

[N.J. Stat. Title 26, Ch. 2H, Pt. I](#)

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(§§ 26:2H-1 — 26:2H-26)*

Part I. Health Care Facilities Planning Act

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Administrative Law: Agency Rulemaking: State Proceedings

Health Care Facilities Planning Act, [N.J. Stat. Ann. §§ 26:2H-1](#) to [26:2H-26](#), as supplemented by the forms of administrative action permitted under chapter 31, contains reasonably detailed standards to govern the Department

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of Health's review of certificate of need applications and thus satisfies due process requirements. [In re Adoption of Regulations Governing the State Health Plan, N.J.A.C., 262 N.J. Super. 469, 621 A.2d 484, 1993 N.J. Super. LEXIS 50 \(App.Div. 1993\)](#), aff'd, [135 N.J. 24, 637 A.2d 1246, 1994 N.J. LEXIS 172 \(N.J. 1994\)](#).

[N.J. Stat. Ann. § 26:2H-1](#) et seq. neither expressly prohibits nor permits regulations requiring nursing homes to provide a reasonable number of beds to indigent persons as a condition of licensure or re-licensure. [New Jersey Asso. of Health Care Facilities v. Finley, 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 \(App.Div. 1979\)](#), aff'd, [83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 \(N.J. 1980\)](#).

Under [N.J. Stat. Ann. § 26:2H-1](#) et seq. administrative supervision of hospitals was transferred from the Department of Institutions and Agencies to the State Department of Health in 1971. [Guerrero v. Burlington County Memorial Hospital, 70 N.J. 344, 360 A.2d 334, 1976 N.J. LEXIS 203 \(N.J. 1976\)](#).

Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: General Overview

Hospital was not subject to a claim brought by parents of a patient under the Consumer Fraud Act, [N.J. Stat. Ann. § 56:8-1](#) et seq.; [N.J. Stat. Ann. § 56:8-2](#) did not encompass services performed by a hospital; there was no purpose to a requirement that hospital services be within the purview of the Act when those same services fell within the purview of the Department of Health, the Health Care Facilities Planning Act, [N.J. Stat. Ann. § 26:2H-1](#) et seq., and regulations promulgated by the Department. [Hampton Hosp. v. Bresan, 288 N.J. Super. 372, 672 A.2d 725, 1996 N.J. Super. LEXIS 118 \(App.Div.\)](#), cert. denied, [144 N.J. 588, 677 A.2d 760, 1996 N.J. LEXIS 838 \(N.J. 1996\)](#).

Constitutional Law: Bill of Rights: Fundamental Rights: Procedural Due Process: Scope of Protection

Health Care Facilities Planning Act, [N.J. Stat. Ann. §§ 26:2H-1](#) to [26:2H-26](#), as supplemented by the forms of administrative action permitted under chapter 31, contains reasonably detailed standards to govern the Department of Health's review of certificate of need applications and thus satisfies due process requirements. [In re Adoption of Regulations Governing the State Health Plan, N.J.A.C., 262 N.J. Super. 469, 621 A.2d 484, 1993 N.J. Super. LEXIS 50 \(App.Div. 1993\)](#), aff'd, [135 N.J. 24, 637 A.2d 1246, 1994 N.J. LEXIS 172 \(N.J. 1994\)](#).

Governments: State & Territorial Governments: Licenses

Where the Department of Health has the authority, pursuant to [N.J. Stat. Ann. § 26:2H-1](#), to promulgate regulations requiring health providers to deliver needed services, then it follows that it may employ its licensing function to enforce those regulations. [New Jersey Asso. of Health Care Facilities v. Finley, 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 \(App.Div. 1979\)](#), aff'd, [83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 \(N.J. 1980\)](#).

[N.J. Stat. Ann. § 26:2H-1](#) et seq. neither expressly prohibits nor permits regulations requiring nursing homes to provide a reasonable number of beds to indigent persons as a condition of licensure or re-licensure. [New Jersey Asso. of Health Care Facilities v. Finley, 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 \(App.Div. 1979\)](#), aff'd, [83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 \(N.J. 1980\)](#).

