

SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FOURTH REGULAR SESSION, 1982

CONGRESSIONAL BILL NO. 2-279, C.D.1

AN ACT

To establish a health care certificate of need program in accordance with the needs of the people of the Federated States of Micronesia; to repeal chapter 3 of title 41 of the Code of the Federated States of Micronesia; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Short title. This chapter may be cited as the
2 "Federated States of Micronesia Health Care Certificate of Need Act
3 of 1982."

4 Section 2. Purpose.

5 (1) The people of the Federated States of Micronesia are
6 dependent upon the existence of an efficient, effective, and well
7 coordinated program of health care services and disease prevention
8 activities. In order to achieve the necessary level of efficiency,
9 effectiveness, and coordination, there is a continuous compelling
10 need for a rational program for the determination of allocations of
11 scarce health resources.

12 (2) In addition, the impending termination of the Trusteeship
13 Agreement and the probable change in resources available for the delivery
14 of health care and environmental protection require a careful analysis
15 of the proposed allocation of funds and resources to be used to provide
16 health care, related services, and environmental health protection
17 services to ensure that those funds and resources shall be utilized in
18 accordance with the needs of the people of the Federated States of
19 Micronesia.

20 (3) Therefore, it is declared to be the public policy of the
21 Federated States of Micronesia and the purpose of this chapter to develop
22 and operate a program which will identify the health needs of the

1 residents of the Federated States of Micronesia and ensure that
2 resources which are proposed for health programs or services meet those
3 needs in the most efficient and effective manner possible.

4 (4) It is not the intent of this chapter to prohibit or
5 any way curtail the development of private practice of medicine in the
6 Federated States of Micronesia.

7 Section 3. Definitions. As used in this chapter unless the
8 context otherwise requires:

9 (1) "Affected persons" shall include: the applicant, the
10 Subarea Health Council, persons residing in the geographic area
11 to be served by the applicant, any person who regularly uses health
12 services or facilities within the area to be served by the proposed
13 project, health care facilities and health maintenance organizations
14 located in the service area which provide similar services to those
15 under review, health care facilities and health maintenance organizations
16 which have previously indicated their intention to provide similar
17 services in the future, third party payers who reimburse health care
18 facilities in the service area, and rate review organizations in the
19 service area.

20 (2) "Agency" means the Trust Territory Office of Health
21 Services in its designated capacity as the Micronesia Health Planning
22 and Development Agency which was created by designation agreement between
23 the High Commissioner and the United States Secretary of Health,
24 Education, and Welfare as the Trust Territory's designated agency to
25 administer territorial health planning and development functions. The

1 term "Micronesia Health Planning and Development Agency" is further
2 defined to be synonymous with the terms "Territorial Health Planning
3 and Development Agency," "State Health Planning and Development Agency,"
4 and "Office of Health Planning and Development." These terms may be
5 used interchangeably to mean the same in this chapter or in the
6 regulations adopted under this chapter.

7 (3) "Certificate of need" means an authorization, when
8 required under this chapter, to construct, expand, alter, or convert a
9 health care facility or to initiate, expand, or modify a health care
10 service, or to acquire major medical equipment.

11 (4) "Cost" for the purposes of determining whether a proposed
12 project is subject to review under this chapter means the fair market
13 value or the amount actually paid to acquire a facility or equipment or
14 to initiate a service, whichever is higher.

15 (5) "Date activity undertaken" means the date on which
16 institutional health services are actually started.

17 (6) "Director" means the director of the Trust Territory
18 Office of Health Services in his capacity as the director of the
19 Micronesia Health Planning and Development Agency.

