevada should be retained but modified.

Recommendation No. 1

Exempt from review capital expenditures which are not directly related to patient services. This exemption could include expenditures for:

- a. Costs associated with facility maintenance;
- b. Data processing and communication systems;
- c. Energy conservation systems;
- d. Land acquisition;

- e. Parking structures;
- f. Renovation costs necessary to comply with life safety, licensure, certification or accreditation standards; and
- g. Other elements which are determined by the department of human resources not to relate directly to patient services.

(BDR 40-154)

Discussion

Discussion centered around the point that the items exempted by the foregoing recommendation have a limited value to the provider attempting to increase market share. Unnecessary expenditures in this area would appear to place the provider at a competitive disadvantage.

Recommendation No. 2

Exempt from review replacement of medical equipment.
(BDR-40-153)

Discussion

It was felt that replacement of antiquated or outmoded equipment does not constitute new services and allows facilities to continue to provide the same services competitively.

Recommendation No. 3

Exempt from review all new services which do not involve new beds or exceed capital and equipment thresholds except:

- a. Burn units;
- b. Neonatal intensive care units;
- c. Open heart surgery units; and
- d. Transplant units.

(BDR 40-155)

Discussion

Exemption of these services would make it easier for current providers to utilize existing unused service capacity or develop competing new services. It would, however, prevent major facilities from being constructed without review and

approval. By excepting items (a) through (d), those specialized services could still be monitored and approved only for specific hospitals which have the volume to efficiently provide those types of services.

Recommendation No. 4

Raise the threshold above which new technological equipment must be approved before it is purchased from \$400,000 to \$1 million. (BDR 40-152)

Discussion

There was considerable discussion regarding the intent of maintaining a threshold in order to require a determination of need and adequate volume (necessity) to justify the purchase of a particular piece of equipment. It was felt that the intent was to monitor the acquisition of "high technology" equipment and that the \$1,000,000 threshold would still provide that protection while allowing hospitals to remain competitive.

Recommendation No. 5

Raise the capital expenditure level to \$2 million.
(BDR 40-151)

Discussion

The subcommittee determined, after due consideration, that raising the threshold for capital expenditure to \$2 million was appropriate and would still allow the monitoring of the construction of new facilities.

IV. LIST OF SELECTED REFERENCE MATERIALS

1. American Hospital Association, Division of Hospital Planning, Capital Finance, and Special Studies, Office of Public Analysis, "Report on Status of Capital Expenditure Regulation," January 21, 1986.
2. Heller, Gloria, "A Summary Of A Study Of The Impact Of Deregulation On Health Facilities In Arizona," Office of Planning and Budget Development, Arizona Department of Health Services, November 1985.
3. Hildebrandt, Sharon L., "Information on CON/1122 by State - 1984-85 State Medicaid Changes," State Issues Forum, June 21, 1985.
4. Morris, Jonas, Searching For A Cure, National Health Care Policy Considered, Berkeley Morgan/Publishers, Washington, D.C. 1984.
5. Pierce, Bob, "1984 State Health Care Cost Containment Legislation," National Conference of State Legislatures, 1985.
6. Polchow, Michelle, "1985 State Health Care Cost Containment Legislation," National Conference of State Legislatures, 1986.
7. White, William D., "The American Hospital Industry Since 1900: A Short History," Center for Health Studies Working Paper, 1979.

V. APPENDICES

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APPENDIX A

Chapter 439A of Nevada Revised Statutes

CHAPTER 439A
PLANNING FOR THE PROVISION OF
HEALTH CARE

- 439A.010 Definitions.
439A.0105 "Administrator" defined.
439A.011 "Council" defined.
439A.012 "Department" defined.
439A.0125 "Director" defined.
439A.0127 "Division" defined.
439A.014 "Federal Act" defined.
439A.015 "Health facility" defined.
439A.016 "Health maintenance organization" defined.
439A.017 "Health services" defined.
439A.018 "Health systems agency" defined.
439A.0195 "Practitioner" defined.
439A.020 Purposes of chapter.
439A.030 State health coordinating council: Creation; membership; chairman; meetings.
439A.040 State health coordinating council: Limit on consecutive terms; vacancy; alternate membership prohibited; compensation and expenses of member.
439A.060 State health coordinating council: Duties.
439A.081 Department is state agency for health planning and development; powers of director; fees.
439A.082 Director to contract with University of Nevada System to collect and analyze information from health facilities and purchasers of health care.
439A.083 Director to establish procedure for review of statutes, regulations and standards governing approval, licensing or certification of health facilities; preparation of report for governor and legislature.
439A.100 Approval of director required for certain projects; criteria for review of application.
439A.103 Exemption from review for project related to health maintenance organization.
439A.110 Injunctions.
439A.120 Civil penalties.
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439A.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 439A.0105 to 439A.0195, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1971, 566; A 1977, 253; 1979, 967; 1981, 1214; 1985, 1357)

439A.0105 "Administrator" defined. "Administrator" means the administrator of the division.

