TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-320
of	:	May 24, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Warren J. Abbott Assistant Attorney General	:	

SUBJECT: EXEMPTION—This opinion deals with questions relating to exemptions f torn certificates of need issued pursuant to the Health Planning Law.

The Honorable John A. Nejedly, Senator for the Seventh District, has requested an opinion on the following questions relating to exemptions from certificates of need issued pursuant to the Health Planning Law:

1. Must a hospital, in order to qualify for an exemption under paragraph (1) of subdivision (b) of section 437.11 of the Health and Safety Code also qualify for an exemption under section 437.13?

2. May a hospital qualify for an exemption under paragraph (1) of subdivision (b) of section 437.11 of the Health and Safety Code if the services which will no longer be available at the hospital because of an emergency are available at other health facilities within near proximity to the hospital seeking the exemption?

CONCLUSIONS

1. A hospital that qualifies for an exemption under paragraph (1) of subdivision (b) of section 437.11 of the Health and Safety Code need not also qualify for an exemption under the provisions of section 437.13.

2. When an emergency exists which causes particular services to be no longer available at a hospital, the fact that such services are available at other health facilities within near proximity to that hospital does not disqualify the hospital for an exemption under paragraph (1) of subdivision (b) of section 437.11 of the Health and Safety Code.

ANALYSIS

A hospital owned and operated by a hospital district has operated a linear accelerator for patient therapy for nine years. In October, 1978, the accelerator became totally inoperative due to a sudden burnout of its wave guide, resulting in an immediate suspension of treatments. The hospital applied to the Office of Statewide Health Planning and Development for a certificate of exemption under Health and Safety Code section 437.11(b) (1)[1] to replace the accelerator. The cost of replacement would greatly exceed $160,650. The director of the Office of Statewide Planning and Development denied the application on the grounds that the machine's breakdown did not create an "emergency" within the meaning of the statute. The decision of the director indicated that no corrective action or installation of a replacement machine could save patients currently undergoing radiation therapy from an interruption in their normal course of treatment, but there exists sufficient operational equipment in the service area to handle radiation therapy patients, at least on an interim basis. The director thus concluded that no emergency existed.

The Health Planning Law was enacted in 1967 (Stats. 1967, ch. 1597) initially to take advantage of the comprehensive health planning services grants provided by Public Law 89–749 (42 U.S.C. § 246). (§ 437 as originally enacted; see *Bakersfield Community Hosp. v. Department of Health* (1977) 77 Cal. App. 3d 193, 197; Tuohey and McDermott, *Comprehensive Health Planning and Procedures: The California Experience* (1974) 11 San Diego L. Rev. 353, 359–364.) In 1976, the Health Planning Law was substantially revised (Stats. 1976, ch. 854). It requires, among other provisions, that a health facility[2] must obtain a certificate of need issued by the Office of Statewide Planning and

[1] All section references are to the Health and Safety Code unless otherwise specified.

[2] A hospital is a health facility within the meaning of licensing provisions for health facilities, (§ 1250) and although the term is undefined in the Health Planning Law, by reference to that law in the licensing provisions (§ 1268) we assume the definitions of section 1250 are adopted for the Health Planning Law.

Development (hereinafter "Office") for any of a lengthy list of projects. (§ 437.10.)[3] Decisions on applications for certificates of need are to be based on a Statewide Health Facilities and Service Plan (§ 437.9) which, in turn, is to be based on factors of community need, efficiency and cost-effective utilization of health resources. (§§ 437.7; 437.8.) A health facility may not commence a project without a certificate of need (§ 438.6) and may not be licensed or have its license renewed without such a certificate when required. (§ 1268.)

The Health Planning Law contains several exemptions from the requirements of a certificate of need. First is a grandfather provision contained in the licensing provisions. (§ 1268.)[4] Section 437.11[5] lists two types of exemptions. Subdivision (a) provides for a grandfather exemption. By its own terms, the time has expired on issuing any new exemptions under that subdivision. (See *Ross Gen. Hosp. v. Lackner* (1978) 83 Cal. App. 3d 346.) Subdivision (b) contains provisions for exemptions for which a certificate of need shall be issued under any of three circumstances. The one pertinent here is paragraph (1): The project is necessary solely to replace health care services that are no longer available at the facility because of a disaster or other emergency. . . ."