20 (7) "Health care facilities" means hospitals, psychiatric
21 hospitals, tuberculosis hospitals, skilled nursing facilities, kidney
22 disease treatment centers including freestanding hemodialysis units,
23 intermediate care facilities, ambulatory surgical facilities, and such
24 other facilities as the agency by regulation shall so designate; PROVIDED
25 that "health care facilities" shall not include recognized Christian

1 Science sanitariums, or facilities owned and operated by the United
2 States Federal Government.

3 (8) "Health Maintenance Organization" means a public or
4 private organization which is qualified under section 1310(d) of the
5 United States Public Health Services Act or which:

6 (a) Provides or otherwise makes available to enrolled
7 participant health care services, including at least usual physician
8 services, hospitalization, laboratory, x-ray, emergency and preventive
9 services, and out-of-area coverage; and

10 (b) Is compensated (except for copayments) for the
11 provision of the above-listed services to enrolled participants by
12 a payment which is paid on a periodic basis without regard to the date
13 the health care services are provided and which is fixed without regard
14 to the frequency, extent, or kind of health services actually provided;
15 and

16 (c) Provides physician services through physicians
17 who are employees or partners in the organization or through arrangements
18 with individual physicians or groups of physicians.

19 (9) "Institutional health services" means health services
20 provided in or through health care facilities or health maintenance
21 organizations and includes the entities in or through which such services
22 are provided.

23 (1) "Major medical equipment" means a single unit of medical
24 equipment or a single system of components with related functions which
25 is used to provide medical and other health care services and which

1 costs more than \$50,000.

2 (11) "Micronesia Health Coordinating Council" means that
3 health coordinating council created by proclamation of the High
4 Commissioner on October 6, 1976, and comprised of the Micronesia
5 Regional Executive Committee and Subarea Councils for the Federated
6 States of Micronesia, Republic of the Marshall Islands, and Republic
7 of Palau, as described in the Council's bylaws.

8 (12) "Obligation" means entry into a contract enforceable
9 under the laws of this Government; taking of formal action to commit
10 funds within applicant's own organization so as to serve as an in-house
11 contractor; or in the case of donated property, the date the gift
12 transaction is completed.

13 (13) "Person" means an individual, a trust or estate, a
14 partnership, a corporation, a State, the National Government of the
15 Federated States of Micronesia, a political subdivision, or any legal
16 entity recognized by the Federated States of Micronesia Government.

17 (14) The "territorial health plan" is that comprehensive
18 five-year health plan prepared and established by the Micronesia Health
19 Coordinating Council which shall be based upon State health plans from
20 the several States of the Federated States of Micronesia and shall
21 include a medical facilities plan with appropriate consideration given
22 to the development of facilities and services in the private sector
23 and an environmental health section.

24 Section 4. Program established. There is established the Federated
25 States of Micronesia Certificate of Need Program which shall prescribe

1 the means, procedures, and requirements for health care providers to
2 apply for and obtain certificates of need prior to undertaking
3 construction, expansion, alteration, or conversion of health care
4 facilities or initiation, expansion, or modification of certain health
5 care services including acquisition of equipment.

6 Section 5. Coverage; Applicability.

7 (1) Commencing on the effective date of this chapter, no
8 person, whether public or private, shall make capital expenditures for
9 activities enumerated in subsection (2) of this section without first
10 obtaining a certificate of need or an exemption as required under this
11 chapter.

12 (2) A certificate of need shall be required prior to:

13 (a) The development of all new institutional health
14 services including, but not limited to, the construction, development,
15 or other establishment of any new health facility;

16 (b) Any obligation for a capital expenditure by or on
17 behalf of a health care facility, other than to acquire an existing
18 health care facility, in excess of \$50,000, including the costs of
19 surveys, designs, plans, working drawings, specifications, and other
20 activities essential to the acquisition, improvement, expansion,
21 replacement, or construction of any plant or equipment;

22 (c) The offering by a health care facility of health
23 services which were not offered on a regular basis in or through such
24 health care facility within the 12-month period preceeding the time
25 such services would be offered, if:

1 (i) The obligation of any capital expenditure
2 is entailed by the addition of services; or

3 (ii) Regardless of whether a capital expenditure
4 is entailed, the annual operating costs for such services will exceed
5 \$10,000.

6 (d) The termination of a health service which was
7 offered in or through a health care facility if that termination is
8 associated with obligation of any capital expenditures.