(Added to NRS by 1985, 1357)

439A.011 "Council" defined. "Council" means the state health coordinating council.

(Added to NRS by 1981, 1213)

439A.012 "Department" defined. "Department" means the department of human resources.

(Added to NRS by 1981, 1213)

439A.0125 "Director" defined. "Director" means the director of the department.

(Added to NRS by 1981, 1213)

439A.0127 "Division" defined. "Division" means the division for review of health resources and costs of the department of human resources.

(Added to NRS by 1985, 1357)

439A.014 "Federal Act" defined. "Federal Act" means 42 U.S.C. §§ 300k-1 to 300n-4, inclusive.

(Added to NRS by 1981, 1213; A 1985, 290)

439A.015 "Health facility" defined. "Health facility" means a facility in or through which health services are provided, except for the office of a practitioner used solely to provide routine services for health to his patients. The term includes any parent, affiliate, subsidiary or partner of such a facility and any other entity which has a primary purpose of providing a benefit to such a facility. For the purposes of this section "office of a practitioner solely to provide routine services for health to his patients" does not include:

1. A facility which is or will be qualified to receive reimbursement, other than for the services of a practitioner, as a health facility from any public agency.

2. A facility which contains or will contain medical equipment

which meets the threshold for review of costs pursuant to paragraph (d) of subsection 2 of NRS 439A.100.

(Added to NRS by 1981, 1213; A 1985, 1358, 1749)

439A.016 "Health maintenance organization" defined. "Health maintenance organization" has the meaning ascribed to it in subsection 7 of NRS 695C.030.

(Added to NRS by 1981, 1213)

439A.017 "Health services" defined. "Health services" means the care and observation of patients, the diagnosis of human diseases, the treatment and rehabilitation of patients, or related services. The term includes treatment of patients for alcohol or drug abuse, services related to mental health and diagnostic services.

(Added to NRS by 1981, 1213; A 1983, 1524)

439A.018 "Health systems agency" defined. "Health systems agency" means an organization in this state which has been designated as a health systems agency by the Federal Government or by the governor.

(Added to NRS by 1981, 1213; A 1981, 1898)

439A.0195 "Practitioner" defined. "Practitioner" means a physician licensed under chapter 630, 630A or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatrist, licensed psychologist, chiropractor, doctor of traditional Oriental medicine in any form, medical laboratory director or technician, pharmacist or other person whose principal occupation is the provision of services for health.

(Added to NRS by 1985, 1357)

439A.020 Purposes of chapter. The purposes of this chapter are to:

1. Promote equal access to quality health care at a reasonable cost;
2. Promote an adequate supply and distribution of health resources;
3. Promote uniform, effective methods of delivering health care;
4. Promote and encourage the adequate distribution of health and care facilities and manpower;
5. Promote and encourage the effective use of methods for controlling increases in the cost of health care;
6. Encourage participation in health planning by members of the several health professions, representatives of institutions and agencies interested in the provision of health care and the reduction of the cost of such care, and the general public;
7. Utilize the viewpoint of the general public for making decisions;

8. Encourage public education regarding proper personal health care and methods for the effective use of available health services; and

9. Promote a program of technical assistance to purchasers to contain effectively the cost of health care, including:

(a) Providing information to purchasers regarding the charges made by practitioners.

(b) Training purchasers to negotiate successfully for a policy of health insurance.

(c) Conducting studies and providing other information about measures to assist purchasers in containing the cost of health care.

(Added to NRS by 1971, 566; A 1977, 254; 1983, 1524; 1985, 1358)

439A.030 State health coordinating council: Creation; membership; chairman; meetings.

1. The state health coordinating council is hereby created. The council consists of at least seven members appointed by the governor. Between 50 and 60 percent of the members of the council must be persons who are recipients of health services and not providers of health services.

2. Each health systems agency is entitled to the same number of representatives, no fewer than two, on the council. Of the representatives of each health systems agency, between 50 and 60 percent must be persons who are recipients of health services and not providers of health services.