Governments: State & Territorial Governments: Police Power

N.J. Administrative Code provision which required nursing homes to make available "a reasonable number of their beds to indigent persons" as a condition of licensure under [N.J. Stat. Ann. §§ 26:2H-5, 26:2H-8, and 26:2H-12](#), did not exceed the power given to the state under [N.J. Stat. Ann. § 26:2H-1](#) et seq.; the argument that the state was attempting to regulate the quantity of health care services, rather than the quality of health care services was rejected because the acute shortage of nursing home beds for indigent persons was a public health concern, and the regulations were not arbitrary or unreasonable. [In re Health Care Administration Board, 83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 \(N.J.\)](#), cert. denied, [449 U.S. 944, 101 S. Ct. 342, 66 L. Ed. 2d 208, 1980 U.S. LEXIS 3668 \(U.S. 1980\)](#).

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Healthcare Law: Actions Against Healthcare Workers: ERISA Preemption

[N.J. Stat. Ann. § 26:2H-1](#) which set hospital rates was improperly deemed preempted by Employee Retirement Income Security Act (ERISA) because the statute was one of general applicability designed to regulate health care costs; the ERISA preemption provision was designed to prevent state interference with federal control of ERISA plans and did not require the creation of a fully insulated legal world that excluded the plans from any purely local regulation. [United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1993 U.S. App. LEXIS 11112 \(3d Cir. N.J.\)](#), cert. denied, 510 U.S. 944, 114 S. Ct. 383, 126 L. Ed. 2d 332, 1993 U.S. LEXIS 6694 (U.S. 1993).

Healthcare Law: Business Administration & Organization: General Overview

[N.J. Stat. Ann. § 26:2H-1](#) which set hospital rates was improperly deemed preempted by Employee Retirement Income Security Act (ERISA) because the statute was one of general applicability designed to regulate health care costs; the ERISA preemption provision was designed to prevent state interference with federal control of ERISA plans and did not require the creation of a fully insulated legal world that excluded the plans from any purely local regulation. [United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1993 U.S. App. LEXIS 11112 \(3d Cir. N.J.\)](#), cert. denied, 510 U.S. 944, 114 S. Ct. 383, 126 L. Ed. 2d 332, 1993 U.S. LEXIS 6694 (U.S. 1993).

In allocating reductions in Medicare payments under Gramm-Rudman to the hospitals there was no evidence that the hospital rate setting commission had considered the effect of the statutory and regulatory scheme under [N.J. Stat. Ann. § 26:2H-1](#) et seq. [New Jersey Hospital Asso. v. New Jersey State Dep't of Health, Hospital Rate Setting Com., 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 \(App.Div. 1988\)](#).

Administrator and the beneficiaries were not entitled to a preliminary injunction to prohibit the Commissioner of the Department of Health from implementing an amendment to the New Jersey Health Care Facilities Planning Act of 1971, [N.J. Stat. Ann. § 26:2H-1](#) et seq., which created a state commission to set a schedule of rates for hospital services based on a patient's diagnosis; the argument that the rate setting system was preempted by the Employee Retirement Income Security Act and the National Labor Relations Act had little chance of success on the merits. [Bonser v. New Jersey, 605 F. Supp. 1227, 1985 U.S. Dist. LEXIS 21162 \(D.N.J. 1985\)](#).

In a proceeding brought by a hospital seeking adjustment of its rate schedule to reflect the costs of pension and dental plans that the hospital had established for its employees, a judgment that vacated the decision of the rate setting commission to uphold a recommendation against the rate adjustment was affirmed because, under the Health Care Facilities Planning Act, [N.J. Stat. Ann. §§ 26:2H-1 to 26:2H-52](#), the rate setting commission's grounds for its action were neither adequately supported by the record nor clearly explained; the court directed the rate setting commission to conduct another hearing to examine the facts, carefully apply the pertinent regulations, and clearly set forth its conclusions. [Riverside General Hospital v. New Jersey Hospital Rate Setting Com., 98 N.J. 458, 487 A.2d 714, 1985 N.J. LEXIS 2229 \(N.J. 1985\)](#).

Healthcare Law: Business Administration & Organization: Licenses: General Overview

Under the Health Care Facilities Planning Act, [N.J. Stat. Ann. § 26:2H-1](#) et seq., hospital rates are subject to regulation, and the legislative policy is to provide for the protection and promotion of the health of the inhabitants of New Jersey, to promote the financial solvency of hospitals and similar health care facilities, and to contain the rising cost of health care services. [Slocum v. Hospital Rate Setting Com., Dep't of Health, 240 N.J. Super. 566, 573 A.2d 971, 1990 N.J. Super. LEXIS 137 \(App.Div. 1990\)](#).

