

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 692
SENATE BILL 816

AN ACT TO MAKE TECHNICAL AND CLARIFYING AMENDMENTS TO THE
CERTIFICATE OF NEED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-176 reads as rewritten:

"§ 131E-176. Definitions.

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

- (1) 'Ambulatory surgical facility' means a facility designed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.
- (1a) 'Ambulatory surgical program' means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (2) 'Bed capacity' means space used exclusively for inpatient care, including space designed or remodeled for licensed inpatient beds even though temporarily not used for such purposes. The number of beds to be counted in any patient room shall be the maximum number for which adequate square footage is provided as established by rules of the Department except that single beds in single rooms are counted

even if the room contains inadequate square footage. The term 'bed capacity' also refers to the number of dialysis stations in kidney disease treatment centers, including freestanding dialysis units.

- (2a) 'Capital expenditure' means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
- (3) 'Certificate of need' means a written order of the Department setting forth the affirmative findings that a proposed project sufficiently satisfies the plans, standards, and criteria prescribed for such projects by this Article and by rules of the Department as provided in G.S. 131E-183(a) and which affords the person so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project.
- (4) 'Certified cost estimate' means an estimate of the total cost of a project certified by ~~the proponent of the project within 60 days prior to or subsequent to the date of submission of the proposed new institutional health service to the Department and which is based on:~~ a licensed architect or engineer which is based on:
 - a. Preliminary plans and specifications;
 - b. Estimates of the cost of equipment certified by the manufacturer or vendor; and
 - c. Estimates of the cost of management and administration of the project.
- (5) 'Change in bed capacity' means (i) any relocation of health service facility beds, or dialysis stations from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176 (9c), or (iii) any increase in the number of health service facility beds, or dialysis stations in kidney disease treatment centers, including freestanding dialysis units.
- (5a) 'Chemical dependency treatment facility' means a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, administration of a therapeutic regimen for the treatment of chemically dependent or substance abusing persons and related services. The facility or unit may be:
 - a. A unit within a general hospital or an attached or freestanding unit of a general hospital licensed under Article 5, Chapter 131E, of the General Statutes,
 - b. A unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C,

- c. A freestanding facility specializing in treatment of persons who are substance abusers or chemically dependent licensed under Article 1A of General Statutes Chapter 122 or Article 2 of General Statutes Chapter 122C; and may be identified as 'chemical dependency, substance abuse, alcoholism, or drug abuse treatment units,' 'residential chemical dependency, substance abuse, alcoholism or drug abuse facilities,' 'social setting detoxification facilities' and 'medical detoxification facilities,' or by other names if the purpose is to provide treatment of chemically dependent or substance abusing persons, but shall not include halfway houses or recovery farms.
- (5b) 'Chemical dependency treatment beds' means beds that are licensed for detoxification or for the inpatient treatment of chemical dependency. Residential treatment beds for the treatment of chemical dependency or substance abuse are chemical dependency treatment beds but those residential treatment beds that were developed and operated without a certificate of need shall not be counted in the inventory of chemical dependency treatment beds in the State Health Plans prepared by the Department pursuant to G.S. 131E-177(4) after July 1, 1987. The State Health Plans prepared after July 1, 1987, shall also contain no limitation on the proportion of the overall inventory of chemical dependency treatment beds located in any of the types of chemical dependency treatment facilities identified in subdivision (5a).
- (6) 'Department' means the North Carolina Department of Human Resources.
- (7) To 'develop' when used in connection with health services, means to undertake those activities which will result in the offering of institutional health service not provided in the previous 12-month reporting period or the incurring of a financial obligation in relation to the offering of such a service.
- (8), (9) Repealed by Session Laws 1987, c. 511, s. 1.
- (9a) 'Health service' means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity that is integral to the clinical management of a sick, injured, or disabled person. 'Health service' does not include administrative and other activities that are not integral to clinical management.
- (9b) 'Health service facility' means a hospital; psychiatric facility; rehabilitation facility; long term care facility; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; and ambulatory surgical facility.
- (9c) 'Health service facility bed' means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) ~~intermediate nursing care or skilled~~

