

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 1182
SENATE BILL 993

AN ACT TO PROVIDE A CERTIFICATE OF NEED LAW, SO AS TO IMPLEMENT THE RECOMMENDATIONS OF THE LEGISLATIVE COMMISSION ON MEDICAL COST CONTAINMENT.

The General Assembly of North Carolina enacts:

Section 1. This act may be cited as the North Carolina Health Planning and Resource Development Act of 1978.

Sec. 2. Chapter 131 of the General Statutes is amended by adding a new Article 18 to read:

"ARTICLE 18.

"Certificate of Need Law.

"§ 131-170. 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.
- (2) That the continuously increasing cost of health care services 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.
- (4) That this trend of proliferation of unnecessary health care 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 services by physicians.
- (5) That a certificate of need law is required by P.L. 93-641 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 If these funds were withdrawn the State of North Carolina would lose in excess of fifty-five million dollars (\$55,000,000).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 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, 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.

"§ 131-171. 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 public or private facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.
- (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 of the department except that single beds in single rooms are counted even if the room contains inadequate square footage.
- (3) 'Certificate of need' means a written order of the department setting forth the affirmative finding 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. 131-176(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 of ownership' means the transfer by purchase, lease or comparable arrangements of the controlling interest of a capital asset or capital stock, or voting rights of a corporation, from one person to another. Such transfer is deemed to occur when fifty percent (50%) or more of an existing capital asset or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one person from another person.
- (6) 'Commencement of construction' means that all of the following have been completed with respect to a project:
 - a. a written contract executed between the applicant and a licensed contractor to construct and complete the project within a designated time schedule in accordance with final architectural plans;
 - b. required initial permits and approvals for commencing work on the project have been issued by responsible governmental agencies; and
 - c. actual construction work on the project has started and a progress payment has been made by the applicant to the licensed contractor under terms of the construction contract.
- (7) 'Department' means the North Carolina Department of Human Resources.
- (8) '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.

(9) 'Final decision' means an approval, a denial, an approval with conditions, or a deferral.

(10) 'Health care facility' means hospitals; psychiatric hospitals; tuberculosis hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory surgical facilities; health maintenance organizations; home health agencies; and diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) purchased or leased by a 'person', as defined in this section. 'Health care facility' does not include a facility operated solely as part of the private medical practice of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation, except with respect to acquisitions of diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) if with respect to such acquisition either:

- a. the notice required by G.S. 131-173(e) is not filed in accordance with that paragraph with respect to such acquisition, or
- b. the department finds, within 30 days after the date it receives a notice in accordance with G.S. 131-173(e) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

(11) 'Health Maintenance Organization (HMO)' means a public or private organization which:

- 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 in subdivision a. of this section to enrolled participants on a predetermined periodic rate basis; and
- c. provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(12) 'Health systems agency' means an agency, as defined by P.L. 93-641, as amended, and rules and regulations implementing that act.

(13) 'Home health agencies' 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 subdivision e. of this subsection, 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.

(14) '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. Such term does not include psychiatric hospitals, as defined in subdivision (22) of this section, or tuberculosis hospitals, as defined in subdivision (27) of this section.

(15) 'To incur a financial obligation in relation to the offering of a new institutional health service' means that in establishing a new institutional health service a person must fulfill the following performance requirements relative to but not limited to the following types of projects:

- a. new construction or renovation project:
 1. has acquired title or long-term lease to the appropriate site; and
 2. has entered into an enforceable construction contract specifying price and date for commencement of construction within 120 days from the date the contract is entered into; and
 3. has filed with the appropriate State agency and received approval on the complete set of schematic drawings for the project; and
 4. has obtained a financial commitment, including an enforceable offer and acceptance from a financial institution to provide adequate capital financing for the project.
- b. acquisition of equipment: the equipment must either be purchased, the lease agreement must be entered into by the proponent, or if acquired by a comparable arrangement the proponent must have possession of the equipment;
- c. change of ownership by lease or purchase or comparable arrangement:
 1. the lease must be entered into; or
 2. the title to the property or stock must be in the possession of the proponent.

(16) '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.