9 (e) The obligation of any capital expenditure by or on
10 behalf of a health care facility which changes the bed capacity of a
11 health care facility by increasing or decreasing the total number of beds
12 (or distributing beds among various categories or relocating such beds
13 from one physical facility or site to another) by 10 beds or 10 percent
14 of total bed capacity, whichever is less, over a 2-year period;

15 (f) The acquisition by any person of major medical
16 equipment to be owned by or located in a health care facility or,
17 regardless of ownership or location, if the equipment is to be used to
18 provide patient care services, to inpatients or outpatients, unless such
19 services are provided on an occasional basis in the event of natural
20 disaster, major accident, or equipment failure;

21 (g) If any person acquires an existing health care
22 facility, that person shall file a notice of intent with the Agency as
23 prescribed under section 6 of this chapter. A certificate of need shall
24 be required for such acquisition unless the Agency finds that the
25 acquirer is a health maintenance organization; or that no changes will

1 result in facilities or services rendered due to the acquisition;

2 (h) In the event that the Agency issues a certificate
3 of need for a project and within one year of the date the project was
4 undertaken there is a change in that project associated with a capital
5 expenditure, regardless of the amount of the expenditure, that change
6 will be subject to certificate of need review.

7 (3) A certificate of need which normally would be required
8 under subsection (2) of this section will not be required if:

9 (a) A health care facility is being acquired by a health
10 maintenance organization or if the acquisition will not result in a
11 change of services or modification of the facility, including the
12 organizational structure;

13 (b) The applicant is a health maintenance organization
14 if:

15 (i) It has a current enrollment or reasonable
16 anticipated future enrollment of at least 50,000 persons in the service
17 area;

18 (ii) The proposed facility or service will be
19 reasonably accessible to the enrolled population;

20 (iii) At least 75 percent of the persons to be
21 served will be enrollees; and

22 (iv) An acquisition of a facility or equipment is
23 by lease, the lease will be in effect for at least 15 years duration
24 after such acquisition.

25 (c) Major medical equipment is acquired by or on behalf

1 of a clinical laboratory to provide clinical laboratory services,
2 if:

3 (i) The clinical laboratory is independent
4 of a physician's office and a hospital; and

5 (ii) It is determined under title XVIII of
6 the United States Social Security Act to meet the requirements of
7 paragraphs (10) and (11) of 1861(s) of that act.

8 (4) The Agency must issue a certificate of need for a
9 capital expenditure necessary to:

10 (a) Eliminate or prevent a safety hazard;

11 (b) Comply with licensure standards; or

12 (c) Comply with accreditation or certification

13 standards required for the applicant to receive reimbursement under
14 title XVIII or XIX of the United States Social Security Act; PROVIDED
15 that prior to insurance of such a certificate of need the Agency
16 finds that:

17 (i) The facility or service for which the
18 capital expenditure is proposed is needed; and

19 (ii) The obligation of the capital expenditure
20 is consistent with the State health plan.

21 (5) For capital expenditures not meeting the criteria
22 set forth in subsection (4) of this section, the Agency shall issue
23 a certificate of need, if it is found that:

24 (i) The proposed facility, services, or
25 equipment is needed by the population to be served;

1 (ii) Such facility, service, or equipment is
2 consistent with the Trust Territory health plan; and

3 (iii) The project complies with this chapter
4 and regulations adopted under this chapter. The criteria to be
5 used by the Agency in determining need for the facility, service,
6 or equipment shall be as set forth in section 7 of this chapter.

7 Section 6. Applications.

8 (1) Applications for certificates of need and notices of
9 intent shall be filed with the Agency on application forms provided
10 by the Agency and shall contain such information and be in such form
11 as the director may require.

12 (2) At least 30 days before any person acquires or enters
13 into a contract to acquire an existing health care facility or major
14 medical equipment which will not be located in or owned by a health
15 care facility, the person shall notify the Agency of the intended
16 acquisition period. Such notice of intent shall be in writing,
17 containing such information as required by regulations as the Agency
18 may promulgate.

19 (3) The Agency shall act upon any application submitted
20 pursuant to this chapter within 90 days of receipt of such application;
21 PROVIDED that for reasonable cause and upon notice to the applicant,
22 the Agency may extend its time for review for a specific period not
23 to exceed 30 additional days. In cases where the Agency requests the
24 applicant to provide additional information subsequent to submission
25 of the application, the Agency must, at the request of the applicant,

1 extend the review period for no less than an additional 15 days.
2 Failure to act upon the application within the time period herein
3 prescribed shall be deemed grounds for the applicant to seek
4 judicial remedy but shall not be deemed an approval or denial of
5 the certificate of need by the Agency.