Where the Department of Health has the authority, pursuant to [N.J. Stat. Ann. § 26:2H-1](#), to promulgate regulations requiring health providers to deliver needed services, then it follows that it may employ its licensing function to enforce those regulations. [New Jersey Asso. of Health Care Facilities v. Finley, 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 \(App.Div. 1979\)](#), aff'd, [83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 \(N.J. 1980\)](#).

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[N.J. Stat. Ann. § 26:2H-1](#) et seq. neither expressly prohibits nor permits regulations requiring nursing homes to provide a reasonable number of beds to indigent persons as a condition of licensure or re-licensure. [New Jersey Asso. of Health Care Facilities v. Finley](#), 168 N.J. Super. 152, 402 A.2d 246, 1979 N.J. Super. LEXIS 757 (App.Div. 1979), aff'd, 83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 (N.J. 1980).

Under [N.J. Stat. Ann. § 26:2H-1](#) et seq. administrative supervision of hospitals was transferred from the Department of Institutions and Agencies to the State Department of Health in 1971. [Guerrero v. Burlington County Memorial Hospital](#), 70 N.J. 344, 360 A.2d 334, 1976 N.J. LEXIS 203 (N.J. 1976).

Regulation of private hospitals by State, pursuant to the Health Care Facilities Planning Act of 1971, [N.J. Stat. Ann. § 26:2H-1](#) et seq., did not constitute state action; a policy to prohibit use of their facilities for elective abortions was not arbitrary where women could seek procedures within reasonable distances of the hospitals. [Doe v. Bridgeton Hospital Asso.](#), 130 N.J. Super. 416, 327 A.2d 448, 1974 N.J. Super. LEXIS 550 (Law Div. 1974), rev'd, 71 N.J. 478, 366 A.2d 641, 1976 N.J. LEXIS 169 (N.J. 1976).

Healthcare Law: Business Administration & Organization: Licenses: Requirements

N.J. Administrative Code provision which required nursing homes to make available "a reasonable number of their beds to indigent persons" as a condition of licensure under [N.J. Stat. Ann. §§ 26:2H-5](#), [26:2H-8](#), and [26:2H-12](#), did not exceed the power given to the state under [N.J. Stat. Ann. § 26:2H-1](#) et seq.; the argument that the state was attempting to regulate the quantity of health care services, rather than the quality of health care services was rejected because the acute shortage of nursing home beds for indigent persons was a public health concern, and the regulations were not arbitrary or unreasonable. [In re Health Care Administration Board](#), 83 N.J. 67, 415 A.2d 1147, 1980 N.J. LEXIS 1365 (N.J.), cert. denied, 449 U.S. 944, 101 S. Ct. 342, 66 L. Ed. 2d 208, 1980 U.S. LEXIS 3668 (U.S. 1980).

Healthcare Law: Insurance: Reimbursement: General Overview

In allocating reductions in Medicare payments under Gramm-Rudman to the hospitals there was no evidence that the hospital rate setting commission had considered the effect of the statutory and regulatory scheme under [N.J. Stat. Ann. § 26:2H-1](#) et seq. [New Jersey Hospital Asso. v. New Jersey State Dep't of Health, Hospital Rate Setting Com.](#), 227 N.J. Super. 557, 548 A.2d 211, 1988 N.J. Super. LEXIS 355 (App.Div. 1988).

Administrator and the beneficiaries were not entitled to a preliminary injunction to prohibit the Commissioner of the Department of Health from implementing an amendment to the New Jersey Health Care Facilities Planning Act of 1971, [N.J. Stat. Ann. § 26:2H-1](#) et seq., which created a state commission to set a schedule of rates for hospital services based on a patient's diagnosis; the argument that the rate setting system was preempted by the Employee Retirement Income Security Act and the National Labor Relations Act had little chance of success on the merits. [Bonser v. New Jersey](#), 605 F. Supp. 1227, 1985 U.S. Dist. LEXIS 21162 (D.N.J. 1985).