(17) 'New institutional health services' means:

- a. the construction, development, or other establishment of a new health care facility;
- b. any expenditure by or on behalf of a health care facility in excess of one hundred fifty thousand dollars (\$150,000) which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this Article shall not apply to expenditures solely for the termination or reduction of beds or of a health service, but shall apply to expenditures for site acquisitions and acquisition of existing health care facilities. Where a person makes an acquisition by or on behalf of a health care facility under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review. The value of the transaction shall be deemed to be the fair market value of the asset and not necessarily the actual dollar amount of the transaction. Donations shall include bequests. A change in a proposed capital expenditure project which in itself meets the criteria set forth herein shall be considered a capital expenditure, as well as a change in ownership of in excess of fifty percent (50%) of an existing health care facility or the acquisition of in excess of fifty percent (50%) of the assets or capital stock of a health care facility.
- c. a change in bed capacity of a health care facility which increases the total number of beds, or which distributes beds among various categories, subject to the provisions of subdivision j. of this subdivision, or relocates such beds from one physical facility or site to another. Such bed capacity change is subject to review regardless of whether a capital expenditure is made;
- d. health services, including home health services, which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered;
- e. a formal internal commitment of funds by a facility for a project undertaken by the facility as its own contractor;
- f. any expenditure by or on behalf of a health care facility in excess of one hundred fifty thousand dollars (\$150,000) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of a new institutional health service;
- g. any conversion or upgrading of a facility such that it is converted from a type of facility not covered by this Article to any of the types of health care facilities which are covered by this Article as defined in this section;
- h. a project which substantially expands a service currently offered or which provides a service not offered in the previous 12-month reporting period by the facility, including a change in type of license of five or more beds, subject to the provisions of subdivision j. of this subdivision. Such substantial change of service is subject to review regardless of whether a capital expenditure is made;
- i. the purchase or lease by a person or health care facility of diagnostic or therapeutic equipment, regardless of location, with a value in excess of one hundred fifty thousand dollars (\$150,000), except it

shall not include purchase or lease of such equipment with a value in excess of one hundred fifty thousand dollars (\$150,000) for use in a facility operated solely as part of the private medical practice of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation unless either,

1. the notice required by G.S. 131-173(e) is not filed in accordance with that subsection, or
2. the department finds, within 30 days after it receives a notice under G.S. 131-173(e), that the equipment will be used to provide services for inpatients of a hospital;

j. The Department of Human Resources is authorized and empowered to adopt rules and regulations, consistent with P.L. 93-641, and federal rules and regulations adopted pursuant to said P.L. 93-641, to permit the interchange of skilled nursing and intermediate care beds within the same health care facility to the maximum degree, extent or number permitted from time to time by said federal rules and regulations without requiring a new certificate of need.

for purposes of this subdivision, the acquisition of one or more items of functionally related diagnostic or therapeutic equipment shall be considered as one project. Purchase or lease shall include purchases, contracts, encumbrances of funds, lease arrangements, conditional sales or a comparable arrangement that purports to be a transfer of ownership in whole or in part. Diagnostic or therapeutic equipment shall include units of equipment and all accessories functionally related and used in the diagnosis and treatment of patients, excluding mechanical and electrical equipment related to basic operation and maintenance of the facility. Functionally related means that pieces of equipment are interdependent to the extent that one piece of equipment is unable to function in the absence of or without the functioning piece, or that one piece of equipment performs the same function as another piece, or that pieces of equipment are normally used together in the provision of a single health care facility service.

(18) 'North Carolina State Health Coordinating Council' means the council as defined by P.L. 93-641, as amended, and rules and regulations implementing that act.

(19) 'To offer', when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(20) '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.

(21) '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 act. 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 facility.

(22) 'Psychiatric hospital' means a public or private institution 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.

(23) 'Skilled nursing facility' 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 who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(24) 'State Medical Facilities Plan' means a plan prepared by the Department of Human Resources and the North Carolina State Health Coordinating Council, as required by P.L. 93-641, as amended, and rules and regulations implementing that act.

(25) 'State Health Plan' means the plan required by P.L. 93-641, as amended, and rules and regulations implementing that act.

(26) 'State Mental Health Plan' means the plan prepared by the Department of Human Resources under P.L. 94-63 for the purposes of providing an inventory of existing mental health and mental retardation services, and of establishing priorities for the development of new services to adequately meet the identified needs.

(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.

