

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 511
HOUSE BILL 1052

AN ACT TO AMEND THE CERTIFICATE OF NEED LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 131E of the General Statutes reads as rewritten:

"ARTICLE 9.

"Certificate of Need.

"§ 131E-175. Findings of fact.—The General Assembly of North Carolina makes the following findings:

(1) ~~That, because of the manner in which health care is financed, the forces of free market competition are largely absent and that government regulation is therefore necessary to control the cost, utilization, and distribution of health services—That the financing of health care, particularly the reimbursement of health services rendered by health service facilities, limits the effect of free market competition and government regulation is therefore necessary to control costs, utilization, and distribution of new health service facilities and the bed complements of these health service facilities.~~

(2) That the ~~continuously~~ increasing cost of health care services offered through health service facilities threatens the health and welfare of the citizens of this State in that citizens need assurance of economical and readily available health care.

(3) ~~That the current system of planning for health care facilities and equipment has led to the proliferation of new inpatient acute care facilities and medical equipment beyond the need of many localities in this State and an inadequate supply of health personnel and of resources for long term, intermediate, and ambulatory care in many localities.—That, if left to the market place to allocate health service facilities and health care services, geographical maldistribution of these facilities and services would occur and, further, less than equal access to all population groups, especially those that have traditionally been medically underserved, would result.~~

(4) That ~~this trend of the~~ proliferation of unnecessary health care service facilities and equipment results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of acute care hospital health care services by physicians.

(5) ~~That a certificate of need law is required by Title XV of the Public Health Service Act as a condition for receipt of federal funds. If these funds were withdrawn the State of North Carolina would lose in excess of fifty five million dollars (\$55,000,000).~~

(6) That excess capacity of health service facilities places an enormous economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance subscribers, health plan contributors, and taxpayers.

(7) That the general welfare and protection of lives, health, and property of the people of this State require that new institutional health services to be offered within this State be subject to review and evaluation as to ~~type, level, need, cost of service,~~ accessibility to services, quality of care, feasibility, and other criteria as determined by provisions of this Article or by the North Carolina Department of Human Resources pursuant to provisions of this Article prior to such services being offered or developed in order that only appropriate and needed institutional health services are made available in the area to be served.

"§ 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 ~~regulations~~ 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 and regulations 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. 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 increase in the total number of beds, or (ii) any relocation of beds from one physical facility or site to another, or (iii) a decrease in the total number of beds when that decrease involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section, or (iv) a redistribution of beds among different categories when that redistribution involves a capital expenditure exceeding the expenditure minimum as defined in subdivision (16)b of this section. For purposes of this subdivision "beds" means beds in hospitals, rehabilitation facilities, psychiatric facilities, chemical dependency treatment facilities, intermediate care facilities, skilled nursing facilities and intermediate care facilities for the mentally retarded.~~(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) 'Final decision' means an approval, an approval with conditions, or denial of an application for a certificate of need.~~

~~(9) 'Health care facilities' means hospitals; psychiatric facilities; skilled nursing facilities; kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities, including intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; chemical dependency treatment facilities, and ambulatory surgical facilities.~~

(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; 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; (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 Chapter 57B 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 agency, as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act~~ an independent, private, nonprofit corporation, incorporated in this State, that engages in regional health planning and development functions.

(12) 'Home health ~~agencies~~ 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 ~~within~~ 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) 'Intermediate care facility' means a public or private institution which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services above the level of room and board.~~

(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 beds, or both.

~~(15) 'Major medical equipment' means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than six hundred thousand dollars (\$600,000). In determining whether medical equipment costs more than six hundred thousand dollars (\$600,000), the costs of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value.~~

(16) 'New institutional health services' means:

- a. The construction, development, or other establishment of a new health ~~care-service~~ facility;
- b. ~~The obligation by or on behalf of a health care facility or a local health department established under Article 2 of Chapter 130A of the General Statutes of any capital expenditure, other than one to acquire an existing health care facility, which exceeds the expenditure minimum.~~

~~Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is one million dollars (\$1,000,000) for the 12-month period beginning October 1, 1985. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. 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 the expenditure minimum two million dollars (\$2,000,000);~~

