

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 10
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Short Title: CON Modifications.

(Public)

Sponsors:

Referred to:

January 28, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE CERTIFICATE OF NEED LAW.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 131E-175 reads as rewritten:

5 "§ 131E-175. Findings of fact.

6 The General Assembly of North Carolina makes the following findings:

- 7 (1) That the financing of health care, particularly the reimbursement of
- 8 health services rendered by health service facilities, limits the effect of
- 9 free market competition and government regulation is therefore
- 10 necessary to control costs, utilization, and distribution of new health
- 11 service facilities and the bed complements of these health service
- 12 facilities.
- 13 (2) That the increasing cost of health care services offered through health
- 14 service facilities threatens the health and welfare of the citizens of this
- 15 State in that citizens need assurance of economical and readily
- 16 available health care.
- 17 (3) That, if left to the market place to allocate health service facilities and
- 18 health care services, geographical maldistribution of these facilities
- 19 and services would occur and, further, less than equal access to all
- 20 population groups, especially those that have traditionally been
- 21 medically underserved, would result.

- 1 (3a) That access to health care services and health care facilities is critical
2 to the welfare of rural North Carolinians, and to the continued viability
3 of rural communities, and that the needs of rural North Carolinians
4 should be considered in the certificate of need review process.
- 5 (4) That the proliferation of unnecessary health service facilities results in
6 costly duplication and underuse of facilities, with the availability of
7 excess capacity leading to unnecessary use of expensive resources and
8 overutilization of health care services.
- 9 (5) Repealed by Session Laws 1987, c. 511, s. 1.
- 10 (6) That excess capacity of health service facilities places an enormous
11 economic burden on the public who pay for the construction and
12 operation of these facilities as patients, health insurance subscribers,
13 health plan contributors, and taxpayers.
- 14 (7) That the general welfare and protection of lives, health, and property
15 of the people of this State require that new institutional health services
16 to be offered within this State be subject to review and evaluation as to
17 need, cost of service, accessibility to services, quality of care,
18 feasibility, and other criteria as determined by provisions of this
19 Article or by the North Carolina Department of Human Resources
20 pursuant to provisions of this Article prior to such services being
21 offered or developed in order that only appropriate and needed
22 institutional health services are made available in the area to be
23 served."

24 Sec. 2. G.S. 131E-176 reads as rewritten:

25 **"§ 131E-176. Definitions.**

26 As used in this Article, unless the context clearly requires otherwise, the following
27 terms have the meanings specified:

- 28 (1) 'Ambulatory surgical facility' means a facility designed for the
29 provision of ~~an~~ a specialty ambulatory surgical program or a
30 multispecialty ambulatory surgical program. An ambulatory surgical
31 facility serves patients who require local, regional or general
32 anesthesia and a period of post-operative observation. An ambulatory
33 surgical facility may only admit patients for a period of less than 24
34 hours and must provide at least ~~one~~ two designated operating ~~room~~
35 rooms and at least one designated recovery room, have available the
36 necessary equipment and trained personnel to handle emergencies,
37 provide adequate quality assurance and assessment by an evaluation
38 and review committee, and maintain adequate medical records for each
39 patient. An ambulatory surgical facility may be operated as a part of a
40 physician or dentist's office, provided the facility is licensed under
41 G.S. Chapter 131E, Article 6, Part D, but the performance of
42 incidental, limited ambulatory surgical procedures which do not
43 constitute an ambulatory surgical program as defined in subdivision

- 1 ~~(1a)~~-(1b) and which are performed in a physician's or dentist's office
2 does not make that office an ambulatory surgical facility.
- 3 (1a) 'Air ambulance' means aircraft used to provide air transport of sick or
4 injured persons between destinations within the State.
- 5 ~~(1a)~~ (1b) 'Ambulatory surgical program' means a formal program for
6 providing on a same-day basis those surgical procedures which
7 require local, regional or general anesthesia and a period of post-
8 operative observation to patients whose admission for more than 24
9 hours is determined, prior to surgery, to be medically unnecessary.
- 10 (2) 'Bed capacity' means space used exclusively for inpatient care,
11 including space designed or remodeled for licensed inpatient beds even
12 though temporarily not used for such purposes. The number of beds to
13 be counted in any patient room shall be the maximum number for
14 which adequate square footage is provided as established by rules of
15 the Department except that single beds in single rooms are counted
16 even if the room contains inadequate square footage. The term 'bed
17 capacity' also refers to the number of dialysis stations in kidney
18 disease treatment centers, including freestanding dialysis units.
- 19 (2a) 'Bone marrow transplantation services' means the process of infusing
20 bone marrow into persons with diseases to stimulate the production of
21 blood cells.
- 22 (2b) 'Burn intensive care services' means services provided in a unit
23 designed to care for patients who have been severely burned.
- 24 (2c) 'Campus' means the adjacent grounds and buildings, or grounds and
25 buildings not separated by more than a public right-of-way, of a health
26 service facility and related health care entities.
- 27 ~~(2a)~~ (2d) 'Capital expenditure' means an expenditure for a project,
28 including but not limited to the cost of construction, engineering,
29 and equipment which under generally accepted accounting principles
30 is not properly chargeable as an expense of operation and
31 maintenance. Capital expenditure includes, in addition, the fair
32 market value of an acquisition made by donation, lease, or
33 comparable arrangement by which a person obtains equipment, the
34 expenditure for which would have been considered a capital
35 expenditure under this Article if the person had acquired it by
36 purchase.
- 37 (2e) 'Cardiac angioplasty equipment' means the cardiac catheterization
38 equipment used in surgery for the restoration, repair, or reconstruction
39 of coronary blood vessels.
- 40 (2f) 'Cardiac catheterization equipment' means the equipment required to
41 perform diagnostic procedures or therapeutic intervention in which a
42 catheter is introduced into a vein or artery and threaded through the
43 circulatory system to the heart.

- 1 (3) ~~'Certificate of need' means a written order of the Department setting~~
2 ~~forth the affirmative findings that a proposed project sufficiently~~
3 ~~satisfies the plans, standards, and criteria prescribed for such projects~~
4 ~~by this Article and by rules of the Department as provided in G.S.~~
5 ~~131E-183(a) and which affords the person so designated as the legal~~
6 ~~proponent of the proposed project the opportunity to proceed with the~~
7 ~~development of such project.~~
- 8 (4) ~~'Certified cost estimate' means an estimate of the total cost of a project~~
9 ~~certified by a licensed architect or engineer which is based on:~~
10 a. ~~Preliminary plans and specifications;~~
11 b. ~~Estimates of the cost of equipment certified by the manufacturer~~
12 ~~or vendor; and~~
13 e. ~~Estimates of the cost of management and administration of the~~
14 ~~project.~~
- 15 (5) 'Change in bed capacity' means (i) any relocation of health service
16 facility beds, or dialysis stations from one licensed facility or campus
17 to another, or (ii) any redistribution of health service facility bed
18 capacity among the categories of health service facility bed as defined
19 in G.S. 131E-176(9c), or (iii) any increase in the number of health
20 service facility beds, or dialysis stations in kidney disease treatment
21 centers, including freestanding dialysis units.
- 22 (5a) 'Chemical dependency treatment facility' means a public or private
23 facility, or unit in a facility, which is engaged in providing 24-hour a
24 day treatment for chemical dependency or substance abuse. This
25 treatment may include detoxification, administration of a therapeutic
26 regimen for the treatment of chemically dependent or substance
27 abusing persons and related services. The facility or unit may be:
28 a. A unit within a general hospital or an attached or freestanding
29 unit of a general hospital licensed under Article 5, Chapter
30 131E, of the General Statutes,
31 b. A unit within a psychiatric hospital or an attached or
32 freestanding unit of a psychiatric hospital licensed under Article
33 1A of General Statutes Chapter 122 or Article 2 of General
34 Statutes Chapter 122C,
35 c. A freestanding facility specializing in treatment of persons who
36 are substance abusers or chemically dependent licensed under
37 Article 1A of General Statutes Chapter 122 or Article 2 of
38 General Statutes Chapter 122C; and may be identified as
39 'chemical dependency, substance abuse, alcoholism, or drug
40 abuse treatment units,' 'residential chemical dependency,
41 substance abuse, alcoholism or drug abuse facilities,' 'social
42 setting detoxification facilities' and 'medical detoxification
43 facilities,' or by other names if the purpose is to provide