Healthcare Law: Managed Healthcare: General Overview

The Health Care Facilities Planning Act, [N.J. Stat. Ann. § 26:2H-1](#) et seq., did not apply to physician groups, who were bound contractually with health management corporations, because the physician groups were still engaged in private practice. [Women's Medical Center v. Finley](#), 192 N.J. Super. 44, 469 A.2d 65, 1983 N.J. Super. LEXIS 976 (App.Div. 1983), certif. denied, 96 N.J. 279, 475 A.2d 578, 1984 N.J. LEXIS 2506 (N.J. 1984).

Public Health & Welfare Law: Healthcare: Services for Disabled & Elderly Persons: General Overview

Where the Commissioner of Health issued a certificate of need for the establishment of a nursing home subject to the conversion of a portion of another facility previously established for geriatric care, to a center for the treatment of patients with Acquired Immune Deficiency Syndrome, the Commissioner deviated in material respects from controlling statutes and regulations in issuing a certificate of need; the Commissioner failed to notify the Health Systems Agency of the application, which precluded a review and a determination whether the certificate was

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necessary, under [N.J. Stat. Ann. § 26:2H-1](#), to provide for and contribute to required health care in the area. [In re Bloomingdale Convalescent Center, 233 N.J. Super. 46, 558 A.2d 19, 1989 N.J. Super. LEXIS 194 \(App.Div. 1989\)](#).

Pursuant to the Health Care Facilities Planning Act (Act), [N.J. Stat. Ann. § 26:2H-1](#) et seq., the state health department properly denied a hospital's proposed per diem rate for Blue Cross and Medicaid patients for calendar year 1976 based upon the excessiveness of two proposed cost items, the budgets for the hospital's emergency room and newborn nursery center; however, because the emergency room rate was affected by a determination of whether or not the hospital was required by administrative regulations to maintain a physician on duty 24 hours per day, that portion of the state health department's decision was remanded for further fact-finding. [In re William B. Kessler Memorial Hospital, 78 N.J. 564, 397 A.2d 656, 1979 N.J. LEXIS 1168 \(N.J. 1979\)](#).

Public Health & Welfare Law: Healthcare: Services for Disabled & Elderly Persons: Care Facilities: General Overview

Holding, that an agreement between the trustees of a life-care community home and its residents impliedly included the residents' right to an accounting by the trustees on the grounds that the monthly fees were expected to remain stable and reasonable, was consistent with the legislative policy expressed in New Jersey's fairly extensive regulation of the residential health care facilities industry set forth in [N.J. Stat. Ann. § 30:11A-1](#) et seq., [N.J. Stat. Ann. § 26:2H-1](#) et seq., and N.J. Admin. Code tit. 8, § 43-1.1 et seq. [Onderdonk v. Presbyterian Homes of New Jersey, 85 N.J. 171, 425 A.2d 1057, 1981 N.J. LEXIS 2589 \(N.J. 1981\)](#).

Public Health & Welfare Law: Social Security: Medicaid: General Overview

Pursuant to the Health Care Facilities Planning Act (Act), [N.J. Stat. Ann. § 26:2H-1](#) et seq., the state health department properly denied a hospital's proposed per diem rate for Blue Cross and Medicaid patients for calendar year 1976 based upon the excessiveness of two proposed cost items, the budgets for the hospital's emergency room and newborn nursery center; however, because the emergency room rate was affected by a determination of whether or not the hospital was required by administrative regulations to maintain a physician on duty 24 hours per day, that portion of the state health department's decision was remanded for further fact-finding. [In re William B. Kessler Memorial Hospital, 78 N.J. 564, 397 A.2d 656, 1979 N.J. LEXIS 1168 \(N.J. 1979\)](#).

Public Health & Welfare Law: Social Security: Medicare: General Overview

Pursuant to the Health Care Facilities Planning Act (Act), [N.J. Stat. Ann. § 26:2H-1](#) et seq., the state health department properly denied a hospital's proposed per diem rate for Blue Cross and Medicaid patients for calendar year 1976 based upon the excessiveness of two proposed cost items, the budgets for the hospital's emergency room and newborn nursery center; however, because the emergency room rate was affected by a determination of whether or not the hospital was required by administrative regulations to maintain a physician on duty 24 hours per day, that portion of the state health department's decision was remanded for further fact-finding. [In re William B. Kessler Memorial Hospital, 78 N.J. 564, 397 A.2d 656, 1979 N.J. LEXIS 1168 \(N.J. 1979\)](#).