The third set of exemptions is contained in section 437.13,[6] relating to remodeling of any health facility licensed before the effective date of the 1976 amendments to the

---

[3] Section 437.10 is set forth in Appendix 1-A.

[4] Section 1268 provides in part:

". . . Additionally, the director shall not issue a license covering a project within the meaning of Section 437.10 for which there is no valid, subsisting, and unexpired certificate of need issued pursuant to Part 1.5 (commencing with Section 437) of Division 1; provided that (1) a license and a certificate of exemption shall be issued for projects considered pursuant to Part 1.5, as it existed prior to the effective date of amendments to this section enacted during the 1976 portion of the 1975–76 Regular Session of the Legislature, for which there is outstanding a valid and subsisting approval for the project; or (2) the voluntary area health planning agency failed to reach a decision on the project or act on the recommendation of the voluntary local health planning agency within the time prescribed; or (3) more than 12 months have expired since a decision on the project was reached by the voluntary area health planning agency.

"The conversion of a general acute care hospital or special hospital to a general acute care/rehabilitation hospital shall not require a certificate of need, as required by Section 437.10, if the health facility is rendering the services specified in subdivision (f) of Section 1250 on January 1, 1979."

[5] Section 437.11 is set forth in Appendix I-B.

[6] Section 437.13 is set forth in Appendix I-C.

Health Planning Law, or for the replacement of any such facility or its equipment or services. This section, since it is also a form of grandfather provision, expires by its own terms on July 1, 1986, unless extended by new statute.

1. The Relationship Between Sections 437.11 and 437.13

Without an exemption, the hospital in question would undoubtedly be required to obtain a certificate of need before replacing the linear accelerator under either subdivision (d) of section 437.10 (". . . initial purchase or lease by a facility . . . of . . . therapeutic equipment with a value in excess of one hundred fifty thousand dollars ($150,000) in a single fiscal year, . . .") or subdivision (e) thereof ("[a]ny project requiring a capital expenditure for a health facility, . . . or for the services, equipment or modernization of such facility . . . in excess of one hundred fifty thousand dollars ($150,000) in the current fiscal year . . . .")[7]

The hospital applied for an exemption under section 437.11(b) (1), the emergency provision. We conclude that if the hospital qualifies under that provision, it need not qualify under any of the other exemption provisions.

The fundamental rule of statutory construction is to ascertain the intent of the Legislature so as to carry out the purposes of the law. (*Moyer v. Workmen's Comp. Appeals Bd*. (1973) 10 Cal. 3d 222, 230.) Here, the basic purpose of the Health Planning Law is to insure that new or replacement facilities and services in the health care field are subject to advance scrutiny and are only allowed to proceed upon receipt of a certificate of need, unless otherwised exempted.

The language of the pertinent sections outlined above makes it clear that the various exemption provisions are independent. Section 437.10 is the basic section mandating a certificate of need and provides "[e]xcept as otherwise exempted by Sections 437.11, 437.13, or this section, projects requiring a certificate of need . . . are . . . ." The use of the disjunctive 'or" is significant and leads to the conclusion that an exemption may be obtained by qualifying under any of the cited sections. In turn, section 437.11 sets forth several exemptions which are permanently part of the law, and makes no reference to section 437.13 or any requirement that to qualify for a section 437.11 exemption, the applicant must also qualify under section 437.13. Similarly, section 437.13 provides additional exemptions available for a limited time, which are in no way tied to qualifying for a section 437.11 exemption. In fact, section 437.13 provides that "notwithstanding any

[7] Section 437.10 contains a provision requiring the office to adjust annually the capital expenditure threshold of subdivisions (d) and (e) to reflect changes in the cost of living. The latest adjustment puts the figure at $160,650. (22 Cal. Admin. Code § 90412 (a).)

other provision of law . . .” certain qualified applicants need not obtain the statutory approval for remodeling or replacements. We are unable to find any statutory language in the Health Planning law which indicates that even if an applicant is not qualified under one of the sections in question, the exemption under another section would not still be available. We therefore conclude, based on the clear statutory language and scheme, that if a hospital qualifies for an exemption under section 437.11(b) (1), it is not required also to meet the exemption requirements of section 437.13.