- 1 treatment of chemically dependent or substance abusing
2 persons, but shall not include halfway houses or recovery farms.
- 3 (5b) 'Chemical dependency treatment beds' means beds that are licensed for
4 detoxification or for the inpatient treatment of chemical dependency.
5 Residential treatment beds for the treatment of chemical dependency
6 or substance abuse are chemical dependency treatment beds.
- 7 (6) 'Department' means the North Carolina Department of Human
8 Resources.
- 9 (7) To 'develop' when used in connection with health services, means to
10 undertake those activities which will result in the offering of
11 institutional health service ~~not provided in the previous 12-month~~
12 ~~reporting period~~ or the incurring of a financial obligation in relation to
13 the offering of such a service.
- 14 (7a) 'Diagnostic center' means a freestanding facility, program, or provider,
15 including but not limited to, physicians' offices, clinical laboratories,
16 radiology centers, and mobile diagnostic programs, in which the total
17 cost of all the medical diagnostic equipment utilized by the facility
18 exceeds seven hundred fifty thousand dollars (\$750,000). In
19 determining whether the medical diagnostic equipment in a diagnostic
20 center costs more than seven hundred fifty thousand dollars
21 (\$750,000), the costs of the equipment, studies, surveys, designs,
22 plans, working drawings, specifications, construction, installation, and
23 other activities essential to acquiring and making operational the
24 equipment shall be included. The capital expenditure for the
25 equipment shall be deemed to be the fair market value of the
26 equipment or the cost of the equipment, whichever is greater.
- 27 (7b) 'Expedited review' means the status given to an application's review
28 process when the applicant petitions for the review and the Department
29 approves the request based on findings that all of the following are
30 met:
- 31 a. The review is not competitive.
32 b. The proposed capital expenditure is less than five million
33 dollars (\$5,000,000).
34 c. A request for a public hearing is not received within the time
35 frame defined in G.S. 131E-185.
36 d. The agency has not determined that a public hearing is in the
37 public interest.
- 38 (7c) 'Gamma knife' means equipment which emits photon beams from a
39 stationary radioactive cobalt source to treat lesions deep within the
40 brain and is one type of stereotactic radiosurgery.
- 41 (8),(9) Repealed by Session Laws 1987, c. 511, s. 1.
- 42 (9a) 'Health service' means an organized, interrelated medical, diagnostic,
43 therapeutic, and/or rehabilitative activity that is integral to the
44 prevention of disease or the clinical management of a sick, injured, or

- 1 disabled person. 'Health service' does not include administrative and
2 other activities that are not integral to clinical management.
- 3 (9b) 'Health service facility' means a hospital; psychiatric facility;
4 rehabilitation facility; long term care facility; kidney disease treatment
5 center, including freestanding hemodialysis units; intermediate care
6 facility for the mentally retarded; home health agency office; chemical
7 dependency treatment facility; diagnostic center; oncology treatment
8 center; and ambulatory surgical facility.
- 9 (9c) 'Health service facility bed' means a bed licensed for use in a health
10 service facility in the categories of (i) acute care beds; (ii) psychiatric
11 beds; (iii) rehabilitation beds; (iv) nursing care beds; (v) intermediate
12 care beds for the mentally retarded; and (vi) chemical dependency
13 treatment beds.
- 14 (10) 'Health maintenance organization (HMO)' means a public or private
15 organization which has received its certificate of authority under
16 Article 67 of Chapter 58 of the General Statutes and which either is a
17 qualified health maintenance organization under Section 1310(d) of
18 the Public Health Service Act or:
- 19 a. Provides or otherwise makes available to enrolled participants
20 health care services, including at least the following basic
21 health care services: usual physician services, hospitalization,
22 laboratory, X ray, emergency and preventive services, and out-
23 of-area coverage;
- 24 b. Is compensated, except for copayments, for the provision of the
25 basic health care services listed above to enrolled participants
26 by a payment which is paid on a periodic basis without regard
27 to the date the health care services are provided and which is
28 fixed without regard to the frequency, extent, or kind of health
29 service actually provided; and
- 30 c. Provides physicians' services primarily (i) directly through
31 physicians who are either employees or partners of such
32 organizations, or (ii) through arrangements with individual
33 physicians or one or more groups of physicians organized on a
34 group practice or individual practice basis.
- 35 (10a) 'Heart-lung bypass machine' means the equipment used to perform
36 extra-corporeal circulation and oxygenation during surgical
37 procedures.
- 38 (11) Repealed by Session Laws 1991, c. 692, s. 1.
- 39 (12) 'Home health agency' means a private organization or public agency,
40 whether owned or operated by one or more persons or legal entities,
41 which furnishes or offers to furnish home health services.
- 42 'Home health services' means items and services furnished to an
43 individual by a home health agency, or by others under arrangements
44 with such others made by the agency, on a visiting basis, and except

1 for paragraph e. of this subdivision, in a place of temporary or
2 permanent residence used as the individual's home as follows:

- 3 a. Part-time or intermittent nursing care provided by or under the
4 supervision of a registered nurse;
5 b. Physical, occupational or speech therapy;
6 c. Medical social services, home health aid services, and other
7 therapeutic services;
8 d. Medical supplies, other than drugs and biologicals and the use
9 of medical appliances;
10 e. Any of the foregoing items and services which are provided on
11 an outpatient basis under arrangements made by the home
12 health agency at a hospital or nursing home facility or
13 rehabilitation center and the furnishing of which involves the
14 use of equipment of such a nature that the items and services
15 cannot readily be made available to the individual in his home,
16 or which are furnished at such facility while he is there to
17 receive any such item or service, but not including
18 transportation of the individual in connection with any such
19 item or service.

20 (13) 'Hospital' means a public or private institution which is primarily
21 engaged in providing to inpatients, by or under supervision of
22 physicians, diagnostic services and therapeutic services for medical
23 diagnosis, treatment, and care of injured, disabled, or sick persons, or
24 rehabilitation services for the rehabilitation of injured, disabled, or sick
25 persons. The term includes all facilities licensed pursuant to G.S.
26 131E-77 of the General Statutes.

27 (13a) 'Hospice' means any coordinated program of home care with
28 provision for inpatient care for terminally ill patients and their
29 families. This care is provided by a medically directed
30 interdisciplinary team, directly or through an agreement under the
31 direction of an identifiable hospice administration. A hospice
32 program of care provides palliative and supportive medical and other
33 health services to meet the physical, psychological, social, spiritual
34 and special needs of patients and their families, which are
35 experienced during the final stages of terminal illness and during
36 dying and bereavement.