- ~~nursing care beds; nursing care beds;~~ (v) intermediate care beds for the mentally retarded; and (vi) chemical dependency treatment beds.
- (10) 'Health maintenance organization (HMO)' means a public or private organization which has received its certificate of authority under Article 67 of Chapter 58 of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or:
- a. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;
 - b. Is compensated, except for copayments, for the provision of the basic health care services listed above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and
 - c. Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organizations, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (11) ~~'Health systems agency' means an independent, private, nonprofit corporation, incorporated in this State, that engages in regional health planning and development functions.~~
- (12) 'Home health agency' means a private organization or public agency, whether owned or operated by one or more persons or legal entities, which furnishes or offers to furnish home health services.
- Home health services' means items and services furnished to an individual by a home health agency, or by others under arrangements with such others made by the agency, on a visiting basis, and except for paragraph e. of this subdivision, in a place of temporary or permanent residence used as the individual's home as follows:
- a. Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
 - b. Physical, occupational or speech therapy;
 - c. Medical social services, home health aid services, and other therapeutic services;
 - d. Medical supplies, other than drugs and biologicals and the use of medical appliances;
 - e. Any of the foregoing items and services which are provided on an outpatient basis under arrangements made by the home health agency at a hospital or nursing home facility or

rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in his home, or which are furnished at such facility while he is there to receive any such item or service, but not including transportation of the individual in connection with any such item or service.

- (13) 'Hospital' means a public or private institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. The term includes all facilities licensed pursuant to G.S. 131E-77 of the General Statutes.
- (13a) 'Hospice' means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.
- (14) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.
- (14a) 'Intermediate care facility for the mentally retarded' means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, autism, cerebral palsy, epilepsy or related conditions.
- (14b) ~~'Intermediate nursing care' means the provision of health related care and services on a regular basis to individuals who do not require the degree of care and treatment that hospitals or skilled nursing care provide, but who because of their mental or physical condition require health related care and services above the level of room and board.~~
- (14c) 'Long term care facility' means a health service facility whose bed complement of health service facility beds is composed principally of ~~skilled nursing beds or intermediate nursing care facility beds, or both.~~ beds.
- (15) Repealed by Session Laws 1987, c. 511, s. 1.
- (16) 'New institutional health services' means:
 - a. The construction, development, or other establishment of a new health service facility;

- b. The obligation by any person of any capital expenditure on behalf of or for a health service facility as defined in subsection(9b) of this section exceeding two million dollars (\$2,000,000), other than one to acquire an existing health service facility or to replace such a facility destroyed or irreparably damaged by accident or natural disaster. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000);
- c. Any change in bed capacity as defined in G.S.131E-176(5);
- d. The offering of dialysis services or home health services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility;
- e. A change in a project that was subject to certificate of need review and for which a certificate of need was issued, if the change is proposed during the development of the project or within one year after the project was completed. For purposes of this subdivision, a change in a project is a change of more than fifteen percent (15%) of the approved capital expenditure amount or the addition of a health service that is to be located in the facility, or portion thereof, that was constructed or developed in the project;
- f. The offering of a health service by or on behalf of a health service facility if the service was not offered by or on behalf of the health service facility in the previous 12 months and if the annual operating costs of the service equal or exceed one million dollars (\$1,000,000), or the expansion of an existing health service when an annual operating cost of one million dollars (\$1,000,000) is directly associated with the offering of the expanded portion of the service;
- g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- l. The purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to G.S. 131E-180;
- m. Any conversion of nonhealth service facility beds to health service facility beds;