- c. ~~The obligation of a capital expenditure by or on behalf of a health care facility when it is associated with a change in bed capacity and within the limits set forth in G.S. 131E-176(5)-Any change in bed capacity as defined in G.S.131E-176(5);~~
- d. ~~The obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility-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 which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed. For the purposes of this paragraph, a change in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change; 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 care service facility if the service was not offered by or on behalf of the health care service facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum 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; . The expenditure minimum for annual operating costs is two hundred fifty thousand dollars (\$250,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;~~
- g. ~~The acquisition by any person of major medical equipment that will be owned by or located in a health care facility or the acquisition by any person of major medical equipment that includes magnetic resonance imaging, regardless of ownership or location;~~
- h. ~~The acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, or the Department, within 30 days after receipt of the notice, finds that the major medical equipment is among the types enumerated in g. above;~~
- i. ~~The use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;~~
- j. ~~The obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the Department in accordance with rules promulgated by the Department, or the Department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility;~~
- k. ~~A change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or~~

~~on behalf of the facility, in a health care facility which was acquired without a certificate of need, if such change occurs within one year of the acquisition;~~

- l. ~~Notwithstanding the provisions of G.S. 131E-176(16)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131E-180; 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 care service facility beds to health care service facility beds, regardless of whether a capital expenditure is associated with the conversion. A bed is a nonhealth care facility bed if a facility that contained only that type of bed would not be a health care facility. A bed is a health care facility bed if a facility that contained only that type of bed would be a health care facility;~~
- 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) or if there is the obligation of any capital expenditure by or on behalf of the hospice as provided in G.S. 131E-176(16)b.~~

(17) ~~'North Carolina State Health Coordinating Council' means the Council as defined by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act that prepares, with the Department of Human Resources, the State Medical Facilities Plan, a component of the State Health Plan.~~

(18) ~~To 'offer,' when used in connection with health services, means that the health care 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 care 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 ~~or outpatient~~ 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, ~~and shall include 'comprehensive outpatient rehabilitation facilities' as defined by the Social Security Act and the regulations promulgated by the Department of Health and Human Services pursuant to that act.~~

(23) 'Skilled nursing facility care' means a ~~public or private institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients~~ 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 ~~required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act~~ 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 ~~the plan~~ a component of the State Health Plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, ~~as required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act~~ and approved by the Governor.

(26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.

~~(27) "Tuberculosis hospital" means a public or private institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.~~

"§ 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 ~~fulfill responsibilities defined in Title XV of the Public Health Service Act.~~

~~The Department shall~~ 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 ~~and regulations~~ pursuant to Chapter 150A-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 ~~care~~ 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 ~~regulation~~ 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 ~~care~~ service facilities planning, conduct statewide inventories of and make determinations of need for health ~~care~~ service facilities, and develop a ~~State plan coordinated with other plans of health systems agencies with other pertinent plans and with the State health plan of the Department~~ State Health Plan;

(5) Implement, by ~~regulation~~ rule, criteria for project review;

(6) Have the power to grant, deny, ~~suspend, or revoke~~ 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) ~~Develop procedures for appeals of decisions to approve or deny a certificate of need, as provided by G.S. 131E-188; and~~

(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).

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

"§ 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 that chemical dependency treatment facilities containing beds licensed as of June 30, 1984, shall not be required to obtain a certificate of need. A hospital shall not be required to obtain a certificate of need for a new institutional health service offered or developed by or on behalf of the hospital for outpatients in a freestanding facility unless all other persons offering or developing the same new institutional health service in a freestanding facility are required under this Article to obtain a certificate of need.~~

~~No person, acute care hospital, or outpatient facility shall be required to obtain a certificate of need for the acquisition of a lithotripter or for the development, offering, or operation of a lithotripsy service.~~

(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~~ Department. An obligation for a capital expenditure is incurred ~~by or on behalf of a health care facility~~ when:

- (1) An enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into ~~by or on behalf of the health care facility~~ by a person for the construction, acquisition, lease or financing of a capital asset;
- (2) ~~The governing body of a health care facility~~ A person takes formal action to commit ~~its own~~ funds for a construction project undertaken ~~by the health care facility as its~~ 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.