37 (14) Repealed by Session Laws 1987, c. 511, s. 1.

38 (14a) 'Intermediate care facility for the mentally retarded' means facilities
39 licensed pursuant to Article 2 of Chapter 122C of the General
40 Statutes for the purpose of providing health and habilitative services
41 based on the developmental model and principles of normalization
42 for persons with mental retardation, autism, cerebral palsy, epilepsy
43 or related conditions.

44 (14b) Repealed by Session Laws 1991, c. 692, s. 1.

- 1 (14c) 'Long term care facility' means a health service facility whose bed
2 complement of health service facility beds is composed principally
3 of nursing care facility beds.
- 4 (14d) 'Lithotripter' means extra-corporeal shock wave technology used to
5 treat persons with kidney stones and gallstones.
- 6 (14e) 'Magnetic resonance imaging scanner' means medical imaging
7 equipment that uses nuclear magnetic resonance.
- 8 (14f) 'Major medical equipment' means a single unit or single system of
9 components with related functions which is used to provide medical
10 and other health services and which costs more than seven hundred
11 fifty thousand dollars (\$750,000). In determining whether the major
12 medical equipment costs more than seven hundred fifty thousand
13 dollars (\$750,000), the costs of the equipment, studies, surveys,
14 designs, plans, working drawings, specifications, construction,
15 installation, and other activities essential to acquiring and making
16 operational the major medical equipment shall be included. The
17 capital expenditure for the equipment shall be deemed to be the fair
18 market value of the equipment or the cost of the equipment,
19 whichever is greater. Major medical equipment does not include
20 replacement equipment as defined in this section.
- 21 (15) Repealed by Session Laws 1987, c. 511, s. 1.
- 22 (15a) 'Multispecialty ambulatory surgical program' means a formal
23 program for providing on a same-day basis surgical procedures for at
24 least three of the following specialty areas: gynecology,
25 otolaryngology, plastic surgery, general surgery, ophthalmology,
26 orthopedic, or oral surgery.
- 27 (15b) 'Neonatal intensive care services' means those services provided by a
28 health service facility to high-risk newborn infants who require
29 constant nursing care, including but not limited to continuous
30 cardiopulmonary and other supportive care.
- 31 (16) 'New institutional health services' means any of the following:
- 32 a. The construction, development, or other establishment of a new
33 health service ~~facility;~~ facility.
- 34 b. The obligation by any person of ~~any~~ a capital expenditure ~~on~~
35 ~~behalf of or for a health service facility as defined in subsection (9b)~~
36 ~~of this section~~ exceeding two million dollars (\$2,000,000) to
37 develop or expand a health service or a health service facility,
38 ~~other than one to acquire an existing health service facility or to~~
39 ~~replace such a facility destroyed or irreparably damaged by accident~~
40 ~~or natural disaster, or which relates to the provision of a health~~
41 service. The cost of any studies, surveys, designs, plans,
42 working drawings, specifications, and other activities, including
43 staff effort and consulting and other services, essential to the
44 acquisition, improvement, expansion, or replacement of any

- 1 plant or equipment with respect to which an expenditure is
 2 made shall be included in determining if the expenditure
 3 exceeds two million ~~dollars (\$2,000,000);~~ dollars (\$2,000,000).
- 4 c. Any change in bed capacity as defined in ~~G.S.131E-176(5);~~ G.S.
 5 131E-176(5).
- 6 d. The offering of dialysis services or home health services by or
 7 on behalf of a health service facility if those services were not
 8 offered within the previous 12 months by or on behalf of the
 9 ~~facility;~~ facility.
- 10 e. A change in a project that was subject to certificate of need
 11 review and for which a certificate of need was issued, if the
 12 change is proposed during the development of the project or
 13 within one year after the project was completed. For purposes
 14 of this subdivision, a change in a project is a change of more
 15 than fifteen percent (15%) of the approved capital expenditure
 16 amount or the addition of a health service that is to be located in
 17 the facility, or portion thereof, that was constructed or
 18 developed in the ~~project;~~ project.
- 19 f. The development or offering of a health service as listed in this
 20 subdivision by or on behalf of a ~~health service facility~~ any
 21 person: if the service was not offered by or on behalf of the
 22 health service facility in the previous 12 months and if the
 23 annual operating costs of the service equal or exceed one
 24 million dollars (\$1,000,000), or the expansion of an existing
 25 health service when an annual operating cost of one million
 26 dollars (\$1,000,000) is directly associated with the offering of
 27 the expanded portion of the service;
- 28 1. Bone marrow transplantation services.
 - 29 2. Burn intensive care services.
 - 30 3. Neonatal intensive care services.
 - 31 4. Open-heart surgery services.
 - 32 5. Solid organ transplantation services.
- 33 fl. The acquisition by purchase, donation, lease, transfer, or
 34 comparable arrangement of any of the following equipment by
 35 or on behalf of any person:
- 36 1. Air ambulance.
 - 37 2. Cardiac angioplasty equipment.
 - 38 3. Cardiac catheterization equipment.
 - 39 4. Gamma knife.
 - 40 5. Heart-lung bypass machine.
 - 41 6. Lithotripter.
 - 42 7. Magnetic resonance imaging scanner.
 - 43 8. Positron emission tomography scanner.
- 44 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.

- 1 l. The purchase, lease, or acquisition of any health service facility,
2 or portion thereof, or a controlling interest in the health service
3 facility or portion thereof, if the health service facility was
4 developed under a certificate of need issued pursuant to ~~G.S.~~
5 ~~131E-180;~~ G.S. 131E-180.
- 6 m. Any conversion of nonhealth service facility beds to
7 health service facility ~~beds;~~ beds.
- 8 n. The construction, development, or other establishment of a
9 hospice if the operating budget thereof is in excess of one
10 hundred thousand dollars (\$100,000).
- 11 o. The opening of an additional office by an existing home health
12 agency within its service area as defined by rules adopted by the
13 Department; or the opening of any office by an existing home
14 health agency outside its service area as defined by rules
15 adopted by the Department.
- 16 p. The acquisition by purchase, donation, lease, transfer, or
17 comparable arrangement by any person of major medical
18 equipment.
- 19 q. The relocation of a health service facility from one service area
20 to another.
- 21 r. The conversion of a specialty ambulatory surgical program to a
22 multispecialty ambulatory surgical program or the addition of a
23 specialty to a specialty ambulatory surgical program.
- 24 s. The furnishing of mobile medical equipment to any person to
25 provide health services in North Carolina, which was not in use
26 in North Carolina prior to the adoption of this provision, if such
27 equipment would otherwise be subject to review in accordance
28 with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had
29 been acquired in North Carolina.
- 30 (17) 'North Carolina State Health Coordinating Council' means the
31 Council that prepares, with the Department of Human Resources, the
32 State Medical Facilities Plan, ~~a component of the State Health Plan~~ Plan.
- 33 (17a) 'Nursing care' means:
- 34 a. Skilled nursing care and related services for residents who
35 require medical or nursing care;
- 36 b. Rehabilitation services for the rehabilitation of injured,
37 disabled, or sick persons; or
- 38 c. Health-related care and services provided on a regular basis to
39 individuals who because of their mental or physical condition
40 require care and services above the level of room and board,
41 which can be made available to them only through institutional
42 facilities.
- 43 These are services which are not primarily for the care and treatment
44 of mental diseases.