(28) 'Undertake', with reference to a project or capital expenditure project, means:

- a. constructing, remodeling, installing, or proceeding with a project or any part of a project which exceeds one hundred fifty thousand dollars (\$150,000) in the current fiscal year or can exceed a total of one hundred fifty thousand dollars (\$150,000) in three consecutive fiscal years;
- b. the expenditure or commitment of funds, which exceeds one hundred fifty thousand dollars (\$150,000) in the current fiscal year or can exceed a total of one hundred fifty thousand dollars (\$150,000) in three subsequent fiscal years, for a project which shall include but not be limited to:
 1. construction and financing of the project;
 2. equipment orders, purchases, leases or acquisition through other comparable arrangements or donations;
 3. development of studies, surveys, reports, working drawings, plans and specifications;
 4. acquisitions, purchases, leases, or contracts for necessary developmental services respecting an existing or proposed health facility;
 5. promotion, sponsorship, solicitation or representation or holding out to the public for donations or a fund raising drive for a specified project;
 6. obtaining or securing bonds for a specified project;
 7. executing contracts for the project;
 8. cost of legal fees.
- c. The expenditure or commitment of funds to develop applications, studies, reports, schematics, long-range planning or preliminary plans and specifications certified to cost one hundred fifty thousand dollars

(\$150,000) or less shall not be considered to be the undertaking of a project.

"§ 131-172. 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 P.L. 93-641.

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 G.S. Chapter 150A;
- (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 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, procedures for submission of periodic reports by persons or health facilities subject to agency review under this Article;
- (4) develop policy, criteria, and standards for health care facilities planning, conduct statewide inventories of and make determinations of need for health care 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;
- (5) implement, by regulation, criteria for project review;
- (6) have the power to grant, deny, suspend, or revoke a certificate of need;
- (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;
- (8) develop procedures for appeals of decisions to approve or deny a certificate of need, as provided by G.S. 131-180;
- (9) the Secretary of Human Resources shall have final decision-making authority with regard to all functions described in this section.

"§ 131-173. Services and facilities requiring certificates of need. — (a) No person shall undertake new institutional health services or health care facilities without first having obtained a certificate of need as provided by this Article.

(b) Projects subject to certificate of need review shall include 'new institutional health services' as defined by this Article.

(c) Where the estimated cost of a proposed project is certified by a licensed architect or engineer to be one hundred fifty thousand dollars (\$150,000) or less, such expenditure shall be deemed not to exceed one hundred fifty thousand dollars (\$150,000) and shall not require review as a capital expenditure regardless of the actual cost of the project, provided that the following conditions are met:

- (1) The estimated cost is certified to the department within 60 days of the date of submission of the project upon which the obligation for such expenditure is incurred. Such 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 such expenditure exceeded one hundred fifty thousand dollars (\$150,000). Such notice shall include a copy of a certified cost estimate.

(d) The department may grant a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of a new

institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures shall also include those for site acquisition and preliminary plans, studies, and surveys.

(e) Before any person enters into a contractual arrangement to acquire diagnostic or therapeutic equipment with a value in excess of one hundred fifty thousand dollars (\$150,000), which will not be owned by or located in a health care facility, such person shall notify the department of such person's intent to acquire such equipment. Such notice shall be made in writing on such form as the department shall prescribe and shall be made at least 30 days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given. For the purposes of this subsection, health care facility does not include a facility operated solely as part of the private medical practice of (i) an independent practitioner, (ii) a partnership, or (iii) a professional medical corporation.

(f) Any local health department under Article 3 of Chapter 130 of the General Statutes which provides a new institutional health service as defined in G.S. 131-171(17) is subject to the provisions of this Article.

"§ 131-174. 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 transferable or assignable nor shall a project or capital expenditure project be transferred from one person to another. A certificate of need shall be valid for the period of time specified therein.

(b) A certificate of need shall be issued for a 12-month period, or such other lesser period as specified by the department, effective on the date of the department's action. Within the effective period, the legal proponent of the proposed project must perform on the project by fulfilling the specific performance requirements set forth by this act for incurring a financial obligation in relation to the offering of a new institutional health service.

(c) By regulation, the department may define the extent, not to exceed six months, for which a certificate of need may be renewed, provided the applicant by petition makes a good faith showing that, within a reasonable time, he will complete the establishment, construction, or modification of the health care facility, and that he will incur the financial obligation within the extended approval period.

(d) The department shall adopt rules pertaining to the requirement of filing for a certificate of need based on a change of ownership of a health care facility. Any substantial change as to the person who or the partnership which is the operator of a health care facility shall be subject to approval by the department, provided, this provision will not interfere with the authority of the owner of a health care facility to make any change in employment of any administrator who holds a valid license issued by the North Carolina Department of Human Resources. The department shall adopt rules which shall state, at a minimum, that any transfer, assignment or other disposition or change of ownership or control of fifty percent (50%) or more of the capital stock or voting rights thereunder of a corporation which is the operator of a health care facility in the State, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of such corporation which results in the ownership or control of more than fifty percent (50%) of the stock or voting rights thereunder of such corporation by any person shall be subject to approval by the department in accordance with procedures for filing a certificate of need application. In the absence of such approval, the enforcement provisions of G.S. 131-182 may be invoked.