3. If one or more hospitals or other health care facilities of the Veterans' Administration are located in the state, the council shall, in addition to the appointed members, include as a nonvoting member a person whom the Chief Medical Director of the Veterans' Administration designates as a representative of such a facility or facilities.

4. The council shall select a chairman from among its members.

5. The council may meet regularly at least once in each calendar quarter of a year.

(Added to NRS by 1971, 566; A 1977, 254; 1981, 1214; 1983, 1443, 1524; 1985, 1359)

439A.040 State health coordinating council: Limit on consecutive terms; vacancy; alternate membership prohibited; compensation and expenses of member.

1. A member of the council may not serve more than two consecutive terms.

2. Upon the expiration of the term of a representative of a health systems agency on the council or the occurrence of a vacancy in his office, the agency shall submit to the governor at least two nominees

and the governor shall appoint one of those nominees as the representative's successor or replacement. No person may be appointed to alternate membership on the council.

3. Members of the council are not entitled to compensation but are entitled to reimbursement for any actual and necessary expenses incurred in connection with their duties as members of the council, at the rate prescribed by law for state officers and employees.

(Added to NRS by 1971, 566; A 1977, 255; 1981, 66, 1215)

439A.060 State health coordinating council: Duties. The council shall:

1. Review the state health plan at least biennially and make recommendations for any necessary revisions to it.

2. Conduct public hearings on any proposed state health plan before adopting it.

3. Advise the department concerning state health planning functions. In developing and revising any state plan in connection with federal assistance for health programs, the council shall consider, among other things, the amount of money available from the Federal Government for those programs and the conditions attached to the acceptance of the money, and the limitations of legislative appropriations for those programs.

(Added to NRS by 1971, 567; A 1977, 255; 1981, 1215; 1983, 1525)

439A.081 Department is state agency for health planning and development; powers of director; fees.

1. The department is the agency of the State of Nevada for health planning and development, and shall carry out the state administrative program and perform the functions of health planning and development for the state in accordance with the following priorities:

(a) Providing for the effective use of methods for controlling increases in the cost of health care;

(b) Providing for the adequate supply and distribution of health resources;

(c) Providing for equal access to quality health care at a reasonable cost; and

(d) Providing the public education regarding proper personal health care and methods for the effective use of available health services.

The department shall consult with and assist the council.

2. In order to carry out the provisions of this chapter, the director may:

(a) Delegate the duties of the director and the department pursuant to this chapter to the administrator and the division;

(b) Hire employees in the classified service;

(c) Adopt such regulations as are necessary; and

(d) Apply for, accept and disburse money granted by the Federal Government for the purposes of health planning and development, including grants made pursuant to the Federal Act.

3. The department may, by regulation, fix fees to be collected from applicants seeking approval of proposed health facilities or services. The amounts of any such fees must be based upon the department's costs of examining and acting upon the applications.

4. In developing and revising any state plan for health planning and development, the department shall consider, among other things, the amount of money available from the Federal Government for health planning and development and the conditions attached to the acceptance of such money, and the limitations of legislative appropriations for health planning and development.

(Added to NRS by 1977, 257; A 1979, 967; 1981, 1216; 1899; 1983, 1525; 1985, 1359)

439A.082 Director to contract with University of Nevada System to collect and analyze information from health facilities and purchasers of health care. The director shall contract with the University of Nevada System to collect and analyze information from health facilities and purchasers of health care to:

1. Respond to requests for information from the legislature.
2. Provide technical assistance to purchasers of health care.
3. Provide the department with information necessary to carry out the provisions of chapter 439A of NRS.
4. Provide other persons with information relating to the cost of health care.

(Added to NRS by 1985, 1357)

439A.083 Director to establish procedure for review of statutes, regulations and standards governing approval, licensing or certification of health facilities; preparation of report for governor and legislature. The director shall:

1. Establish procedures for the review of all statutes, regulations and standards governing the approval, licensing or certification of health facilities. The procedures must provide for participation in the review by providers of health care and the general public.

2. Before December 31 of each even-numbered year, prepare a report to the governor and the legislature identifying any statutes, regulations and standards which add to the cost of health care without providing a significant benefit and the action which has been taken or is required to eliminate any such statutes, regulations and standards.

(Added to NRS by 1985, 1357)

439A.100 Approval of director required for certain projects; criteria for review of application.