- 1 (18) To 'offer,' when used in connection with health services, means that
2 the health service facility or health maintenance organization holds
3 itself out as capable of providing, or as having the means for the
4 provision of, specified health services.
- 5 (18a) 'Oncology treatment center' means a facility, program, or provider,
6 other than an existing health service facility that provides services for
7 diagnosis, evaluation, or treatment of cancer and its aftereffects or
8 secondary results and for which the total cost of all the medical
9 equipment utilized by the center, exceeds two hundred fifty thousand
10 dollars (\$250,000). In determining whether costs are more than two
11 hundred fifty thousand dollars (\$250,000), the costs of equipment,
12 studies, surveys, designs, plans, working drawings, specifications,
13 construction, installation, and other activities essential to acquiring and
14 making operational the facility, program, or provider shall be included.
15 The capital expenditure for the equipment shall be deemed to be the
16 fair market value of the equipment or the cost of the equipment,
17 whichever is greater.
- 18 (18b) 'Open-heart surgery services' means the provision of surgical
19 procedures that utilize a heart-lung bypass machine during surgery to
20 correct cardiac and coronary artery disease or defects.
- 21 (19) 'Person' means an individual, a trust or estate, a partnership, a
22 corporation, including associations, joint stock companies, and
23 insurance companies; the State, or a political subdivision or agency or
24 instrumentality of the State.
- 25 (19a) 'Positron emission tomography scanner' means equipment that utilizes
26 a computerized radiographic technique that employs radioactive
27 substances to examine the metabolic activity of various body
28 structures.
- 29 (20) 'Project' or 'capital expenditure project' means a proposal to undertake
30 a capital expenditure that results in the offering of a new institutional
31 health service as defined by this Article. A project, or capital
32 expenditure project, or proposed project may refer to the project from
33 its earliest planning stages up through the point at which the specified
34 new institutional health service may be offered. In the case of facility
35 construction, the point at which the new institutional health service
36 may be offered must take place after the facility is capable of being
37 fully licensed and operated for its intended use, and at that time it shall
38 be considered a health service facility.
- 39 (21) 'Psychiatric facility' means a public or private facility licensed
40 pursuant to Article 2 of Chapter 122C of the General Statutes and
41 which is primarily engaged in providing to inpatients, by or under the
42 supervision of a physician, psychiatric services for the diagnosis and
43 treatment of mentally ill persons.

- 1 (22) 'Rehabilitation facility' means a public or private inpatient facility
2 which is operated for the primary purpose of assisting in the
3 rehabilitation of disabled persons through an integrated program of
4 medical and other services which are provided under competent,
5 professional supervision.
- 6 (22a) 'Replacement equipment' means equipment that costs less than two
7 million dollars (\$2,000,000) and is purchased for the sole purpose of
8 replacing comparable medical equipment currently in use which will
9 be sold or otherwise disposed of when replaced. In determining
10 whether the replacement equipment costs less than two million dollars
11 (\$2,000,000), the costs of equipment, studies, surveys, designs, plans,
12 working drawings, specifications, construction, installation, and other
13 activities essential to acquiring and making operational the
14 replacement equipment shall be included. The capital expenditure for
15 the equipment shall be deemed to be the fair market value of the
16 equipment or the cost of the equipment, whichever is greater.
- 17 (23) Repealed by Session Laws 1991, c. 692, s. 1.
- 18 (24) ~~'State Health Plan' means the plan prepared by the Department of~~
19 ~~Human Resources and the North Carolina State Health Coordinating~~
20 ~~Council and approved by the Governor.~~
- 21 (24a) 'Service area' means the area of the State, as defined in the State
22 Medical Facilities Plan or in rules adopted by the Department, which
23 receives services from a health service facility.
- 24 (24b) 'Solid organ transplantation services' means the provision of surgical
25 procedures and the interrelated medical services that accompany the
26 surgery to remove an organ from a patient and surgically implant an
27 organ from a donor.
- 28 (24c) 'Specialty ambulatory surgical program' means a formal program for
29 providing on a same-day basis surgical procedures for only the
30 specialty areas identified on the ambulatory surgical facility's 1993
31 Application for Licensure as an Ambulatory Surgical Center and
32 authorized by its certificate of need.
- 33 (25) ~~'State Medical Facilities Plan' means a component of the State Health~~
34 ~~Plan—the plan prepared by the Department of Human Resources and the~~
35 ~~North Carolina State Health Coordinating Council, and approved by~~
36 ~~the Governor.~~
- 37 (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.
- 38 (27) Repealed by Session Laws 1987, c. 511, s. 1."
- 39 Sec. 3. G.S. 131E-177 reads as rewritten:

40 **"§ 131E-177. Department of Human Resources is designated State Health**
41 **Planning and Development Agency; powers and duties.**

42 The Department of Human Resources is designated as the State Health Planning and
43 Development Agency for the State of North Carolina, and is empowered to exercise the
44 following powers and duties:

- 1 (1) To establish standards and criteria or plans required to carry out the
 2 provisions and purposes of this Article and to adopt rules pursuant to
 3 Chapter 150B of the General Statutes, to carry out the purposes and
 4 provisions of this Article;
- 5 (2) Adopt, amend, and repeal such rules and regulations, consistent with
 6 the laws of this State, as may be required by the federal government
 7 for grants-in-aid for health service facilities and health planning which
 8 may be made available by the federal government. This section shall
 9 be liberally construed in order that the State and its citizens may
 10 benefit from such grants-in-aid;
- 11 (3) Define, by rule, procedures for submission of periodic reports by
 12 persons or health service facilities subject to agency review under this
 13 Article;
- 14 (4) Develop policy, criteria, and standards for health service facilities
 15 ~~planning, planning~~; shall conduct statewide registration and inventories
 16 of and make determinations of need for health service facilities, health
 17 services as specified in G.S. 131E-176(16)f., and equipment as
 18 specified in G.S. 131E-176(16)fl.; and develop a State ~~Health~~ Medical
 19 Facilities Plan;
- 20 (5) Implement, by rule, criteria for project review;
- 21 (6) Have the power to grant, deny, or withdraw a certificate of need and to
 22 impose such sanctions as are provided for by this Article;
- 23 (7) Solicit, accept, hold and administer on behalf of the State any grants or
 24 bequests of money, securities or property to the Department for use by
 25 the Department in the administration of this Article; and
- 26 (8) Repealed by Session Laws 1987, c. 511, s. 1.
- 27 (9) Establish and collect fees for submitting applications for ~~certificates of~~
 28 ~~need, certificates of need~~, which fees shall be based on the total cost of
 29 the project for which the applicant is applying. This fee may not
 30 exceed fifteen thousand dollars (\$15,000) and may not be less than
 31 four hundred dollars (\$400.00).
- 32 (10) The authority to review all records in any recording medium of any
 33 person or health service facility subject to agency review under this
 34 Article which pertain to construction and acquisition activities, staffing
 35 or costs and charges for patient care, including but not limited to,
 36 construction contracts, architectural contracts, consultant contracts,
 37 purchase orders, cancelled checks, accounting and financial records,
 38 debt instruments, loan and security agreements, staffing records,
 39 utilization statistics and any other records the Department deems to be
 40 reasonably necessary to determine compliance with this Article.

41 The Secretary of Human Resources shall have final decision-making authority with
 42 regard to all functions described in this section."