2. Effect of Emergency

The second question relates to whether the evaluation of the effect of an emergency should be limited to the facility where the health care services sought to be replaced are located. We conclude that it should be.[8]

As noted, the very language of the emergency exemption speaks of “. . . services that are no longer available *at the facility* . . .” (Emphasis added.) This would seem clearly to preclude consideration of whether the same services were available at another facility within the service area of the applicant hospital. Further, the regulations of the office use the same limitations. 22 California Administrative Code section 90407 sets forth the requirements for an exemption based on section 437.11(b) (1), and provides in part.

> “(d) A project shall be found to be necessary under this section when the Director finds all of the following:
>
> “(1) A disaster or other emergency caused the discontinuance or disruption in the provision of services *in the facility*.
>
> “(2) The project will only enable *the facility* to continue to provide the services that were disrupted or discontinued.
>
> “. . . . . .” (Emphasis added.)

[8] We have not been presented with all the facts concerning the claimed emergency at the hospital in question. Consequently, we express no opinion on whether the director could find that an emergency exists. We note the definition of “emergency” contained in the regulations of the office:

> “(f) An emergency shall mean any other unpreventable, unexpected or sudden act, event or other occurrence which demands immediate action.” (22 Cal. Admin. Code § 90407(f); see also *County of Los Angeles v. Payne* and cases cited therein (1937) 5 Cal. 2d 563, 572; *Los Angeles Dredging Co. v. Long Beach* (1930) 210 Cal. 348, 356.)

The contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation is entitled to great weight. (Rivera v. City of Fresno (1971) 6 Cal. 3d 132, 140; *Bakersfield Community Hosp. v. Dept. of Health* (1977) 77 Cal. App. 3d 193, 199.) Similarly, it is well established that until administrative rules or regulations are amended or repealed, the administrative agency enacting them is bound by those rules or regulations. (*United States v. Nixon* (1974) 418 U.S. 683, 696; see Davis, Administrative law Treatise (1978 supp.) § 5.03–4; *cf. Garrison v. State of Calif*. (1944) 64 Cal. App. 2d 820, 829.) Here, the office has interpreted its statutory requirement as being an examination of the effect of the emergency at the applicant facility. We believe this is a correct interpretation and should be followed.

An argument can be advanced that in order to carry out the purposes of the Health Planning Law, that of retarding increasing costs of medical care in California (see 57 Ops. Cal. Atty. Gen. 612, 614 (1974)), the director should be able to consider nor only the service at the facility in question, but also those within the service area of that facility and to deny an exemption application if the replacement sought would return the entire service area to one of redundant or excess capacity service availability. We believe, however, that the Legislature did not grant the director that discretion when it used the clear language of "at the facility" in section 437.11(b) (1). We thus conclude that the director in ruling on an application submitted pursuant to section 437.11(b) (1) may look only to the services sought to be replaced at the applicant facility, and may not consider the availability or nonavailability of such services in the community or at other health facilities.

*****

APPENDIX I-A

Section 437.10 provides:

"Except as otherwise exempted by Sections 437.11, 437.13, or this section, projects requiring a certificate of need issued by the State Department of Health are the following:

"(a) Construction of a new health facility, the increase of bed capacity in an existing health facility, the conversion of an existing health facility from on license category to another, or, on or after January 1, 1977, the conversion of a health facility's existing beds in one bed classification to a different bed classification. As used in this section, 'license category' means any category of health facility set forth in Section 1250 and 'bed classification' means any classification set forth in Section 1250.1. A facility may use beds in one bed classification which, pursuant to the facility's license, have been designated in another bed classification, if all such bed classification changes do not at any point in time exceed 5 percent of the total number of the facility's beds as set forth by the facility's

license and if such use meets the requirements of Chapter 2 (commencing with Section 1250) of Division 2.

"In addition, a facility may use an additional 5 percent of its beds in such manner if the director finds that seasonal fluctuations justify it.

"(b) Establishment of a new specialty clinic, as defined in subdivision (b) of Section 1204, the conversion of an existing primary care clinic to a specialty clinic, or the conversion of an existing specialty clinic to a different category of specialty-clinic licensure It shall not constitute a project and no certificate of need shall be required for the establishment of a primary care clinic, as defined in subdivision (a) of Section 1204, the conversion of an existing specialty clinic to a primary care clinic, or the conversion of an existing primary care clinic to a different category of primary-care-clinic licensure. Any capital expenditure involved in the establishment of a primary care clinic shall also not constitute a project, except as provided in subdivision (d).