6 (4) Prior to an exemption pursuant to subsection (3) of
7 section 5 of this chapter, a notice of intent must be filed with the
8 Agency and the Agency shall render a finding as to the applicability
9 of the exemption within 30 days of receipt of such notice.

10 Section 7. Review criteria. The Agency shall adopt regulations
11 under this chapter which shall prescribe specific criteria for the
12 reviewing of certificate of need applications which criteria shall
13 include at least the following general considerations; PROVIDED that
14 criteria adopted for review may vary according to the purpose for which
15 a particular review is being conducted or the type of health service
16 reviewed; and PROVIDED FURTHER that such regulations shall be adopted
17 in accordance with section 14 of this chapter:

18 (1) The relationship of the health services reviewed to
19 the territorial health plan and annual implementation plans;

20 (2) The relationship of services rendered to the long-range
21 development plan, if any, of the person providing or proposing such
22 services;

23 (3) The need that the population served or to be served
24 by such services has for such services and the extent to which residents
25 of the area, and in particular low-income persons, racial and ethnic

1 minorities, women, handicapped, and other underserved groups, and
2 the elderly, are likely to have access to those services. In the
3 case of a reduction or elimination of service, including relocation
4 of a facility or service, the extent to which the alternative
5 arrangements, and the effect of the reduction, elimination, or
6 relocation on the ability of low-income persons, racial and ethnic
7 minorities, women, handicapped persons and other underserved groups,
8 and the elderly, to obtain the needed health care;

9 (4) The availability of less costly or more effective
10 alternative methods of providing such services;

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

15 (6) The relationship of the services proposed to be provided
16 to the existing health care system of the area in which such services
17 are proposed to be provided and the probable impact of the proposal on
18 the economic and social development of the Federated States of
19 Micronesia;

20 (7) The contribution of the proposed service or facility to
21 meeting the health needs of medically underserved groups which have
22 traditionally experienced difficulties in obtaining equal access to
23 health services, particularly those needs identified in the Trust
24 Territory health plan as priorities. For the purpose of determining
25 the extent the proposed service or facility will be accessible, the

1 Agency shall consider:

2 (a) The extent to which medically underserved
3 populations currently use the applicant's services in comparison
4 to the percentage of the population in the service area which is
5 underserved and the extent to which medically underserved populations
6 are expected to use the proposed services if approved;

7 (b) The performance of the applicant in meeting its
8 obligations, if any, under applicable Federal regulations requiring
9 provision of uncompensated care, community service, or access by
10 minorities and handicapped persons to programs receiving Federal
11 financial assistance; and

12 (c) The extent to which the applicant offers a range
13 of means by which a person will have access to its services, (e.g.
14 outpatient services, hospital privileges, etc.).

15 (8) The availability of resources, (including health
16 personnel, management personnel, and funds for capital and operating
17 needs) for the provision of the services proposed to be provided and
18 the need for alternative uses of those resources as identified by the
19 Trust Territory health plan;

20 (9) The relationship, including organizational relationship,
21 of the health services proposed to be provided to ancillary or support
22 services;

23 (10) The effect of the means proposed for the delivery of
24 health services on the clinical needs of health professional training
25 programs in the area in which services are to be provided;

1 (11) If proposed health services are to be available in a
2 limited number of facilities, the extent to which the health profession
3 schools in the area will have access to the services for training
4 purposes;

5 (12) Special needs and circumstances of those entities
6 which provide a substantial portion of their services or resources
7 or both to individuals not residing in the health service areas in
8 which the entities are located or in adjacent health service areas;

9 (13) The special needs and circumstances of biomedical
10 or behavioral research projects which are designed to meet a National
11 need and for which local conditions offer special advantages;

12 (14) In the case of a construction project:

13 (a) The costs and methods of the proposed construction,
14 including the costs and methods of energy provision; and