43 Sec. 4. G.S. 131E-178 reads as rewritten:

44 "**§ 131E-178. Activities requiring certificate of need.**

1 (a) No person shall offer or develop a new institutional health service without
2 first obtaining a certificate of need from the Department; provided, however, no hospital
3 licensed pursuant to Article 5 of this Chapter that was established to serve a minority
4 population that would not otherwise have been served and that continues to serve a
5 minority population may be required to obtain a certificate of need for transferring up to
6 65 beds to nursing care facility beds.

7 (b) No person shall make an acquisition by donation, lease, transfer, or
8 comparable arrangement without first obtaining a certificate of need from the
9 Department, if the acquisition would have been a new institutional health service if it
10 had been made by purchase. In determining whether an acquisition would have been a
11 new institutional health ~~service the fair market value of the asset shall be deemed to be the~~
12 ~~purchase price.~~ service, the capital expenditure for the asset shall be deemed to be the fair
13 market value of the asset or the cost of the asset, whichever is greater.

14 (c) No person shall incur an obligation for a capital expenditure which is a new
15 institutional health service without first obtaining a certificate of need from the
16 Department. An obligation for a capital expenditure is incurred when:

- 17 (1) An enforceable contract, excepting contracts which are expressly
18 contingent upon issuance of a certificate of need, is entered into by a
19 person for the construction, acquisition, lease or financing of a capital
20 asset;
- 21 (2) A person takes formal action to commit funds for a construction
22 project undertaken as his own contractor; or
- 23 (3) In the case of donated property, the date on which the gift is
24 completed.

25 (d) Where the estimated cost of a proposed capital ~~expenditure—expenditure,~~
26 including the fair market value of equipment acquired by purchase, lease, transfer, or
27 other comparable arrangement, is certified by a licensed architect or engineer to be
28 equal to or less than the expenditure minimum for capital expenditure for new
29 institutional health services, such expenditure shall be deemed not to exceed the
30 ~~expenditure minimum for capital expenditures—amount for new institutional health services~~
31 regardless of the actual amount expended, provided that the following conditions are
32 met:

- 33 (1) The certified estimated cost is prepared in writing 60 days or more
34 before the obligation for the capital expenditure is incurred. Certified
35 cost estimates shall be available for inspection at the facility and sent
36 to the Department upon its request.
- 37 (2) The facility on whose behalf the expenditure was made notifies the
38 Department in writing within 30 days of the date on which such
39 expenditure is made if the expenditure exceeds the expenditure
40 minimum for capital expenditures. The notice shall include a copy of
41 the certified cost estimate.

42 (e) The Department may grant certificates of need which permit capital
43 expenditures only for predevelopment activities. Predevelopment activities include the

1 preparation of architectural designs, plans, working drawings, or specifications, the
2 preparation of studies and surveys, and the acquisition of a potential site."

3 Sec. 5. G.S. 131E-181 reads as rewritten:

4 **"§ 131E-181. Nature of certificate of need.**

5 (a) A certificate of need shall be valid only for the defined scope, physical
6 location, and person named in the application. A certificate of need shall not be
7 transferred or assigned except as provided in G.S. 131E-189(c).

8 (b) A recipient of a certificate of need, or any person who may subsequently
9 acquire, in any manner whatsoever permitted by law, the service for which that
10 certificate of need was issued, is required to materially comply with the representations
11 made in its application for that certificate of need. The Department shall require any
12 recipient of a certificate of need, or its successor, whose service is in operation to
13 submit to the Department evidence that the recipient, or its successor, is in material
14 compliance with the representations made in its application for the certificate of need
15 which granted the recipient the right to operate that service. In determining whether the
16 recipient of a certificate of need, or its successor, is operating a service which materially
17 differs from the representations made in its application for that certificate of need, the
18 Department shall consider cost increases to the recipient, or its successor, including, but
19 not limited to, the following:

20 (1) Any increase in the consumer price index;

21 (2) Any increased cost incurred because of Government requirements,
22 including federal, State, or any political subdivision thereof; and

23 (3) Any increase in cost due to professional fees or the purchase of
24 services and supplies.

25 (c) Whenever a certificate of need is issued more than 12 months after the
26 application for the certificate of need began review, the Department shall adjust the
27 capital expenditure amount proposed by increasing it to reflect any inflation in the
28 Department of Commerce's Construction Cost Index that has occurred since the date
29 when the application began review; and the Department shall use this recalculated
30 capital expenditure amount in the certificate of need issued for the project.

31 (d) A project authorized by a certificate of need is complete when the health
32 service or the health service facility for which the certificate of need was issued is
33 licensed and certified and is in material compliance with the representations made in the
34 certificate of need application."

35 Sec. 6. G.S. 131E-183 reads as rewritten:

36 **"§ 131E-183. Review criteria.**

37 (a) The Department shall review all applications utilizing the criteria outlined in
38 this subsection and shall determine that an application is either consistent with or not in
39 conflict with these criteria before a certificate of need for the proposed project shall be
40 issued.

41 (1) The proposed project shall be consistent with applicable policies and
42 ~~projections-need determinations~~ in the State Medical Facilities Plan, the
43 ~~needs—projection—need determination~~ of which constitutes a
44 determinative limitation on the ~~number of~~ provision of any health

1 service, health service facility, health service facility beds, dialysis
2 stations, ambulatory surgical facilities, operating rooms, or home health
3 agencies, offices that may be allocated, may be approved.

4 (2) Repealed by Session Laws 1987, c. 511, s. 1.

5 (3) The applicant shall identify the population to be served by the
6 proposed project, and shall demonstrate the need that this population
7 has for the services proposed, and the extent to which all residents of
8 the area, and, in particular, low income persons, racial and ethnic
9 minorities, women, handicapped persons, the elderly, and other
10 underserved groups are likely to have access to the services proposed.

11 (3a) In the case of a reduction or elimination of a service, including the
12 relocation of a facility or a service, the applicant shall demonstrate that
13 the needs of the population presently served will be met adequately by
14 the proposed relocation or by alternative arrangements, and the effect
15 of the reduction, elimination or relocation of the service on the ability
16 of low income persons, racial and ethnic minorities, women,
17 handicapped persons, and other underserved groups and the elderly to
18 obtain needed health care.

19 (4) Where alternative methods of meeting the needs for the proposed
20 project exist, the applicant shall demonstrate that the least costly or
21 most effective alternative has been proposed.

22 (5) Financial and operational projections for the project shall demonstrate
23 the availability of funds for capital and operating needs as well as the
24 immediate and long-term financial feasibility of the proposal, based
25 upon reasonable projections of the costs of and charges for providing
26 health services by the person proposing the service.

27 (6) The applicant shall demonstrate that the proposed project will not
28 result in unnecessary duplication of existing or approved health service
29 capabilities or facilities.

30 (7) The applicant shall show evidence of the availability of resources,
31 including health manpower and management personnel, for the
32 provision of the services proposed to be provided. ~~Further, the applicant~~
33 ~~shall show that the use of these resources for provision of these services will~~
34 ~~not preclude alternative uses of these resources to fulfill other more~~
35 ~~important needs identified by the applicable State Health Plan.~~

36 (8) The applicant shall demonstrate that the provider of the proposed
37 services will make available, or otherwise make arrangements for, the
38 provision of the necessary ancillary and support services. The
39 applicant shall also demonstrate that the proposed service will be
40 coordinated with the existing health care system.

