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*Health Care: Certificates of Need
Delegation of Executive Power*

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September 23, 1977

To: David E. Smith, Commissioner, Department of Human Services
From: Joseph E. Brennan, Attorney General
Re: Proposed Certificate of Need Legislation

You have requested opinions relative to two issues raised by L.D. 1202 - An Act Establishing a Maine Certificate of Need Program. Since these issues have been substantially addressed in two opinions issued by this office on this date, one to Senator Olympia J. Snowe, and one to Representative Harland Goodwin, I am enclosing copies of those opinions and refer you to them for an explication of the facts and for the reasons supporting the rulings on your questions.

Questions posed:

1. I have serious reservations about State statutes that are administered by a State agency that require the approval of regulations by an advisory council, and request a ruling on the legality of this.

2. I also would question the obligation of the Health Systems Agency to any regulations developed and approved by a State Council when the federal law clearly states their right to develop procedures of their own, and also request a ruling on this.

Conclusions:

1. It is the opinion of this office that the approval by the SHCC of regulations promulgated by the Department, as contemplated in L.D. 1202, would constitute a non-compliance with P.L. 93-641, 42 USC § 300n-1(a) and would be an unconstitutional delegation of legislative power.

David E. Smith, Commissioner, Department of Human Services

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2. It is the opinion of this office that to require the approval by the SHCC of regulations promulgated by the HSA would constitute non-compliance with P.L. 93-641, 42 USC § 300n 1(a), and would be an unconstitutional delegation of power.

JOSEPH E. BRENNAN
Attorney General

JEB/ec