15 (b) The probable impact of the construction project
16 on the costs of providing health services by the person proposing the
17 construction project and on the costs and charges to the public of
18 providing health services by other persons;

19 (15) The special circumstances of health care facilities
20 with respect to the need for conserving energy;

21 (16) Factors which affect the effect or competition on the
22 supply of health services being reviewed;

23 (17) Improvements and innovations in the financing and
24 delivery of health services which foster competition and serve to
25 promote quality assurance and cost effectiveness;

1 (18) The efficiency and appropriateness of the use of
2 existing services and facilities similar to those proposed;

3 (19) In the case of existing services or facilities, the
4 quality of care provided by those facilities in the past;

5 (20) When an application is made by an osteopathic or
6 allopathic facility to construct, expand, or modernize a health care
7 facility or add services or acquire major medical equipment, the need
8 will be considered on the basis of the need for and the availability
9 in the community of services and facilities for osteopathic and
10 allopathic physicians and their patients;

11 (21) In the case of applications by health maintenance
12 organizations, the only criteria to be applied for determination or
13 need shall be:

14 (a) The needs of enrolled members and reasonably
15 anticipated new members of the health maintenance organization for the
16 health services proposed to be provided; and

17 (b) The availability of the new health services from non-
18 health maintenance organization providers or other health maintenance
19 organizations in a reasonable and cost-effective manner which is consistent
20 with the basic method of operation of the health maintenance organization.
21 In assessing the availability of these services from other providers: the
22 Agency shall consider only whether the services from these providers:

23 (i) Would be available under a contract of at
24 least 5 years duration;

25 (ii) Would be available and conveniently accessible

1 through physicians and other health professionals associated with
2 the health maintenance organization;

3 (iii) Would cost no more than if the services
4 were provided by the applicant health maintenance organization; and

5 (iv) Would be available in a manner which is
6 administratively feasible to the applicant health maintenance
7 organization.

8 Section 8. Withdrawal. The Agency may withdraw a certificate
9 of need if:

10 (1) The applications contain false or misleading information
11 or intentionally omits material facts; or

12 (2) Circumstances based upon which the certificates of
13 need were issued have changed or new circumstances have developed
14 which alter the need for the projects; PROVIDED that said changed or
15 new circumstances occur prior to the commencement of construction or
16 substantial expenditure or obligation of funds.

17 (3) All applications for a certificate of need shall include
18 a timetable for implementing the project. The Agency shall periodically
19 evaluate the progress of the applicant towards implementing the project
20 according to the timetable submitted. Failure of the applicant to make
21 a good faith effort toward implementation may constitute grounds for
22 withdrawal of the certificate of need.

23 (4) Any holder of a certificate of need shall be entitled
24 to an administrative hearing prior to the suspension of its certificate
25 of need.

1 Section 9. Reconsideration of Agency action.

2 (1) The Agency shall order a public hearing on an
3 application upon written request by any person for the purposes of
4 reconsidering an Agency decision, PROVIDED that:

5 (a) The request is received within 30 days after the
6 decision was rendered; and

7 (b) A good cause is shown. A request for public
8 hearing shall be deemed to have shown good cause if it:

9 (i) Presents significant relevant information
10 not previously considered by the Agency;

11 (ii) Demonstrates that there have been significant
12 changes in factors or circumstances relied upon by the Agency in
13 making its decision;

14 (iii) Demonstrates that the Agency failed to follow
15 appropriate procedures prescribed in these regulations; or

16 (iv) That the Agency acted without regard for a
17 conflict of interest situation.

18 (2) The Agency shall provide public notice of reconsideration
19 hearings and adopt hearing procedures in accordance with this chapter
20 and regulations adopted under the provisions of section 14 of this
21 chapter.

22 Section 10. Judicial review.

23 (1) Any person adversely affected by a final decision of
24 the Agency with respect to a certificate of need or an application for
25 exemption may, within a reasonable time after the decision is made,

1 obtain judicial review in accordance with title 17 of the Code of
2 the Federated States of Micronesia.