41 (9) An applicant proposing to provide a substantial portion of the project's
42 services to individuals not residing in the health service area in which
43 the project is located, or in adjacent health service areas, shall

- 1 document the special needs and circumstances that warrant service to
2 these individuals.
- 3 (10) When applicable, the applicant shall show that the special needs of
4 health maintenance organizations will be fulfilled by the project.
5 Specifically, the applicant shall show that the project accommodates:
6 a. The needs of enrolled members and reasonably anticipated new
7 members of the HMO for the health service to be provided by
8 the organization; and
9 b. The availability of new health services from non-HMO
10 providers or other HMOs in a reasonable and cost-effective
11 manner which is consistent with the basic method of operation
12 of the HMO. In assessing the availability of these health
13 services from these providers, the applicant shall consider only
14 whether the services from these providers:
15 1. Would be available under a contract of at least five years'
16 duration;
17 2. Would be available and conveniently accessible through
18 physicians and other health professionals associated with
19 the HMO;
20 3. Would cost no more than if the services were provided
21 by the HMO; and
22 4. Would be available in a manner which is
23 administratively feasible to the HMO.
- 24 (11) Repealed by Session Laws 1987, c. 511, s. 1.
- 25 (12) Applications involving construction shall demonstrate that the cost,
26 design, and means of construction proposed represent the most
27 reasonable alternative, and that the construction project will not unduly
28 increase the costs of providing health services by the person proposing
29 the construction project or the costs and charges to the public of
30 providing health services by other persons, and that applicable energy
31 saving features have been incorporated into the construction plans.
- 32 (13) The applicant shall demonstrate the contribution of the proposed
33 service in meeting the health-related needs of the elderly and of
34 members of medically underserved groups, such as medically indigent
35 or low income persons, Medicaid and Medicare recipients, racial and
36 ethnic minorities, women, and handicapped persons, which have
37 traditionally experienced difficulties in obtaining equal access to the
38 proposed services, particularly those needs identified in the State
39 Health Plan as deserving of priority. For the purpose of determining
40 the extent to which the proposed service will be accessible, the
41 applicant shall show:
42 a. The extent to which medically underserved populations
43 currently use the applicant's existing services in comparison to

- 1 the percentage of the population in the applicant's service area
2 which is medically underserved;
- 3 b. Its past performance in meeting its obligation, if any, under any
4 applicable regulations requiring provision of uncompensated
5 care, community service, or access by minorities and
6 handicapped persons to programs receiving federal assistance,
7 including the existence of any civil rights access complaints
8 against the applicant;
- 9 c. That the elderly and the medically underserved groups
10 identified in this subdivision will be served by the applicant's
11 proposed services and the extent to which each of these groups
12 is expected to utilize the proposed services; and
- 13 d. That the applicant offers a range of means by which a person
14 will have access to its services. Examples of a range of means
15 are outpatient services, admission by house staff, and admission
16 by personal physicians.
- 17 (14) The applicant shall demonstrate that the proposed health services
18 accommodate the clinical needs of health professional training
19 programs in the area, as applicable.
- 20 (15) to (18) Repealed by Session Laws 1987, c. 511, s. 1.
- 21 (18a) The applicant shall demonstrate the expected effects of the proposed
22 services on competition in the proposed service area, including how
23 any enhanced competition will have a positive impact upon the cost
24 effectiveness, quality, and access to the services proposed; and in the
25 case of applications for services where competition between providers
26 will not have a favorable impact on cost effectiveness, quality, and
27 access to the services proposed, the applicant shall demonstrate that its
28 application is for a service on which competition will not have a
29 favorable impact.
- 30 (19) Repealed by Session Laws 1987, c. 511, s. 1.
- 31 (20) An applicant already involved in the provision of health
32 services shall provide evidence that quality care has been provided
33 in the past.
- 34 (21) Repealed by Session Laws 1987, c. 511, s. 1.
- 35 (b) The Department is authorized to adopt rules for the review of particular types
36 of applications that will be used in addition to those criteria outlined in subsection (a) of
37 this section and may vary according to the purpose for which a particular review is
38 being conducted or the type of health service reviewed. No such rule adopted by the
39 Department shall require an academic medical center teaching hospital, as defined by
40 the State Medical Facilities Plan, to demonstrate that any facility or service at another
41 hospital is being appropriately utilized in order for that academic medical center
42 teaching hospital to be approved for the issuance of a certificate of need to develop any
43 similar facility or service.
- 44 (c) Repealed by Session Laws 1987, c. 511, s. 1."

1 Sec. 7. G.S. 131E-184 reads as rewritten:

2 **"§ 131E-184. Exemptions from review.**

3 (a) Except as provided in subsection (b), the Department shall exempt from
4 certificate of need review a ~~proposed capital expenditure~~ new institutional health service if
5 it receives prior written notice from the entity proposing ~~to make the capital expenditure,~~
6 the new institutional health service, which notice includes an explanation of why the
7 ~~expenditure~~ new institutional health service is ~~required~~: required, for any of the
8 following:

9 (1) To eliminate or prevent imminent safety hazards as defined in federal,
10 State, or local fire, building, or life safety codes or ~~regulations~~;
11 regulations.

12 (1a) To comply with State licensure ~~standards~~; standards.

13 (1b) To comply with accreditation or certification standards which must be
14 met to receive reimbursement under Title XVIII of the Social Security
15 Act or payments under a State plan for medical assistance approved
16 under Title XIX of that ~~act~~; act.

17 (2) Repealed by Session Laws 1987, c. 511, s. 1.

18 (3) To provide data processing ~~equipment~~; equipment.

19 (4) To provide parking, heating or cooling systems, elevators, or other
20 basic plant or mechanical improvements, unless these activities are
21 integral portions of a project that involves the construction of a new
22 health service facility or portion thereof and that is subject to
23 certificate of need ~~review~~; or review.

24 (5) To replace or repair facilities destroyed or damaged by accident or
25 natural disaster.

26 (6) To provide any nonhealth service facility or service.

27 (7) To provide replacement equipment.

28 (8) To acquire an existing health service facility, including equipment
29 owned by the health service facility at the time of acquisition.

30 (9) To develop or acquire a physician office building regardless of cost,
31 unless a new institutional health service other than defined in G.S.
32 131E-176(16)b. is offered or developed in the building.

33 (b) Those portions of a proposed project which are not proposed for one or more
34 of the purposes under subsection (a) of this section are subject to certificate of need
35 review, if these non-exempt portions of the project are new institutional health services
36 under G.S. 131E-176(16).

37 (c) The Department shall exempt from certificate of need review any conversion
38 of existing acute care beds to psychiatric beds provided:

39 (1) The hospital proposing the conversion has executed a contract with the
40 Department's Division of Mental Health, Developmental Disabilities,
41 and Substance Abuse Services and/or one or more of the Area Mental
42 Health, Developmental Disabilities, and Substance Abuse Authorities
43 to provide psychiatric beds to patients referred by the contracting
44 agency or agencies; and

1 (2) The total number of beds to be converted shall not be more than twice
2 the number of beds for which the contract pursuant to subdivision (1)
3 of this subsection shall provide."

4 Sec. 8. G.S. 131E-185 reads as rewritten:

5 "**§ 131E-185. Review process.**

6 (a) Repealed by Session Laws 1987, c. 511, s. 1.

7 (a1) Except as provided in subsection (c) of this section, there shall be a time limit
8 of 90 days for review of the applications, beginning on the day established by rule as the
9 day on which applications for the particular service in the service area shall begin
10 review.