1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are as follows:

(a) Any proposed expenditure by or on behalf of a health facility in excess of the greater of \$714,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service to be offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) The proposed acquisition of any medical equipment which would cost more than \$400,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

- (1) The need for and the appropriateness of the project in the area to be served;
- (2) The extent to which the project is consistent with the state health plan;
- (3) The financial feasibility of the project;
- (4) The effect of the project on the cost of health care; and
- (5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

4. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.

5. The decision of the director is a final decision for the purposes of judicial review.

(Added to NRS by 1971, 568; A 1977, 256; 1979, 491, 968; 1981, 1216; 1983, 1526; 1985, 1360)

439A.103 Exemption from review for project related to health maintenance organization. Any project related to a health maintenance organization is not exempt from review pursuant to NRS 439A.100 unless it is subject to review pursuant to 42 U.S.C. § 300m-6. (Added to NRS by 1985, 1357)

439A.110 Injunctions.

1. Except as provided in subsection 2, the department may apply to any court of competent jurisdiction to enjoin any person, state agency or local governmental agency which has engaged in or is about to engage in any act which violates any provision of this chapter or the regulations adopted pursuant thereto. Such injunction may be issued without proof of actual damage sustained by any person.

2. The department shall not seek injunctive relief under this section if it has imposed a civil penalty for the same violation.

(Added to NRS by 1977, 257; A 1983, 1528)

439A.120 Civil penalties.

1. Except as provided in subsection 2, any person who violates any of the provisions of this chapter is liable to the state for a civil penalty of:

- (a) Where the provision violated governs the licensing of a project

described in subsection 2 of NRS 439A.100, not more than 10 percent of the proposed expenditure for the project.

(b) Where any other provision is violated, not more than \$20,000 for each violation.

2. The department shall not impose a penalty under this section if it applies for injunctive relief to prevent the same violation.

(Added to NRS by 1983, 1523)

The next page is 15809

APPENDIX B
Workshop Document

W O R K S H O P
RECOMMENDATIONS AND CONCEPTS RELATED TO
CERTIFICATE OF NEED (CON)

Following are the recommendations and concepts for consideration which were presented to the legislative commission's subcommittees to study statutes requiring approval by department of human resources of certain medical projects - Certificate of Need (A.C.R. 41) and to study restraining costs of medical care in Nevada (S.B. 460):

I. SCOPE OF CON REVIEW

- A. Abolish certificate of need.
- B. Specify elements to be exempted from the CON process:
 - *1. Exempt from review capital expenditures which are not directly related to patient services. This exemption could include expenditures for:
 - a. Land acquisition;
 - b. Parking structures;
 - c. Costs associated with facility maintenance;
 - d. Renovation costs necessary to comply with life safety, licensure, certification or accreditation standards;
 - e. Energy conservation systems;
 - f. Data processing and communication systems; and
 - g. Other elements which are determined by the department of human resources not to relate directly to patient services.
 - **2. Exempt from review "replacement" medical equipment, subject to an expedited determination that the equipment meets the criteria as a replacement of existing equipment.
 - 3. Exempt from review all new services which do not involve new beds or exceed capital and equipment thresholds; except those services for which the department of human resources determines that the quality is impacted by service volume, including:
 - a. Neonatal intensive care units;
 - b. Burn units;
 - c. Trauma centers;
 - d. Transplant units;
 - e. Open heart surgery units; and
 - f. Other services as determined by the department of human resources.

*See V-D.
**See V-C.

4. Exempt hospitals licensed to operate 150 or more beds from CON review for proposed acquisitions of medical equipment.
 5. Differentiate between private practice and hospitals; i.e., loosen restrictions if equipment is to be placed where there would be greater access by the largest number of physicians.
- C. Specify "targeted" elements to be included in the CON process:
1. Direct the department of human resources to specify, by regulation, the elements to be reviewed under the CON process.
 2. Maintain a "targeted" CON program which retains review/approval authority on one or more of the following elements:
 - a. High technology equipment;
 - b. Facilities for psychiatric care;
 - c. Facilities for long-term care;
 - d. Construction of large hospitals; and
 - e. Other specialty services.
- D. Maintain current CON process.

II. ADMINISTRATION OF CON PROGRAM

- A. Establish a strong review process that is streamlined (i.e., eliminate nonclinical review--target high technology) with a staff sufficient to conduct a hearing. Each review would be subject to specific time limits.
- B. Change the focus of the CON to be a policy oriented review of a health planning document which would be approved by the legislature.
- C. Change CON decisionmaking processes to offer an opportunity for immediate judicial appeal.
- D. Refocus priorities of the Health Systems Agencies to be policy recommending agencies without authority to make recommendations concerning individual applications.