"§ 131E-179. Research activities.—(a) Notwithstanding any other provisions of this Article, a ~~health care service facility~~ health care service facility may ~~acquire major medical equipment to be used solely for research,~~ 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 care service facility~~ health care 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 ~~acquisition,~~ offering or obligation will not:

- (1) Affect the charges of the ~~health care service facility~~ health care 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 care service facility~~ health care service facility has received an exemption pursuant to subsection (a) of this section, it shall not ~~use the major medical equipment,~~ offer the new institutional health services, or use ~~the equipment or a facility~~ the equipment or 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.

(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.

"§ 131E-180. Health maintenance organization.—(a) Subject to the provisions of subsection (b) of this section, no inpatient health ~~care-service~~ facility controlled, directly or indirectly, by a health maintenance organization, ~~(HMO), hereinafter referred to as HMOs,~~ or combination of HMOs, shall offer or develop new institutional health services without first obtaining a certificate of need from the Department. ~~Further, subject to the provisions of subsection (b) of this section, no health care service facility of an HMO shall offer or develop any of the new institutional health services specified in G.S. 131E-176(16)g, h, and i without first obtaining a certificate of need from the Department.~~—This section shall not be construed as requiring that a certificate of need be obtained before an HMO is established.

(b) The requirements of subsection (a) of this section shall not apply to any person who receives an exemption under this subsection. In order to receive an exemption an application must be submitted to the Department and the appropriate health systems agency or agencies. The application shall be on forms prescribed by the Department and contain the information required by the Department. The application shall be submitted at a time and in a manner prescribed by the rules ~~and regulations~~ of the Department. The Department may grant an exemption if it finds that the applicant is qualified or will be qualified on the date the activity is undertaken. Any of the following are qualified applicants:

- (1) An HMO or combination of HMOs, if (i) the HMO or combination of HMOs has an enrollment of at least 50,000 individuals in its service area, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled in the HMO or HMOs in combination; or
- (2) A health ~~care-service~~ facility, or portion thereof, if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iv) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health

service will be individuals enrolled with the HMO or HMOs in combination; or

- (3) A health ~~care~~-service facility, or portion thereof, if (i) the facility is or will be leased by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area and on the date the application for exemption is submitted at least 15 years remain on the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination.

(c) If a fee-for-service component of an HMO or combination of HMOs qualifies for an exemption under subsection (b) of this section, then it must be granted an exemption.

(d) In reviewing certificate of need applications submitted pursuant to this section, the Department shall not deny the application solely because the proposal is not addressed in the applicable health systems plan, annual implementation plan or State Health Plan.

(e) Notwithstanding the review criteria of G.S. 131E-183(a), if an HMO or a health ~~care~~-service facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the Department may grant the certificate if it finds, in accordance with G.S. 131E-183(a)(10), that (i) granting the certificate is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (ii) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

"§ 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. Provided, however, that a certificate of need granted to operate a hospital may be transferred or assigned to another person undertaking a legal obligation to own or operate the hospital if the Department determines that:

- (1) The existing hospital cannot reasonably continue operating in a manner sufficient to provide the health services for which its certificate of need was granted;
- (2) Another person is ready, willing and able to assume ownership or operation of the hospital and to provide the appropriate and needed health services;
- (3) Failure to approve the transfer or assignment would likely result in a significant deficiency in the level of health services available in the area to be served; and

- (4) There is no pending application for a certificate of need which is likely to be granted for providing the appropriate and needed services within time to prevent a significant deficiency in the level of health services available in the area to be served. Any certificate of need transferred or assigned under this section may be under such conditions as the Department considers necessary to best protect the health and lives of the people of this State.

(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 may ~~by rule~~ 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. ~~The Secretary is authorized to adopt, amend, and repeal rules to administer this subsection.~~ 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 ~~court~~ 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.