"§ 131-175. Application. — All persons or health care facilities subject to review, as defined in G.S. 131-171 must file an application for a certificate of need with the department. An application for a certificate of need shall be made on the forms provided by the department. This application shall contain such information as the department, by regulation, deems

necessary to conduct the review. Such application shall include affirmative evidence on which the department shall make the findings required under this Article, and upon which the department shall make its final decision on the application.

"§ 131-176. 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:

- (1) The relationship of the proposed project to the State Medical Facilities Plan, the State Health Plan, and the State Mental Health Plan.
- (2) The relationship of services reviewed to the long-range development plan of the persons providing or proposing such services.
- (3) The need that the population served or to be served by such services has for such services.
- (4) The availability of less costly or more effective alternative methods of providing such services.
- (5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services.
- (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.
- (7) The availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.
- (8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
- (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.
- (10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations.
- (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.

(13) The need that the medically underserved portion of the population, especially those people located in rural or economically depressed areas, has for such services, and the extent to which the project under review proposes to meet that need.

(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.

"§ 131-177. 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 shall review each application for a certificate of need in accord with its adopted plans, standards, criteria, and procedures, and shall submit its comments thereon to the department within 60 days after receipt of a complete application by the department. 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.

(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. If the department fails to act within such period, the failure to act shall constitute denial of the application.

(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 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.

"§ 131-178. Final 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.

"§ 131-179. Written notice of decision. — 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 such decision.

"§ 131-180. Rights of appeal and judicial review. — (a) In fulfilling the functions and duties of this Article the department shall comply with the North Carolina Administrative Procedures Act, G.S. Chapter 150A.

(b) Any proponent of a new institutional health service or capital expenditure project or any person who qualifies as a 'party' or 'person aggrieved' under G.S. 150A-2 shall have all the rights of appeal and judicial review available under Articles 3 and 4 of G.S. Chapter 150A.

(c) In the instance that the department makes a recommendation on review of a project which is inconsistent with a recommendation made by a particular Health Systems Agency, the

department shall submit a written, detailed statement of the reasons for the inconsistency. The Health Systems Agency may request an appeal under the North Carolina Administrative Procedures Act, G.S. Chapter 150A.

"§ 131-181. Forfeiture of certificate of need. — The department may revoke a certificate of need, for failure to perform on the certificate of need, based on rules adopted by the department. The department may revoke a certificate of need for, including but not necessarily limited to, the following reasons:

- (1) For failure to satisfy within 180 days following issuance of the certificate of need any performance requirements that may be set forth by the department.
- (2) After review, upon 12 months' duration of approval, for failure to incur the financial obligation for a capital expenditure as defined in this Article.
- (3) After notice and a fair hearing on proof that a person who has been awarded a certificate of need, and who before completion of the project and operation of the facility, has attempted to or has transferred or conveyed more than five percent (5%) ownership or control in a facility without prior written approval of the department. Transfers resulting from personal illness or other good cause, as determined by the department, may be exempt from this provision based on rules adopted by the department. Transfers resulting from death shall be exempt from this provision.

"§ 131-182. 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 expenditures in excess of one hundred fifty thousand dollars (\$150,000) in preparation for 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, except as otherwise provided in G.S. 131-173.

(c) 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.

(d) 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.

(e) 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 penalty for such violation of this Article and rules and regulations hereunder is 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.

(f) 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.

(g) A civil penalty of 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. 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. 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 its 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.

(h) 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.

(i) 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 Secretary of Human Resources or any person aggrieved, as defined by G.S. 150A-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.

"§ 131-183. Venue. — (a) Any action brought by a 'person aggrieved', as defined by G.S. 150A-2(6), to enforce the provisions of this Article against any health care facility, as defined in G.S. 131-171(10) 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 by G.S. 150A-2(5), 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."

Sec. 3. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the remaining provisions.

Sec. 4. This act shall become effective January 1, 1979.

This act shall not apply to any project which has received approval under the Section 1122, P.L. 92-603 program prior to January 1, 1979, as long as construction has commenced before January 1, 1980.

This act shall not apply to any project for which application is made under the Section 1122, P.L. 92-603 program between July 1, 1978, and January 1, 1979, if such application is approved, and construction has commenced before January 1, 1980.

Rules and Regulations under this act may be issued at any time after the date of ratification of this act, but shall not become effective prior to January 1, 1979.

In the General Assembly read three times and ratified, this the 16th day of June, 1978.