"(c) The establishment of a new special service delineated in subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 1255, or the establishment, pursuant to subdivision (c) of Section 1255, of an emergency center which provides basic or comprehensive emergency medical services, as defined by regulation of the state department, or the establishment by a specialty clinic, as defined in subdivision (b) of Section 1204, of a new special service identified by or pursuant to Section 1203.

"(d) The initial purchase or lease by a facility or by a clinic subject to licensure under Chapter 1 (commencing with Section 1200) of Division 2, of diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars ($150,000) in a single fiscal year, or for which the cumulative cost exceeds such amount in more than one fiscal year. For purposes of this subdivision, the purchase or lease of one or more articles of functionally related diagnostic or therapeutic equipment, as determined by the state department, shall be considered together.

"(e) Any project requiring a capital expenditure for a health facility, or for a specialty clinic as defined in subdivision (b) of Section 1204, or for the services equipment or modernization of such facility or clinic in excess of one hundred fifty thousand dollars ($150,000) in the current fiscal year or cumulation to an expenditure of one hundred fifty thousand dollars ($150,000) in the same fiscal year or subsequent fiscal years for a single project.

"For the purposes of this subdivision, a 'capital expenditure' shall mean any of the following:

"(1) An expenditure, including an expenditure for a construction project undertaken by the facility or clinic as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and which exceeds one hundred fifty thousand dollars ($150,000). The cost of studies, surveys, legal fees, land, offsite improvements, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the physical plant and equipment with respect to which such expenditure is made shall be included in determining whether such cost exceeds one hundred fifty thousand dollars ($150,000). Where the estimated cost of a proposed project, including cost escalation factors appropriate to the area in which the project is located, is, within 60 days of the date on which the obligation for such expenditure is incurred, certified by a licensed architect or engineer to be one hundred fifty thousand dollars ($150,000) or less, such expenditure shall be deemed not to exceed one hundred fifty thousand dollars ($150,000) regardless of the actual cost of such project. However, in any such case where the actual cost of the project exceeds one hundred fifty thousand dollars ($150,000) the health facility or clinic on whose behalf such expenditure is made shall provide written notification of such cost to the state department not more than 30 days after the date on which such expenditure is incurred. Such notification shall include a copy of the certified estimate.

"(2) The acquisition, under lease or comparable arrangement, or through donation, of any facility or part thereof, or equipment for a facility or clinic, the expenditure for which would have been considered a capital expenditure if the person had acquired it by purchase. For the purpose of this paragraph, 'donation' shall not include a bequest.

"(3) Any change in a proposed capital expenditure which itself meets the criteria set forth in this subdivision.

"A 'capital expenditure' shall include the total cost of the proposed project as certified by a licensed architect or engineer based on preliminary plans or specifications and concurred in by the state department. For the purposes of this subdivision, 'project' shall not include the purchase of real property for future use or the transfer of ownership, in whole or part, of an existing health facility or clinic or the acquisition of all or substantially all of the assets or stock thereof.

"For the purposes of this subdivision, 'modernization' means the alteration, expansion, repair, remodeling, replacement, or renovation of existing buildings, including initial equipment thereof, and the replacement of equipment of existing buildings.

"The state department shall annually adjust the capital expenditure thresholds set forth in subdivisions (d) and (e) of this section to reflect changes in the cost of living, as determined by the Department of Finance, using 1976 as the base year."

APPENDIX I-B

Section 437.11 sets forth:

"(a) The state department shall exempt from the provisions of Sections 438 to 438.13, inclusive, and shall issue a certificate of exemption for those projects which were not previously subject to review under Section 437.7 prior to the effective date of this section where the applicant has shown and the director has found that:

"(1) The applicant has, prior to the effective date of this section, committed or incurred a financial obligation, including any obligation payable by force account, which is certified by a licensed architect or engineer to be 10 percent of the cost of the total project, or seventy-five thousand dollars ($75,000), whichever is less; and

"(2) The project cannot be terminated without substantial economic loss to the applicant; and

"(3) Except with respect to projects set forth in subdivision (d) of Section 437.10, the project was commenced prior to the effective date of this section and is being diligently pursued to completion; and

"(4) The applicant has filed a notice of such project with the state department on forms supplied by the state department within 60 days of the effective date of this section.