"§ 131E-182. Application.—(a) The Department in its rules ~~and regulations~~ shall establish schedules for submission and review of completed applications. The schedules, ~~which shall be consistent with federal law and regulations~~, shall provide that applications for similar proposals in the same health service area will be reviewed together.

(b) An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules ~~and regulations~~, deems necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria.

(c) All fees established by the Department for submitting an application for a ~~certificate of need~~ certificate of need are due when the application is submitted. These fees are not refundable, regardless of whether a ~~certificate of need~~ certificate of need is issued.

"§ 131E-183. Review criteria.—(a) The Department shall ~~promulgate rules implementing criteria outlined in this subsection to determine whether an applicant is to be issued a certificate for the proposed project. Criteria so implemented are to be consistent with federal law and regulations and shall cover:~~ review all applications utilizing the criteria outlined in this subsection and shall determine if an application is consistent with these criteria and whether a certificate of need for the proposed project shall be issued.

- (1) ~~The relationship of the proposed project shall be consistent with applicable policies and projections in to the State Medical Facilities Plan, [and] and the State Health Plan.~~
- (2) ~~The relationship of services reviewed to the long range development plan, if any, of the persons providing or proposing such services.~~
- (3) ~~The need that~~ The applicant shall identify the population served or to be served by such services has for such services, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, are likely to have access to those services the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.
- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the need that needs of the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.
- (4) ~~The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated~~ Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.
- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the ~~The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on~~ based upon reasonable

projections of the costs of and charges for providing health services by the person proposing the service.

- (6) ~~The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided~~ The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.
- (7) ~~The applicant shall show evidence of the availability of resources, including health manpower, manpower and management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided. Further, the applicant shall show that the use of these resources for provision of these services will not preclude alternative uses of these resources to fulfill other more important needs identified by the applicable State Health Plan, and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State Health Plan.~~
- (8) ~~The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.~~ The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.
- (9) ~~Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers. An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.~~
- (10) ~~The special needs and circumstances of HMOs. These needs and circumstances shall be limited to~~ When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates:

- a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and

- b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services

from these providers, the ~~Department~~applicant shall consider only whether the services from these providers:

1. Would be available under a contract of at least five years' duration;
2. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
3. Would cost no more than if the services were provided by the HMO; and
4. Would be available in a manner which is administratively feasible to the HMO.

(11) ~~The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.~~

(12) ~~In the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons. Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.~~

(13) ~~The applicant shall demonstrate the~~ The contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed health services, particularly those needs identified in the applicable health systems plan, annual implementation plan, and State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the Department shall consider ~~applicant shall show:~~

a. The extent to which medically underserved populations currently use the applicant's ~~proposed~~ existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved, ~~and the extent to which medically underserved populations are expected to use the proposed services if approved;~~

b. ~~The~~ Its ~~past performance of the applicant~~ in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs

receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

c. ~~The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant~~ That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

d. ~~The extent to which~~ That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

- (14) ~~The effect of the means proposed for delivery of the health services on the clinical needs of health professional training programs in the area in which the services are to be provided~~ The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.
- (15) ~~If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.~~
- (16) ~~The special circumstances of health care facilities with respect to the need for conserving energy.~~
- (17) ~~In accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k 2(b), the factors which influence the effect of competition on the supply of the health services being reviewed.~~
- (18) ~~Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k 2(b), and serve to promote quality assurance and cost effectiveness.~~
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.
- (19) ~~In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing, similar services and facilities.~~
- (20) ~~In the case of existing services or facilities, the quality of care provided in the past~~ An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.
- (21) ~~When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health~~

~~care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the bases of the need for and availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The Department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.~~

~~(b) Criteria adopted for reviews in accordance with subsection (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. 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.~~

~~(c) (See Editor's Note for Applicability and Effective Date). In reviewing applications for skilled nursing facilities or intermediate care facilities to be provided within a "life care" or "care for life" institution, the determination of need for beds shall not include a relationship of the proposed project to the need for such services specified in the State Medical Facilities Plan or State Health Plan provided that (i) the use of the proposed facilities is to be limited to resident members of the "life care" or "care for life" institution, (ii) the facilities are not to be certified for participation in either the Medicare or Medicaid programs, (iii) the ratio of skilled nursing facility beds and intermediate care facility beds to domiciliary and other residential arrangements shall not exceed one to three, and (iv) the facilities are to be developed after residential housing has been established or be developed as a part of a total housing construction program which shall result in the complex being one inseparable project. Facilities developed under this provision shall not alter the need for nursing home beds for the general population that exists now or at any time in the future.~~