3 (2) The court shall affirm the decision of the Agency
4 unless it finds it to be arbitrary or capricious or not made in
5 compliance with applicable law;

6 (3) For the purposes of this section, "person adversely
7 affected" shall include the Agency, any person previously defined
8 as "affected" in section 3 of this chapter, and any person who
9 participated in the review proceedings before the Agency.

10 Section 11. Nontransferability. A certificate of need issued
11 under this chapter is not transferable without the prior written
12 approval of the Agency.

13 Section 12. Civil penalties. Any person violating any of the
14 provisions of section 5 of this chapter shall be subject to the
15 imposition of a civil fine in the amount of \$1,000 for each violation;
16 PROVIDED that for the purpose of determining the amount or fine to be
17 imposed under this chapter, violations shall be deemed recurring
18 with each week or fractional part thereof that a violation continues
19 being construed as a separate violation.

20 Section 13. Reporting. The director shall submit an annual
21 report to the Congress of the Federated States of Micronesia on or
22 before January 10 of each year on all activities of the Agency and
23 all funds received by the Agency pursuant to, or by virtue of this
24 chapter.

25 Section 14. Regulations - Promulgation.

1 (1) The Agency shall adopt and promulgate the
2 regulations authorized in section 7 of this chapter in accordance
3 with the procedures and requirements of the Federated States of
4 Micronesia Administrative Procedures Act, title 17 of the Code of
5 the Federated States of Micronesia, except that compliance by the
6 Agency with the requirements of subsection (2) of this section shall
7 constitute compliance with all the publication and notice requirements
8 set forth in title 17 of the Code of the Federated States of
9 Micronesia and further that notwithstanding the provisions in sections
10 103 and 104 of title 17 of the Code of the Federated States of
11 Micronesia regarding the filing and effective date of regulations,
12 regulations adopted and promulgated under this chapter shall be filed
13 and become effective in accordance with subsection (3) of this section.

14 (2) In the adoption and promulgation of regulations pursuant
15 to section 7 of this chapter, the Agency shall prior to the adoption
16 of such regulations do the following:

17 (a) Prior to the adoption of regulations prescribing
18 a review process, or any revision thereof, the Agency shall:

19 (i) Give all interested parties a reasonable
20 opportunity to offer written comments on the review procedures proposed
21 for adoption;

22 (ii) Distribute copies of its proposed, adopted,
23 and revised or amended review procedures to public and private health
24 organizations, the Micronesia Health Coordinating Council, the Governors
25 of the Federated States of Micronesia, the High Commissioner, the

1 Secretary of Health, Education and Welfare, the President of the
2 Federated States of Micronesia and such other interested persons as
3 shall request them; including rate setting agencies and health
4 maintenance organizations should such be established within the
5 Federated States of Micronesia; and

6 (iii) The Agency shall notify the general public
7 of its intent to adopt procedures and criteria, or revisions thereof,
8 through publication in at least one newspaper of general circulation
9 in the Federated States of Micronesia.

10 (3) The Agency shall file in the Office of the Registrar
11 of Corporations of the National Government of the Federated States of
12 Micronesia, the office of each State Governor, and with the Clerks of
13 Court of both the State and National Courts and the Trust Territory
14 High Court, a certified copy of the review procedure regulation
15 adopted by it.

16 (4) Each regulation adopted is effective 10 days after
17 completion of the requirements of subsection (2) of this section.

18 (5) The regulations adopted and promulgated by the Agency
19 in July 1979 in accordance with the act are hereby confirmed and shall
20 remain in affect until amended, repealed, or superseded by the Agency
21 acting pursuant to and in accordance with this chapter.

22 Section 15. Rights and liabilities unaffected. The repeal in
23 section 16 of this act does not affect the status of any civil or
24 criminal actions, rights, or liabilities existing before the repeal
25 takes effect.

1 Section 16. Repealer. Chapter 3 of title 41 of the Code of
2 the Federated States of Micronesia is hereby repealed in its
3 entirety.

4 Section 17. Effective date. This act shall become law upon
5 approval by the President of the Federated States of Micronesia or
6 upon its becoming law without such approval.

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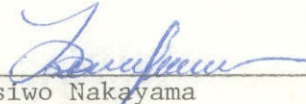
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Tosiwo Nakayama
President
Federated States of Micronesia

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