- n. The construction, development, or other establishment of a hospice if the operating budget thereof is in excess of one hundred thousand dollars (\$100,000).
 - o. The opening of an additional office by an existing home health agency within its service area as defined by rules adopted by the Department; or the opening of any office by an existing home health agency outside its service area as defined by rules adopted by the Department.
- (17) 'North Carolina State Health Coordinating Council' means the Council that prepares, with the Department of Human Resources, the State Medical Facilities Plan, a component of the State Health Plan.
- (17a) 'Nursing care' means:
- a. Skilled nursing care and related services for residents who require medical or nursing care;
 - b. Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
 - c. Health-related care and services provided on a regular basis to individuals who because of their mental or physical condition require care and services above the level of room and board, which can be made available to them only through institutional facilities.
- These are services which are not primarily for the care and treatment of mental diseases.
- (18) To 'offer,' when used in connection with health services, means that the health service facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.
- (19) 'Person' means an individual, a trust or estate, a partnership, a corporation, including associations, joint stock companies, and insurance companies; the State, or a political subdivision or agency or instrumentality of the State.
- (20) 'Project' or 'capital expenditure project' means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health service facility.
- (21) 'Psychiatric facility' means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the

supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

- (22) 'Rehabilitation facility' means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.
 - (23) ~~'Skilled nursing care' means the provision of that degree of care to inpatients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~
 - (24) 'State Health Plan' means the plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council and approved by the Governor.
 - (25) 'State Medical Facilities Plan' means a component of the State Health Plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, and approved by the Governor.
 - (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.
 - (27) Repealed by Session Laws 1987."
- Sec. 2. G.S. 131E-177 reads as rewritten:

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

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

- (1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules pursuant to Chapter 150B of the General Statutes, to carry out the purposes and provisions of this Article;
- (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health service facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (3) Define, by rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this Article;
- (4) Develop policy, criteria, and standards for health service facilities planning, conduct statewide inventories of and make determinations of need for health service facilities, and develop a State Health Plan;
- (5) Implement, by rule, criteria for project review;
- (6) Have the power to grant, deny, or withdraw a certificate of need and to impose such sanctions as are provided for by this Article;

- (7) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use by the Department or ~~health systems agencies~~ in the administration of this Article; and
- (8) Repealed by Session Laws 1987, c. 511, s. 1.
- (9) Establish and collect fees for submitting applications for certificates-of-need, which fees shall be based on the total cost of the project for which the applicant is applying. This fee may not exceed fifteen thousand dollars (\$15,000) and may not be less than four hundred dollars (\$400.00).
- (10) The authority to review all records in any recording medium of any person or health service facility subject to agency review under this Article which pertain to construction and acquisition activities, staffing or costs and charges for patient care, including but not limited to, construction contracts, architectural contracts, consultant contracts, purchase orders, cancelled checks, accounting and financial records, debt instruments, loan and security agreements, staffing records, utilization statistics and any other records the Department deems to be reasonably necessary to determine compliance with this Article.

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

Sec. 3. G.S. 131E-178 reads as rewritten:

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

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

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

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

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by a person for the construction, acquisition, lease or financing of a capital asset;
- (2) A person takes formal action to commit funds for a construction project undertaken as his own contractor; or

(3) In the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

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

(e) The Department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site."

Sec. 4. G.S. 131E-179 reads as rewritten:

"§ 131E-179. Research activities.

(a) Notwithstanding any other provisions of this Article, a health service facility may offer new institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the Department grants an exemption. The Department shall grant an exemption if the health service facility files a notice of intent with the Department in accordance with rules promulgated by the Department and if the Department finds that the offering or obligation will not:

- (1) Affect the charges of the health service facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) Substantially change the bed capacity of the facility; or
- (3) Substantially change the medical or other patient care services of the facility.

(b) After a health service facility has received an exemption pursuant to subsection (a) of this section, it shall not offer the new institutional health services, or use a facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research and shall not charge patients for the use of the service for which an exemption has been granted, without first obtaining a certificate of need from the ~~Department~~ Department; provided, however, that any facility or service acquired or developed under the exemption provided by this section

shall not be subject to the foregoing restrictions on its use if the facility or service could otherwise be offered or developed without a certificate of need.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient care provided on an occasional and irregular basis and not as a part of the research program."

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

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

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

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

- (1) Any increase in the consumer price index;
- (2) Any increased cost incurred because of Government requirements, including federal, State, or any political subdivision thereof; and
- (3) Any increase in cost due to professional fees or the purchase of services and supplies.

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

Sec. 6. G.S. 131E-183(b) reads as rewritten:

"(b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service."