III. MISCELLANEOUS RECOMMENDATIONS

- A. Conduct a cost analysis to ascertain whether or not the CON process provides benefits that justify the cost of conducting the hearings and preparing studies.
- B. Establish a provision that all health care providers which receive a facility fee from third party payers must be licensed by the health division of the department of human resources.

- C. Place a cap on the amount of expenditures the hospital industry can make in 1 year.
- D. Retain a CON process as a part of a broader program to encourage containment of hospital costs through such procedures as competitive bidding, ratesetting or rate review.

IV. CHANGES ALREADY BEING CONSIDERED ADMINISTRATIVELY

- A. Eliminate the semiannual filing schedule. When a letter of intent is found reviewable, publish a notice and allow competing applicants 30 days to file a letter of intent. This approach would minimize the need for applicants to file simply in anticipation of a competitor's application.
- B. Incorporate within the state health plan (SHP) criteria which provide additional incentives and/or mandates to develop alternatives to the higher cost institutional services.
- C. As one of several options, incorporate within the SHP criteria which require services to indigent persons as a condition for approval of applications through the CON process.

V. RECOMMENDATIONS SUBMITTED BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY RESTRAINING THE COSTS OF MEDICAL CARE IN NEVADA (S.B. 460)

- A. Retain the present "bed/need methodology" as it is, except as proposed in the "State Health Plan."
- B. Raise the threshold above which new technological equipment must be approved before it is purchased from \$400,000 to \$1 million.
- C. Exempt from the CON process replacement of out-dated equipment by similar new equipment.
- D. Exempt from the CON process nonmedical capital improvements to an existing facility or institution.

APPENDIX C

Suggested Legislation

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BDR 40-151 Increases amount health facilities may spend without approval of the department of human resources.....	31
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SUMMARY---Increases amount health facilities may spend without approval of the department of human resources. (BDR 40-151)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to planning for health care; increasing the amount of capital expenditures which may be made by a health facility without the approval of the director of the department of human resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439A.100 is hereby amended to read as follows:

439A.100 1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are : [as follows:]

(a) Any proposed expenditure by or on behalf of a health facility in excess of the greater of [\$714,000] \$2,000,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service to be

offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) The proposed acquisition of any medical equipment which would cost more than \$400,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

(1) The need for and the appropriateness of the project in the area to be served;

(2) The extent to which the project is consistent with the state health plan;

- (3) The financial feasibility of the project;
 - (4) The effect of the project on the cost of health care; and
 - (5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.
4. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.
5. The decision of the director is a final decision for the purposes of judicial review.

SUMMARY---Increases amount expendable for medical equipment without approval of the department of human resources. (BDR 40-152)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to planning for health care; increasing the amount which may be expended for medical equipment without the approval of the department of human resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439A.100 is hereby amended to read as follows:

439A.100 1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are : [as follows:]

(a) Any proposed expenditure by or on behalf of a health facility in excess of the greater of \$714,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service to be

offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) The proposed acquisition of any new or used medical equipment which [would cost] has a market value of more than [\$400,000,] \$1,000,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

(1) The need for and the appropriateness of the project in the area to be served;

(2) The extent to which the project is consistent with the state health plan;

- (3) The financial feasibility of the project;
- (4) The effect of the project on the cost of health care; and
- (5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

4. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.

5. The decision of the director is a final decision for the purposes of judicial review.

SUMMARY---Permits acquisition of certain medical equipment without prior approval of director of the department of human resources. (BDR 40-153)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to planning for health care; permitting the acquisition of certain medical equipment without the prior approval of the director of the department of human resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439A.100 is hereby amended to read as follows:

439A.100 1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are : [as follows:]

(a) Any proposed expenditure by or on behalf of a health facility in excess of the greater of \$714,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service to be offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) [The] Except as otherwise provided in subsection 3, the proposed acquisition of any medical equipment which would cost more than \$400,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. The provisions of paragraph (d) of subsection 2 do not include acquisitions of medical equipment proposed primarily to replace existing equipment. The department shall by regulation develop standards to determine whether the primary purpose of a proposed acquisition is to replace existing equipment.

4. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

(1) The need for and the appropriateness of the project in the area to be served;

(2) The extent to which the project is consistent with the state health plan;

(3) The financial feasibility of the project;

(4) The effect of the project on the cost of health care; and

(5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

[4.] 5. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.