"For the purposes of this subdivision, 'project' shall mean any project set forth in Section 437.10, and the term 'financial obligation' shall include cost factors set forth in the definition of 'capital expenditure' in Section 437.10.

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

"(b) In addition, the state department shall exempt from the provisions of Sections 438 to 438.13, inclusive, and shall issue a certificate of need for those projects where the applicant has shown and the director has found that:

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

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

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

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

APPENDIX I-C

Section 437.13 provides:

"(a) Notwithstanding any other provision of law, no proposal for the remodeling of any health facility licensed on or before September 9, 1976, or for the construction of any new health facility to replace in whole or in part any existing health facility licensed on or before September 9, 1976, or for the replacement of the equipment or services of any health facility licensed on or before September 9, 1976, shall be required to be approved as provided in this part, unless the proposal involves one of the following:

"(1) An increase in bed capacity.

"(2) The conversion of a facility in one category of licensure to a different category of licensure.

"(3) The conversion of any of a health facility's existing beds from one classification set forth in Section 1250.1 to another classification, except as authorized by Section 437.10.

"(4) A significant expansion or addition of diagnostic or therapeutic capability, or a significant expansion or addition of services.

"(5) Location of the health facility on a site which is not the same site or immediately adjacent thereto.

"(6) The remodeling or replacement of any special service set forth in subdivision (a), (b), (c), (d), (e), (f), (g), or (h) of Section 1255, which exceeds a cost of one hundred fifty thousand dollars ($150,000), unless a certificate of need has been obtained for such remodeling or replacement of such special service.

"(7) The replacement of any diagnostic or therapeutic equipment at a cost in excess

of one hundred fifty thousand dollars ($150,000), when such equipment has been in operation for five years or less. For the purposes of this paragraph, the purchase or lease of one or more articles of functionally related diagnostic or therapeutic equipment, as determined by the state department, shall be considered together.

"(8) The replacement or remodeling of patient rooms and nursing stations costing in excess of two hundred fifty thousand dollars ($250,000), unless such replacement or remodeling meets the requirements of subdivision (b).

"(9) Except as provided in subdivision (c), a project for the remodeling or replacement of all or any portion of a health facility or equipment thereof which is not limited to a project specified in paragraph (6), (7), or (8) of this subdivision and the cost of which exceeds the lesser of one million five hundred thousand dollars ($1,500,000) or four thousand dollars ($4,000) multiplied by the health facility's total authorized bed capacity, excluding the cost of projects covered in paragraph (6), (7), or (8).

"(b) Any project specified in paragraph (8) of subdivision (a) which is not otherwise rendered ineligible for exemption by paragraphs (1) to (7), inclusive, of such subdivision, shall be entitled to an exemption under this section if any of the following conditions are met:

"(1) Where the health facility has over the previous three years experienced an average licensed bed occupancy rate of over 80 percent, the licensed bed capacity shall not be required to be reduced by a remodeling or replacement proposal.

"(2) Except as provided in paragraph (6) of this subdivision, where the health facility has over the previous three years experienced an average licensed bed occupancy rate of not less than 76 nor more than 80 percent, the licensed bed
capacity of the health facility upon completion of the remodeling or replacement proposal shall not exceed 95 percent of the licensed bed capacity prior to the project.

"(3) Except as provided in paragraph (6) of this subdivision, where the health facility has over the previous three years experienced an average licensed bed occupancy rate of not less than 71 nor more than 75 percent, the licensed bed capacity of the health facility upon completion of the remodeling or replacement proposal shall not exceed 95 percent of the licensed bed capacity prior to the project.

"(4) Except as provided in paragraph (6) of this subdivision, where the health facility has over the previous three years experienced an average licensed bed occupancy rate of not less than 66 nor more than 70 percent, the licensed bed capacity of the health facility upon completion of the remodeling or replacement proposal shall not exceed 85

percent of the licensed bed capacity prior to the project.

"(5) Except as provided in paragraph (6) of this subdivision, where the health facility has over the previous three years experienced an average licensed bed occupancy rate of nor more than 65 percent, the licensed bed capacity of the facility upon completion of the remodeling or replacement proposal shall not exceed 80 percent of the licensed bed capacity prior to the project.