~~"§ 131E-184. **Required approvals-Exemptions from review.**-(a)Except as provided in subsection (b), the Department shall issue a exempt from certificate of need review for a proposed capital expenditure if it receives notice from the entity proposing to make the capital expenditure, which notice includes an explanation of why the expenditure is required:~~

- ~~(1) The capital expenditure is required (i) to To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations, or (ii) to ;~~
 - ~~(1a) To comply with State licensure standards, or (iii) to ;~~
 - ~~(1b) To comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act; and~~
- ~~(2) The Department determines that (i) the facility or services for which the capital expenditure is proposed is needed, and (ii) the obligation of~~

~~the capital expenditure is consistent with the State Health Plan. Even though the proposal is inconsistent with the State Health Plan, the Department may issue a certificate of need if emergency circumstances pose an imminent threat to public health.~~

- ~~(3) To provide data processing equipment;~~
- ~~(4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review; or~~
- ~~(5) To replace or repair facilities destroyed or damaged by accident or natural disaster.~~

~~(b) Those portions of a proposed project which are not to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards proposed for one or more of the purposes under subsection (a) of this section are subject to review under the criteria developed under G.S. 131E-183 certificate of need review, if these non-exempt portions of the project are new institutional health services under G.S. 131E-176(16).~~

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

- ~~(1) The hospital proposing the conversion has executed a contract with the Department's Division of Mental Health, Mental Retardation, and Substance Abuse Services and/or one or more of the Area Mental Health, Mental Retardation, and Substance Abuse Authorities to provide psychiatric beds to patients referred by the contracting agency or agencies; and~~
- ~~(2) The total number of beds to be converted shall not be more than twice the number of beds for which the contract pursuant to subdivision (1) of this subsection shall provide.~~

~~"§ 131E-185. Review process.-(a)Except as provided in subsection (c) of this section there shall be a time limit of 90 days for review of the project beginning on the day the Department declares the application "complete for review," as established by departmental regulations.~~

- ~~(1) The appropriate health systems agency or agencies shall have 60 days to review each application as to consistency with duly adopted plans, standards, and criteria. Following the review the health systems agency shall submit to the Department its comments and recommendations. The comments may include a recommendation to approve the application, to approve the application with conditions, to defer the application, or to deny the application. Suggested modifications, if any, shall relate directly to the project under review.~~
- ~~(2) The appropriate health systems agency shall, during the course of its review, provide an opportunity for a public meeting at which interested persons may introduce testimony and exhibits.~~

~~(3) Any person may file written comments and exhibits concerning a proposal under review with the appropriate health systems agency and the Department.~~

(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 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 more than 30 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 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 public hearing on each 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 ~~receipt of a completed~~ 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 ~~affected persons-applicants~~.

~~"§ 131E-186. Final decision-Decision. The Department shall send its decision along with written findings to the person proposing the new institutional health service and to the Health Systems Agency for the health service area in which the new service is proposed to be offered or developed. In the case of a final decision to "approve" or "approve with conditions" a proposal for a new institutional health service, the Department shall issue a certificate of need to the person proposing the new institutional health service.~~

(a) Within the prescribed time limits in G.S 131E-185, the Department shall issue a decision to "approve," "approve with conditions," or "deny," an application for a new institutional health service.

(b) Within five days after it makes a decision on an application, the Department shall provide written notice of all the findings and conclusions upon which it based its decision, including the criteria used by the Department in making its decision, to both the applicant and to the appropriate health systems agency.