[5.] 6. The decision of the director is a final decision for the purposes of judicial review.

SUMMARY---Permits certain capital expenditures by health facility without prior approval of director of the department of human resources. (BDR 40-154)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to planning for health care; permitting certain capital expenditures by a health facility without the prior approval of the director of the department of human resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439A.100 is hereby amended to read as follows:

439A.100 1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are [as follows:

(a) Any] :

(a) Except as otherwise provided in subsection 3, any proposed expenditure by or on behalf of a health facility in excess of the greater of \$714,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal

to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service to be offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) The proposed acquisition of any medical equipment which would cost more than \$400,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. The provisions of paragraph (a) of subsection 2 do not include any capital expenditure for:

(a) The acquisition of land;

(b) The construction of a facility for parking;

(c) The maintenance of a health facility;

(d) The renovation of a health facility to comply with standards for safety, licensure, certification or accreditation;

(e) The installation of a system to conserve energy;

(f) The installation of a system for data processing or communication; or

(g) Any other project which, in the opinion of the department, does not directly relate to the provision of any health service.

4. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

(1) The need for and the appropriateness of the project in the area to be served;

(2) The extent to which the project is consistent with the state health plan;

(3) The financial feasibility of the project;

(4) The effect of the project on the cost of health care; and

(5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

[4.] 5. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.

[5.] 6. The decision of the director is a final decision for the purposes of judicial review.

SUMMARY---Limits types of new health services that require prior approval of director of the department of human resources. (BDR 40-155)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to planning for health care; limiting the types of new health services that require the prior approval of the director of the department of human resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 439A.100 is hereby amended to read as follows:

439A.100 1. Except as provided in NRS 439A.103, no person may undertake any project described in subsection 2 without first applying for and obtaining the written approval of the director. The health division of the department of human resources shall not issue a new license or alter an existing license for any project described in subsection 2 unless the director has issued such an approval.

2. The projects for which this approval is required are : [as follows:]

(a) Any proposed expenditure by or on behalf of a health facility in excess of the greater of \$714,000 or such an amount as the department may specify by regulation, which under generally accepted accounting principles consistently applied is a capital expenditure;

(b) A proposal which increases the number of licensed or approved beds in a health facility through the addition of 10 or more beds or a number of beds equal to 10 percent of the licensed or approved capacity of that facility, whichever is less, over a period of 2 years;

(c) The proposed addition, expansion or consolidation of any health service listed

in subsection 3 to be offered in or through a health facility which was not offered on a regular basis in the previous 12 months if the addition, expansion or consolidation:

(1) Involves a capital expenditure in excess of \$100,000, or such an amount as the department may specify by regulation; or

(2) Would entail an annual operating expense for providing the service in excess of \$297,500, or such an amount as the department may specify by regulation, whichever is greater;

(d) The proposed acquisition of any medical equipment which would cost more than \$400,000, or such an amount as the department may specify by regulation, whichever is greater;

(e) The acquisition of an existing health facility if:

(1) The purchaser does not, within a period specified by a regulation of the department, notify it of his intention to acquire the facility; or

(2) The department finds, within 30 days after it receives the notice, that in acquiring the facility the purchaser will change the number of beds or the health services offered; and

(f) The conversion of an existing office of a practitioner to a health facility, regardless of the cost of the conversion, if the establishment of the office would have met the threshold for review of costs pursuant to paragraph (c).

3. The provisions of paragraph (c) of subsection 2 are limited to the following health services:

(a) The intensive care of newborn babies.

(b) The treatment of burns.

(c) The transplant of organs.

(d) The performance of open-heart surgery.

4. In reviewing an application for approval, the director shall:

(a) Comparatively assess applications for similar projects affecting the same geographic area;

(b) Consider any recommendation of a health systems agency; and

(c) Base his decision on criteria established by the director by regulation. The criteria must include:

(1) The need for and the appropriateness of the project in the area to be served;

(2) The extent to which the project is consistent with the state health plan;

(3) The financial feasibility of the project;

(4) The effect of the project on the cost of health care; and

(5) The extent to which the project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

[4.] 5. The department may by regulation require additional approval for a proposed change to a project which has previously been approved if the proposal would result in a change in the number of existing beds or a change in the health services which are to be provided, a change in the location of the project or a substantial increase in the cost of the project.

[5.] 6. The decision of the director is a final decision for the purposes of judicial review.