"(6) Where the health facility serves a medically underserved population in a medically underserved area as determined by the Health Manpower Policy Commission and the facility's average bed occupancy rate over the previous three years was in excess of 65 percent, the licensed bed capacity shall not be required to be reduced. Where the health facility serves a medically underserved population in a medically underserved area as determined by the Health Manpower Policy Commission and the health facility's average bed occupancy rate is below 65 percent over the previous three years, the licensed bed capacity of the facility upon completion of the remodeling or replacement proposal shall not exceed 90 percent of the facility's licensed bed capacity prior to the project.

"(c) Any project specified in paragraph (9) of subdivision (a) which is not otherwise rendered ineligible for exemption by paragraphs (1) to (7), inclusive, of such subdivision, shall be entitled to an exemption under this section if the applicant demonstrates to the satisfaction of the director that the project is necessary in order for the facility to be able to continue the provision of service in a manner consistent with current standards of practice, and that the project meets all of the following criteria:

"(1) The proposed space in square feet for the project, upon completion, is not more than 5 percent net above the statewide average number of square feet per licensed bed in services or departments of comparably sized facilities approved in California during the previous two years pursuant to Chapter 1 (commencing with Section 15000) of Division 12.5 unless the applicant demonstrates to the satisfaction of the director special requirements for additional space.

"(2) Financial resources exist to successfully complete and implement the project, and the financing will not result in an undesirable increase in patient charges in the facility.

"(3) The project promotes fiscal economies through measures that assure efficiency and effectiveness, which may include the operation of joint cooperative or shared facility health resources and maximum utilization of facilities.

"(4) Less costly alternatives for the project were evaluated by the applicant and found not to be as desirable as the proposed project.

"(5) The cost of equipment and construction is within reasonable limits and range for the area, type of project, and projected operational cost.

"(6) The size of the project is based on historical or reasonably projected utilization of the service, equipment, or facility.

"The state department shall adopt regulations further defining the specifics of the criteria set forth in this subdivision.

"(d) In reviewing a proposal for a certificate of exemption for remodeling a health facility or for the replacement of equipment or services of a health facility which is not eligible for a certificate of exemption because of paragraph (8) of subdivision (a), or for remodeling or replacing a basic emergency center or its equipment which is not eligible for a certificate of exemption because of paragraph (6) of subdivision (a), when the health facility has been purchased for the purpose of providing services to existing members and reasonably anticipated members of a comprehensive group practice prepayment health care service plan, the medical services, of which are provided by at least 200 physicians in group practice, who provide at least 75 percent of the medical services they deliver to members of the comprehensive group health care service plan, and which is licensed under the Knox-Kneene Health Care Service Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2) and qualified as a health maintenance organization under Title XIII of the federal Public Health Service Act (42 U.S.C., Sec. 300e *et seq*.), the state department, after a public hearing thereon, shall grant a certificate of exemption if the applicant: (1) demonstrates that the project is necessary to meet the needs of such members; (2) meets the criteria in paragraphs (1) to (6), inclusive, of subdivision (c); (3) does not violate paragraphs (1) to (7), inclusive, of subdivision (a), except that remodeling or replacing a basic emergency center shall not be considered a violation of paragraph (6) of subdivision (a) for such purpose; (4) submits a letter of intent to undertake the proposed project within two years of the date of purchase of the facility; and (5) agrees not to sell, lease, or rent the facility for five years without the permission of the state department.

"(e) For all purposes, including those specified in Section 14105.5 of the Welfare and Institutions Code and in Section 1268 of this code, it shall be deemed that a certificate of need has been issued for any proposal issued a certificate of exemption under this section.

"Health facilities desiring an exemption under this section shall, pursuant to regulations of the state department, submit an application and plans to the state department. The state department shall inform the applicant in writing of its determination as to eligibility of the applicant's proposal for such exemption within 60 calendar days of receipt of the application. If the state department determines that the proposal is not eligible for

such exemption, the applicant may reapply for a certificate of need as provided in Section 438 or seek judicial review.

"This section shall remain in effect only until July 1, 1986, and as of such date is repealed, unless a later enacted statute, which is chapter before July 1, 1986, deletes or extends such date,"

*****