11 (1) Any person may file written comments and exhibits concerning a
12 proposal under review with the Department, not later than 30 days
13 after the date on which the application begins review. These written
14 comments may include:

- 15 a. Facts relating to the service area proposed in the application;
16 b. Facts relating to the representations made by the applicant in its
17 application, and its ability to perform or fulfill the
18 representations made;
19 c. Discussion and argument regarding whether, in light of the
20 material contained in the application and other relevant factual
21 material, the application complies with relevant review criteria,
22 plans, and standards.

23 (2) No more than 20 days from the conclusion of the written comment
24 period, the Department shall ensure that a public hearing is conducted
25 at a place within the appropriate health service area if one or more of
26 the following circumstances apply; the review to be conducted is
27 competitive; the proponent proposes to spend five million dollars
28 (\$5,000,000) or more; a written request for a public hearing is received
29 before the end of the written comment period from an affected party as
30 defined in G.S. 131E-188(c); or the agency determines that a hearing is
31 in the public interest. At such public hearing oral arguments may be
32 made regarding the application or applications under review; and this
33 public hearing shall include the following:

- 34 a. An opportunity for the proponent of each application under
35 review to respond to the written comments submitted to the
36 Department about its application;
37 b. An opportunity for any affected person as defined in G.S. 131E-
38 188(c), except one of the proponents, to present comments
39 regarding the applications under review;
40 c. An opportunity for a representative of the Department, or such
41 other person or persons who are designated by the Department
42 to conduct the hearing, to question each proponent of
43 applications under review with regard to the contents of the
44 application;

1 The Department shall maintain a recording of any required public
2 hearing on an application until such time as the Department's final
3 decision is issued, or until a final agency decision is issued pursuant to
4 a contested case hearing, whichever is later; and any person may
5 submit a written synopsis or verbatim statement that contains the oral
6 presentation made at the hearing.

7 (3) The Department may contract or make arrangements with a person or
8 persons located within each health service area for the conduct of such
9 public hearings as may be necessary. The Department shall publish, in
10 each health service area, notice of the contracts that it executes for the
11 conduct of those hearings.

12 (4) Within 15 days from the beginning of the review of an application or
13 applications proposing the same service within the same service area,
14 the Department shall publish notice of the deadline for receipt of
15 written comments, of the time and place scheduled for the public
16 hearing regarding the application or applications under review, and of
17 the name and address of the person or agency that will preside.

18 (5) The Department shall maintain all written comments submitted to it
19 during the written comment stage and any written submissions
20 received at the public hearing as part of the Department's file
21 respecting each application or group of applications under review by it.
22 The application, written comments, and public hearing comments,
23 together with all documents that the Department used in arriving at its
24 decision, from whatever source, and any documents that reflect or set
25 out the Department's final analysis of the application or applications
26 under review, shall constitute the Department's record for the
27 application or applications under review.

28 (a2) When an expedited review has been approved by the Department, no public
29 hearing shall be held. The Department may contact the applicant and request additional
30 or clarifying information, amendments to, or substitutions for portions of the
31 application. The Department may negotiate conditions to be imposed on the certificate
32 of need with the applicant.

33 (b) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 137(a),
34 effective July 8, 1992.

35 (c) The Department may extend the review period for a period not to exceed 60
36 days and provide notice of such extension to all applicants. For expedited reviews, the
37 Department may extend the review period only if it has requested additional substantive
38 information from the applicant."

39 Sec. 9. G.S. 131E-188 reads as rewritten:

40 "**§ 131E-188. Administrative and judicial review.**

41 (a) After a decision of the Department to issue, deny or withdraw a certificate of
42 need or exemption or to issue a certificate of need pursuant to a settlement agreement
43 with an applicant to the extent permitted by law, any affected person, as defined in
44 subsection (c) of this section, shall be entitled to a contested case hearing under Article

1 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed
2 within 30 days after the Department makes its decision. When a petition is filed, the
3 Department shall send notification of the petition to the proponent of each application
4 that was reviewed with the application for a certificate of need that is the subject of the
5 petition. Any affected person shall be entitled to intervene in a contested case.

6 A contested case shall be conducted in accordance with the following timetable:

- 7 (1) An administrative law judge or a hearing officer, as appropriate, shall
8 be assigned within 15 days after a petition is filed.
- 9 (2) The parties shall complete discovery within 90 days after the
10 assignment of the administrative law judge or hearing officer.
- 11 (3) The hearing at which sworn testimony is taken and evidence is
12 presented shall be held within 45 days after the end of the discovery
13 period.
- 14 (4) The administrative law judge or hearing officer shall make his
15 recommended decision within 75 days after the hearing.
- 16 (5) The Department shall make its final decision within 30 days of
17 receiving the official record of the case from the Office of
18 Administrative Hearings.

19 The administrative law judge or hearing officer assigned to a case may extend the
20 deadlines in subdivisions (2) through (4) so long as the administrative law judge or
21 hearing officer makes his recommended decision in the case within 270 days after the
22 petition is filed. The Department may extend the deadline in subdivision (5) for up to
23 30 days by giving all parties written notice of the extension.

24 (a1) On or before the date of filing a petition for a contested case hearing on the
25 approval of an applicant for a certificate of need, the petitioner shall deposit a bond with
26 the clerk of superior court where the new institutional health service that is the subject
27 of the petition is proposed to be located. The bond shall be secured by cash or its
28 equivalent in an amount equal to five percent (5%) of the cost of the proposed new
29 institutional health service that is the subject of the petition, but may not be less than
30 five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A
31 petitioner who received approval for a certificate of need and is contesting only a
32 condition in the certificate is not required to file a bond under this subsection.

33 The applicant who received approval for the new institutional health service that is
34 the subject of the petition may bring an action against a bond filed under this subsection
35 in the superior court of the county where the bond was filed. Upon finding that the
36 petition for a contested case was frivolous or filed to delay the applicant, the court may
37 award the applicant part or all of the bond filed under this subsection. At the conclusion
38 of the contested case, if the court does not find that the petition for a contested case was
39 frivolous or filed to delay the applicant, the petitioner shall be entitled to the return of
40 the bond deposited with the superior court upon demonstrating to the clerk of superior
41 court where the bond was filed that the contested case hearing is concluded.

42 (b) Any affected person who was a party in a contested case hearing shall be
43 entitled to judicial review of all or any portion of any final decision of the Department
44 in the following manner. The appeal shall be to the Court of Appeals as provided in

1 G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of
2 appellate procedure. The appeal of the final decision of the Department shall be taken
3 within 30 days of the receipt of the written notice of final decision ~~decision~~ required by
4 ~~G.S. 131E-187~~ and notice of appeal shall be filed with the Division of Facility Services,
5 Department of Human Resources and ~~with~~ served on all other affected persons who
6 were parties to the contested hearing.

7 (b1) Before filing an appeal of a final decision by the Department granting a
8 certificate of need, the affected person shall deposit a bond with the Clerk of the Court
9 of Appeals. The bond shall be secured by cash or its equivalent in an amount equal to
10 five percent (5%) of the cost of the proposed new institutional health service that is the
11 subject of the appeal, but may not be less than five thousand dollars (\$5,000) and may
12 not exceed fifty thousand dollars (\$50,000). A holder of a certificate of need who is
13 appealing only a condition in the certificate is not required to file a bond under this
14 subsection.

