

SENATE, No. 2347

STATE OF NEW JERSEY

INTRODUCED DECEMBER 15, 1997

By Senator SINAGRA

1 AN ACT concerning megavoltage radiation oncology services and  
2 supplementing P.L.1971, c.136 (C.26:2H-1 et seq.).

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. a. The Department of Health and Senior Services shall not  
8 accept for processing an application for a certificate of need for a new  
9 megavoltage radiation oncology program which seeks a waiver of  
10 certain certificate of need requirements in accordance with regulations  
11 adopted by the Commissioner of Health and Senior Services as set  
12 forth at N.J.A.C.8:33I-1.4(d), unless the application:

13 (1) contains a request to review the certificate of need application  
14 to determine whether it meets the requirements for a waiver pursuant  
15 to N.J.A.C.8:33I-1.4(d);

16 (2) meets the requirements for a waiver pursuant to N.J.A.C.8:33I-  
17 1.4(d); and

18 (3) is otherwise complete for processing.

19 b. Notwithstanding the provisions of subsection a. of this section  
20 to the contrary, an application for a certificate of need for a new  
21 megavoltage radiation oncology program which responded to  
22 certificate of need calls preceding an invitation for certificate of need  
23 applications to be submitted prior to November 5, 1997, and which  
24 meets the requirements for a waiver pursuant to N.J.A.C.8:33I-1.4(d)  
25 and is otherwise complete for processing, shall be accepted for  
26 processing by the department and shall be reviewed by the local  
27 advisory board, the State Health Planning Board and the commissioner  
28 in accordance with statutory requirements.

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30 2. The Commissioner of Health and Senior Services shall adopt  
31 rules and regulations pursuant to the "Administrative Procedure Act,"  
32 P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of  
33 this act.

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35 3. This act shall take effect immediately.

## STATEMENT

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3 The purpose of this bill is to clarify the certificate of need (CN)  
4 requirements for health care providers who wish to initiate new  
5 megavoltage radiation oncology programs pursuant to the waiver  
6 provisions of N.J.A.C.8:33I-1.4(d). Current law and regulations  
7 governing CN applications for such programs do not specify whether  
8 a health care provider filing such a CN application under these waiver  
9 provisions is required to specifically request a waiver in its CN  
10 application, or whether the CN application would be accepted for  
11 processing under the waiver provisions as long as the requirements for  
12 a waiver, as provided in N.J.A.C.8:33I-1.4(d), are satisfied by  
13 appropriate documentation in the CN application.

14 This ambiguity has adversely affected health care providers who  
15 have filed CN applications for new megavoltage radiation oncology  
16 programs, and whose applications have been returned by the  
17 Commissioner of Health and Senior Services as unacceptable for  
18 processing because their application did not specifically request a  
19 review under the waiver provisions of N.J.A.C.8:33I-1.4(d), even  
20 though the application contained specific and quantifiable evidence of  
21 satisfying those waiver provisions.

22 This bill provides that a health care provider who hereafter files a  
23 CN application for a new megavoltage radiation oncology program  
24 must specifically request a review under the waiver provisions of  
25 N.J.A.C.8:33I-1.4(d) to be eligible for a waiver; however, the bill also  
26 protects those providers who have submitted CN applications without  
27 the benefit of this clarifying legislation. To that end, the bill stipulates  
28 that CN applications for new megavoltage radiation oncology  
29 programs which (a) are submitted in response to CN calls preceding  
30 the commissioner's invitation for applications due by November 5,  
31 1997, (b) satisfy the waiver provisions of N.J.A.C.8:33I-1.4(d), and  
32 (c) are otherwise complete for processing, shall be accepted for  
33 processing under applicable CN rules, whether or not a specific  
34 request for consideration under the waiver provisions of  
35 N.J.A.C.8:33I-1.4(d) was included in the CN application. The bill  
36 specifies the November 5, 1997 date because the commissioner's  
37 invitation for CN applications for new megavoltage radiation oncology  
38 programs of August 4, 1997, which were to be submitted by  
39 November 5, expressly stated that these applications would be  
40 accepted under the waiver provisions of N.J.A.C.8:33I-1.4(d), thereby  
41 eliminating any question as to the scope of review of the applications.

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3 Requires Department of Health and Senior Services to process certain  
4 certificate of need applications for new megavoltage radiation  
5 oncology programs.