~~"§ 131E-187. **Written notice of decision**—**Issuance of a certificate of need.**—The Department shall, within 15 days after it makes a final decision on an application, provide in writing to the applicant, to the appropriate Health Systems Agency and, upon request to affected persons, the findings and conclusions on which it based its decision, including but not limited to, the criteria used by the Department in making its decision.~~

~~(a) The Department shall issue a certificate of need within 35 days of the date of the decision referenced in G.S. 131E-186, when no request for a contested case hearing has been filed in accordance with G.S. 131E-188, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.~~

~~(b) The Department shall issue a certificate of need within five days after a request for a contested case hearing has been withdrawn or the final agency decision has been made following a contested case hearing, and all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met.~~

~~"§ 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 ~~150A–150B~~ of the General Statutes; ~~if the Department receives a request therefor within 30 days after its decision.~~ 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.~~

~~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 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 ~~Facilities~~ 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 ~~care~~ service facilities within that geographic area; health ~~care~~ 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 ~~care~~ 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 ~~care~~ 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 ~~care~~ service facilities or HMOs located in the health service area in which the project is proposed to be located.

"§ 131E-189. Withdrawal of a certificate of need.—(a) The Department shall specify in each certificate of need the time the holder has to make the service or equipment available or to complete the project and the timetable to be followed. The timetable shall be the one proposed by the holder of the certificate of need unless ~~at the time the certificate of need is issued the Department determines by a preponderance of the evidence that the timetable proposed by the holder is unreasonable and that a different timetable should be followed by the holder~~ the Department specifies a different timetable in its decision letter. The holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the Department. If no progress report is provided or, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and the holder cannot demonstrate that it is making good faith efforts to meet the timetable, the Department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. If the Department determines that the holder of the certificate is making a good faith effort to meet the timetable, the Department may, at the request of the holder, extend the timetable for a specified period.

(b) The Department may withdraw any certificate of need ~~which was issued subject to a condition or conditions, if the holder of the certificate fails to satisfy such condition or conditions~~ develop and operate the service consistent with the representations made in the application or with any condition or conditions the Department placed on the certificate of need.

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

"§ 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 ~~or 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 ~~health care facility 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 ~~and regulations~~ hereunder ~~is~~ 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 may revoke or suspend the license of any person who ~~If any health care facility~~ proceeds to offer or develop a new institutional health service without having first obtained a certificate of need for such services, ~~the licensure for such facility may be revoked or suspended by the Medical Care Commission, or the Commission for Health Services, as appropriate.~~

(f) The Department may assess a civil penalty ~~not more than twenty thousand dollars (\$20,000) may be assessed by the Department~~ 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 ~~and regulations~~ pertaining thereto, or in violation of the terms of such a certificate, 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. ~~The Department may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Department may specify, the Department may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Department, in the superior court of the county in which the person assessed has his principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Department's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes. 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 ~~health care facility 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. ~~150A-2(6) 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 ~~regulations~~ rules adopted in accordance with this subsection and G.S. 131E-181(b).

~~"§ 131E-191. Venue. (a) Any action brought by a "person aggrieved" as defined by G.S. provisions of this Article against any health care facility as defined in G.S. 131E-176(9), or its agents or employees, may be brought in the superior court of any county in which the cause of action arose or in the county in which the health care facility is located, or in Wake County.~~

~~(b) An action brought by a "party" as defined in G.S. 150A-2(5), except any "affected person" who was a party to a contested case hearing who must bring an action in the North Carolina Court of Appeals pursuant to G.S. 131E-188(b), who has exhausted all administrative remedies made available to that party by statute or rules and regulations, may be brought in the Superior Court of Wake County at any time after a final decision by the Department. Such action must be filed not later than 30 days after a written copy of the final decision by the Department is given by personal service or registered or certified mail to the person seeking judicial review.~~

~~"§ 131E-192 to 131E-199. Reserved for future codification purposes."~~

Sec. 2. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act that can be given effect without the invalid provision.

Sec. 3. This act shall become effective July 1, 1987, and shall apply to all new institutional health services that are proposed on and after that date, but does not apply to applications for certificates of need which begin review, or to projects for which certificates of need were issued, before that date. This act supersedes all previous acts that were to become effective at any time after the effective date of this act.

In the General Assembly read three times and ratified this the 30th day of June, 1987.