15 If the Court of Appeals finds that the appeal was frivolous or filed to delay the
16 applicant, the court shall remand the case to the superior court of the county where a
17 bond was filed for the contested case hearing on the certificate of need. The superior
18 court may award the holder of the certificate of need part or all of the bond. The court
19 shall award the holder of the certificate of need reasonable attorney fees and costs
20 incurred in the appeal to the Court of Appeals. If the Court of Appeals does not find
21 that the appeal was frivolous or filed to delay the applicant and does not remand the
22 case to superior court for a possible award of all or part of the bond to the holder of the
23 certificate of need, the person originally filing the bond shall be entitled to a return of
24 the bond.

25 (c) The term 'affected persons' includes: the applicant; ~~the health systems agency~~
26 ~~for the health service area in which the proposed project is to be located; health systems~~
27 ~~agencies serving contiguous health service areas or located within the same standard~~
28 ~~metropolitan statistical area;~~ any person residing within the geographic area served or to
29 be served by the applicant; any person who regularly uses health service facilities within
30 that geographic area; health service facilities and health maintenance organizations
31 (HMOs) located in the health service area in which the project is proposed to be located,
32 which provide services similar to the services of the facility under review; health service
33 facilities and HMOs which, prior to receipt by the agency of the proposal being
34 reviewed, have formally indicated an intention to provide similar services in the future;
35 third party payers who reimburse health service facilities for services in the health
36 service area in which the project is proposed to be located; and any agency which
37 establishes rates for health service facilities or HMOs located in the health service area
38 in which the project is proposed to be located."

39 Sec. 10. G.S. 131E-189 reads as rewritten:

40 "**§ 131E-189. Withdrawal of a certificate of need.**

41 (a) The Department shall specify in each certificate of need the time the holder
42 has to make the service or equipment available or to complete the project and the
43 timetable to be followed. The timetable shall be the one proposed by the holder of the
44 certificate of need unless the Department specifies a different timetable in its decision

1 letter. The holder of the certificate shall submit such periodic reports on his progress in
2 meeting the timetable as may be required by the Department. If no progress report is
3 provided or, after reviewing the progress, the Department determines that the holder of
4 the certificate is not meeting the timetable and the holder cannot demonstrate that it is
5 making good faith efforts to meet the timetable, the Department may withdraw the
6 certificate. If the Department determines that the holder of the certificate is making a
7 good faith effort to meet the timetable, the Department may, at the request of the holder,
8 extend the timetable for a specified period.

9 (b) The Department may withdraw any certificate of need, if the holder of the
10 certificate fails to develop ~~and operate~~ the service in a manner consistent with the
11 representations made in the application or with any condition or conditions the
12 Department placed on the certificate of need.

13 (c) The Department may immediately withdraw any certificate of need if the
14 holder of the certificate, before completion of the project or operation of the facility,
15 transfers ownership or control of the ~~facility~~facility, the project, or the certificate of
16 need. Any transfer after that time will be subject to the requirement that the service be
17 provided consistent with the representations made in the application and any applicable
18 conditions the Department placed on the certificate of need. Transfers resulting from
19 death or personal illness or other good cause, as determined by the Department, shall
20 not result in withdrawal if the Department receives prior written notice of the transfer
21 and finds good cause. Transfers resulting from death shall not result in withdrawal."

22 Sec. 11. G.S. 131E-190 reads as rewritten:

23 "**§ 131E-190. Enforcement and sanctions.**

24 (a) Only those new institutional health services which are found by the
25 Department to be needed as provided in this Article and granted certificates of need
26 shall be offered or developed within the State.

27 (b) No formal commitments made for financing, construction, or acquisition
28 regarding the offering or development of a new institutional health service shall be
29 made by any person unless a certificate of need for such service or activities has been
30 granted.

31 ~~(c) Nothing in this Article shall be construed as terminating the P.L. 92-603,~~
32 ~~Section 1122, capital expenditure program or the contract between the State of North~~
33 ~~Carolina and the United States under that program. The sanctions available under that~~
34 ~~program and contract, with regard to the determination of whether the amounts~~
35 ~~attributable to an applicable project or capital expenditure project should be included or~~
36 ~~excluded in determining payments to the proponent under Titles V, XVIII, and XIX of~~
37 ~~the Social Security Act, shall remain available to the State.~~

38 (d) If any person proceeds to offer or develop a new institutional health
39 service without having first obtained a certificate of need for such services, the penalty
40 for such violation of this Article and rules hereunder may include the withholding of
41 federal and State funds under Titles V, XVIII, and XIX of the Social Security Act for
42 reimbursement of capital and operating expenses related to the provision of the new
43 institutional health service.

1 (e) The Department may revoke or suspend the license of any person who
2 proceeds to offer or develop a new institutional health service without having first
3 obtained a certificate of need for such services.

4 (f) The Department may assess a civil penalty of not more than twenty thousand
5 dollars (\$20,000) against any person who knowingly offers or develops any new
6 institutional health service within the meaning of this Article without a certificate of
7 need issued under this Article and the rules pertaining thereto, or in violation of the
8 terms or conditions of such a certificate, whenever it determines a violation has
9 occurred and each time the service is provided in violation of this provision. In
10 determining the amount of the penalty the Department shall consider the degree and
11 extent of harm caused by the violation and the cost of rectifying the damage. A person
12 who is assessed a penalty shall be notified of the penalty by registered or certified mail.
13 The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the
14 Department shall refer the matter to the Attorney General for collection. For the
15 purpose of this subsection, the word 'person' shall not include an individual in his
16 capacity as an officer, director, or employee of a person as otherwise defined in this
17 Article.

18 (g) No agency of the State or any of its political subdivisions may appropriate or
19 grant funds or financially assist in any way a person, applicant, or facility which is or
20 whose project is in violation of this Article.

21 (h) If any person proceeds to offer or develop a new institutional health service
22 without having first obtained a certificate of need for such services, the Secretary of
23 Human Resources or any person aggrieved, as defined by G.S. 150B-2(6), may bring a
24 civil action for injunctive relief, temporary or permanent, against the person offering,
25 developing or operating any new institutional health service. The action may be
26 brought in the superior court of any county in which the health service facility is located
27 or in the superior court of Wake County.

28 (i) If the Department determines that the recipient of a certificate of need, or its
29 successor, is operating a service which materially differs from the representations made
30 in its application for that certificate of need, the Department may bring an action in
31 Wake County Superior Court or the superior court of any county in which the certificate
32 of need is to be utilized for injunctive relief, temporary or permanent, requiring the
33 recipient, or its successor, to materially comply with the representations in its
34 application. The Department may also bring an action in Wake County Superior Court
35 or the superior court of any county in which the certificate of need is to be utilized to
36 enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in
37 accordance with this subsection and G.S. 131E-181(b)."

38 Sec. 12. This act is effective upon ratification, and applies to any person,
39 trust or estate, partnership, corporation, the State, any political subdivision of the State,
40 and any other comparable entity that undertakes or is undertaking to offer or develop
41 new institutional health services as defined in G.S. 131E-176(16), except that it shall not
42 apply to any person, trust or estate, partnership, corporation, the State, any political
43 subdivision of the State, or any other comparable entity who has entered into a binding
44 legal contract to develop and offer such new institutional health services. This act shall

- 1 not affect litigation pending on the date of ratification. The inventories required by
- 2 Section 3 of this act shall be completed by the Department of Human Resources within
- 3 180 days of the date of ratification.