Sec. 7. G.S. 131E-185 reads as rewritten:

"§ 131E-185. Review process.

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

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

- (1) Any person may file written comments and exhibits concerning a proposal under review with the Department, not later than ~~45-30~~ days after the date on which the application begins review. These written comments may include:
 - a. Facts relating to the service area proposed in the application;
 - b. Facts relating to the representations made by the applicant in its application, and its ability to perform or fulfill the representations made;
 - c. Discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with relevant review criteria, plans, and standards.

- (2) ~~At least 15, but no~~ No more than ~~30-20~~ days from the conclusion of the written comment period, the Department shall ensure that a public hearing is conducted at a place within the appropriate health service area ~~at which oral presentations~~ if one or more of the following circumstances apply; the review to be conducted is competitive; the proponent proposes to spend five million dollars (\$5,000,000) or more; a written request for a public hearing is received before the end of the written comment period from an affected party as defined in G.S. 131E-188(c); or the agency determines that a hearing is in the public interest. At such public hearing oral arguments may be made regarding the application or applications under review; and this public hearing shall include the following:

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

The Department shall maintain a recording of ~~the any required~~ any required public hearing on ~~each an~~ an application until such time as the Department's final decision is issued, or until a final agency decision is issued

pursuant to a contested case hearing, whichever is later; and any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing.

- (3) The Department may contract or make arrangements with a person or persons located within each health service area for the conduct of such public hearings as may be necessary. The Department shall publish, in each health service area, notice of the contracts that it executes for the conduct of those hearings. ~~If a health systems agency is in operation in a health service area, the Department shall use that health systems agency for the conduct of the public hearings in that area. A health systems agency may make recommendations on any matter covered in this Article, but no such recommendation shall interfere with the timetables of the review process contained in this Article.~~
- (4) Within 15 days from the beginning of the review of an application or applications proposing the same service within the same service area, the Department shall publish notice of the deadline for receipt of written comments, of the time and place scheduled for the public hearing regarding the application or applications under review, and of the name and address of the person or agency that will preside.
- (5) The Department shall maintain all written comments submitted to it during the written comment stage and any written submissions received at the public hearing as part of the Department's file respecting each application or group of applications under review by it. The application, written comments, and public hearing comments, together with all documents that the Department used in arriving at its decision, from whatever source, and any documents that reflect or set out the Department's final analysis of the application or applications under review, shall constitute the Department's record for the application or applications under review.

(b) The Department shall issue as provided in this Article a certificate of need with or without conditions or reject the application within the review period.

(c) The Department shall promulgate rules establishing criteria for determining when it would not be practicable to complete a review within 90 days from the beginning date of the review period for the application. If the Department finds that these criteria are met for a particular project, it may extend the review period for a period not to exceed 60 days and provide notice of such extension to all applicants."

Sec. 8. G.S. 131E-188 reads as rewritten:

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

(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send

notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition.

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

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

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

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

The applicant who received approval for the new institutional health service that is the subject of the petition may bring an action against a bond filed under this subsection in the superior court of the county where the bond was filed. Upon finding that the petition for a contested case was frivolous or filed to delay the applicant, the court may award the applicant part or all of the bond filed under this subsection.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of all or any portion of any final decision of the Department in the following manner. The appeal shall be to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal of the final decision of the Department shall be taken within 30 days of the receipt of the written notice of decision required by G.S. 131E-187 and notice of appeal shall be filed with the Division of Facility Services, Department of Human Resources and with all other affected persons who were parties to the contested hearing.

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

If the Court of Appeals finds that the appeal was frivolous or filed to delay the applicant, the court shall remand the case to the superior court of the county where a bond was filed for the contested case hearing on the certificate of need. The superior court may award the holder of the certificate of need part or all of the bond. The court shall award the holder of the certificate of need reasonable attorney fees and costs incurred in the appeal to the Court of Appeals.

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

Sec. 9. G.S. 131E-190 reads as rewritten:

"§ 131E-190. Enforcement and sanctions.

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

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

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

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

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

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

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

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

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

Sec. 10. This act is effective upon ratification and applies to applications for certificates of need submitted on or after the date of ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives