GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 775
HOUSE BILL 645

AN ACT TO RECODIFY THE PUBLIC HOSPITAL LAWS IN CHAPTERS 131 AND 131B AND IN PORTIONS OF CHAPTER 130 OF THE GENERAL STATUTES.

Whereas, the General Assembly with the ratification of House Resolution 215 directed the North Carolina Department of Human Resources to conduct a recodification study of the public health statutes, particularly those in Chapters 130 and 131 of the General Statutes; and

Whereas, the North Carolina Department of Human Resources has reviewed the public hospital laws in Chapter 131 and the public health laws in Chapter 130; and

Whereas, the North Carolina Department of Human Resources has recommended a Recodification Act that rewrites and reorganizes the basic provisions of Chapters 131 and 131B, that repeals the obsolete provisions of those Chapters and that incorporates some parts of Chapter 130; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapters 131 and 131B of the General Statutes and Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are repealed and a new Chapter 131E substituted in lieu thereof to read:

"Health Care Facilities and Services.

"Article 1.

"General Provisions.

"**§ 131E-1. Definitions.–**As used in this Chapter, unless the context clearly indicates otherwise:

(1) 'Department' means the Department of Human Resources.

(2) 'Person' means an individual, trust, estate, partnership, or corporation including associations, joint stock companies, and insurance companies.

"**§ 131E-2 through 131E-4. Reserved for future codification purposes.**

"Article 2. Public Hospitals.

"Part A. Municipal Hospitals.

"**§ 131E-5. Title and purpose.–**(a) This Part shall be known and may be cited as the 'Municipal Hospital Act'.

(b) The purpose of this Part is to authorize municipalities to construct, operate and maintain hospitals and other facilities which furnish hospital, clinical and similar services to the people of this State. It is also the purpose of this Part to authorize

municipalities to cooperate with other public and private agencies and with each other. Additionally, it is the purpose of this Part to authorize municipalities to accept assistance from State and federal agencies and from other sources.

(c) This Part provides an additional and alternative method for municipalities to establish facilities that furnish hospital, clinical and similar services. This Part shall not be regarded as repealing any powers now existing under any other law, either general, special or local.

(d) This Part shall be construed liberally to effect its purposes.

"**§ 131E-6. Definitions.–**As used in this Part, unless otherwise specified:

(1) 'City', as defined in G.S. 160A-1(2), means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose under any statute or law. The word 'city' is interchangeable with the words 'town' and 'village' and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(2) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(3) 'Corporation, foreign or domestic, authorized to do business in North Carolina' means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(4) 'Hospital facility' means any type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term 'hospital facility' also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.

(5) 'Municipality' means any county, city, or other political subdivision of this State, or any hospital district created under Part C of this Article.

(6) 'Nonprofit association' or 'nonprofit corporation' means any association or corporation from which no part of the net earnings inures or may lawfully inure to the benefit of a private shareholder or individual.

"**§ 131E-7. General powers.–**(a) A municipality shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere in this Part:

(1) to construct, equip, operate, and maintain hospital facilities;

(2) to levy property taxes pursuant to G.S. 153A-149 or G.S. 160A-209 and to allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities; a hospital district may levy annually a tax on property having a situs in the district under the rules and according to the procedures prescribed in the Machinery Act, Chapter 105 of the General Statutes, Subchapter II, and a hospital district may allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities;

(3) to issue bonds and notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes, for the financing of hospital facilities;

(4) to use property owned or controlled by the municipality;

(5) to acquire real or personal property, including existing hospital facilities, by purchase, grant, gift, devise, lease, condemnation, or otherwise;

(6) to establish a fee schedule for services received from hospital facilities and to make services available regardless of ability to pay;

(b) A municipality may contract with or otherwise arrange with other municipalities of this or other states, federal or public agencies or with any person, private organization or nonprofit association for the provision of hospital, clinical, or similar services. The municipality may pay for these services from appropriations or other moneys available for these purposes.

(c) Any two or more municipalities may enter into agreements to jointly exercise the powers, privileges, and authorities granted by this Part. These agreements may provide for:

(1) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage a hospital facility;

(2) The authority and duties of the board and the compensation of its members;

(3) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of hospital facilities;

(4) The duration, amendment, and termination of the agreement and the disposition of property on termination of the agreement; and

(5) Any other matters as necessary.

(d) A municipality may lease any hospital facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The municipality will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(e) A municipality shall not sell nor convey any rights of ownership the municipality has in any hospital facility, including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land or surplus equipment by a municipality to any corporation or other business entity operated for profit.

A municipality may lease any hospital facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272. The municipality shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, surplus land or surplus equipment may be for any length of time determined by the municipality. The lease shall provide that the hospital facility will be operated as a community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a municipality to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, 'surplus' means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance of ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from the effective date of this act until June 30, 1984.

(f) In addition to the general and special powers conferred by this Part, a municipality is authorized to exercise powers necessary to implement the powers under this Part.

"**§ 131E-8. Sale of hospital facilities to nonprofit corporations.–**(a) A municipality as defined in G.S. 131E-6(5) or hospital authority as defined in G.S. 131E-16(14), upon such terms and conditions as it deems wise, with or without monetary consideration, may sell or convey to a nonprofit corporation organized under Chapter 55A of the General Statutes any rights of ownership the municipality or hospital authority has in a hospital facility including the building, land and equipment associated with the hospital, if the nonprofit corporation is legally committed to continue to operate the facility as a community general hospital open to the general public, free of discrimination based upon race, creed, color, sex or national origin. The nonprofit corporation shall also agree, as a condition of the municipality or hospital authority's conveying ownership, to provide such services to indigent patients as the municipality or hospital authority and the nonprofit corporation shall agree. The nonprofit corporation shall further agree that should it fail to operate the facility as a community general hospital open to the general public or should the nonprofit corporation dissolve without a successor nonprofit corporation to carry out the terms and conditions of the agreement of conveyance, all ownership rights in the hospital facility, including the building, land and equipment associated with the hospital, shall revert to the municipality or hospital authority or successor entity originally conveying the hospital.

(b) When either general obligation bonds or revenue bonds issued for the benefit of the hospital to be conveyed are outstanding at the time of sale or conveyance, then the nonprofit corporation must agree to the following:

By the effective date of sale or conveyance, the nonprofit corporation shall place into an escrow fund money or direct obligations of, or obligations the principal of and interest on which, are unconditionally guaranteed by the United States of America (as approved by the Local Government Commission), the principal of and interest on which, when due and payable, will provide sufficient money to pay the principal of and the interest and redemption premium, if any, on all bonds then outstanding to the maturity date or dates of such bonds or to the date or dates specified for the redemption thereof. The nonprofit corporation shall furnish to the Local Government Commission such evidence as the Commission may require that the securities purchased will satisfy the requirements of this section.

A hospital which has placed funds in escrow to retire outstanding general obligation or revenue bonds, as provided in this section, shall not be considered a public hospital, and G.S. 159-39(a)(3) shall be inapplicable to such hospitals.

(c) Any sale or conveyance under this section must be approved by the municipality or hospital authority by a resolution adopted at a regular meeting of the governing body on 10 days' public notice. Notice shall be given by publication describing the hospital facility to be conveyed, the proposed monetary consideration or lack thereof, and the governing body's intent to authorize the sale or conveyance.

(d) Neither G.S. 153A-176 nor Article 12 of Chapter 160A of the General Statutes shall apply to sales or conveyances pursuant to this section.

"**§ 131E-9. Governing authority of hospital facilities.–**(a) The governing body of a municipality may establish by resolution an office, board, or other municipal agency to plan, establish, construct, maintain, or operate a hospital facility. The resolution shall prescribe the powers, duties, compensation, and tenure of the members of the governing authority. The municipality shall remain responsible for the expenses of planning, establishment, construction, maintenance and operation of the hospital facilities.

(b) (1) The county board of commissioners of a county may establish by resolution a county hospital authority to plan, establish, construct, maintain, or operate a hospital facility. The authority shall be referred to as ' _____ County Hospital Authority.'

(2) The county hospital authority shall consist of six appointed members and one ex officio member.

(3) The appointed members of the authority shall be appointed by the county board of commissioners. All appointed members shall be residents of the county. Three of the members shall be residents of a city in the county and the remaining three members shall not be residents of the same city or cities in which the other three members appointed under this subdivision reside.

(4) For the initial appointments to the county hospital authority, two of the members shall be appointed for a term of three years, two for a term of four years, and two for a term of five years to achieve staggered terms. All subsequent appointments shall be for five-year terms.

(5) The ex officio member of the county hospital authority shall be a member of the county board of commissioners. The ex officio member's term on the hospital authority shall be commensurate with his or her term as a member of the county board of commissioners.

(6) When any member of the county hospital authority resigns or is removed from office before the expiration of the member's term, the county board of commissioners shall appoint a person to serve the unexpired portion of the term.

(c) Any authority vested in a county under this Part or any authority or power that may be exercised by a hospital authority under the Hospital Authorities Act, Chapter 131E, Article 2, Part B, may be vested by resolution of the county board of commissioners in a county hospital authority established under this section. However, a county hospital authority shall exercise only the powers and duties prescribed in the county board of commissioners' resolution. The county board of commissioners shall determine in the resolution the compensation, traveling and any other expenses which shall be paid to each member of the county hospital authority. However, the expenses to plan, establish, construct and operate the hospital facility shall remain the responsibility of the county.

"**§ 131E-10. Condemnation.–**Every municipality is authorized to condemn property to carry out the purposes of this Part. In condemning property, a municipality shall proceed in the manner provided in Chapter 40A of the General Statutes or in the charter of the municipality. A municipality or its agents is authorized to enter upon land, provided no unnecessary damage is done, to make surveys and examinations relative to any condemnation proceeding. Notwithstanding the provisions of any other statute or of any applicable municipal charter, the municipality may take possession of property to be condemned at any time after the commencement of the condemnation proceeding. The municipality shall not be precluded from abandonment of the condemnation of property in any case where possession has not taken place.

"**§ 131E-11. Federal and State aid.–**Every municipality or nonprofit association is authorized to accept and disburse federal and State moneys, whether made available by grant, loan, gift or devise, to carry out the purposes of this Part. All federal moneys shall be accepted and disbursed upon the terms and conditions prescribed by the United States, if the terms and conditions are consistent with State law. All State moneys shall be accepted and disbursed upon the terms and conditions prescribed by either or both the State and the North Carolina Medical Care Commission. Unless the terms and conditions provide otherwise, the chief financial officer of the municipality shall deposit all moneys received under this section and keep them in separate trust funds.

"**§ 131E-12. Public purposes.–**The exercise of the powers, privileges, and authorities conferred on municipalities by this Part are public and governmental functions, exercised for a public purpose and matters of public necessity. In the case of a county, the exercise of the powers, privileges and authorities conferred by this Part is a county function and purpose, as well as a public and governmental function. In the case of any municipality other than a county, the exercise of the powers, privileges, and authorities

conferred by this Part is a municipal function and purpose, as well as a public and governmental function.

"**§ 131E-13 through 131E-14. Reserved for future codification purposes.**

"Part B. Hospital Authority.

"**§ 131E-15. Title and purpose.–**(a) This Part shall be known as the 'Hospital Authorities Act'.

(b) The General Assembly finds and declares that in order to protect the public health, safety, and welfare, including that of low income persons, it is necessary that counties and cities be authorized to provide adequate hospital, medical, and health care and that the provision of such care is a public purpose. Therefore, the purpose of this Part is to provide an alternate method for counties and cities to provide hospital, medical, and health care.

"**§ 131E-16. Definitions.–**As used in this Part, unless otherwise specified:

(1) 'Board of county commissioners' means the legislative body charged with governing the county.

(2) 'Bonds' means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.

(3) 'City' means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(4) 'City clerk' and 'mayor' means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(5) 'City council' means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.

(6) 'Commissioner' means one of the members of a hospital authority appointed in accordance with the provisions of this Part.

(7) 'Community general hospital' means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.

(8) 'Contract' means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

(9) 'Corporation, foreign or domestic, authorized to do business in North Carolina means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.

(10) 'County' means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.

(11) 'County clerk' and 'chairman of the board of county commissioners' means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.

(12) 'Federal government' means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.

(13) 'Government' means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(14) 'Hospital authority' means a public body and a body corporate and politic organized under the provisions of this Part.

(15) 'Hospital facilities' means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; domiciliary homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire- fighting facilities; pharmaceutical and recreational facilities; storage space; X-ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.

(16) 'Municipality' means any county, city, town or incorporated village, other than a city as defined above, which is located within or partially within the territorial boundaries of an authority.

(17) 'Real property' means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(18) 'State' means the State of North Carolina.

"**§ 131E-17. Creation of a hospital authority.–**(a) A hospital authority may be created whenever a city council or a county board of commissioners finds and adopts a resolution finding that it is in the interest of the public health and welfare to create a hospital authority.

(b) After the adoption of a resolution creating a hospital authority, the mayor or the chairman of the county board of commissioners shall appoint commissioners in accordance with G.S. 131E-18.

(c) The commissioners shall be a public body and a body corporate and politic upon the completion of the procedures described in G.S. 131E-19.

"**§ 131E-18. Commissioners.–**(a) The mayor or the chairman of the county board shall appoint the commissioners of the authority. There shall be not less than six and not more than 30 commissioners. Upon a finding that it is in the public interest, the commissioners may adopt a resolution increasing or decreasing the number of commissioners by a fixed number; provided that no decrease in the number of commissioners shall shorten a commissioner's term. A certified copy of the resolution and a list of nominees shall be submitted to the mayor or the chairman of the county board of commssioners for appointments in accordance with the procedures set forth in subsection (d) of this section.

(b) For the initial appointments of commissioners, one third of the commissioners shall be appointed for a term of one year, one third for a term of two years, and one third for a term of three years to achieve staggered terms. All subsequent appointments shall be for three-year terms. A commissioner shall hold office until a successor has been appointed and qualified. Vacancies from resignation or removal from office shall be filled for the unexpired portion of the term.

(c) The mayor or the chairman of the county board of commissioners shall name the first chair of the authority. Thereafter, the commissioners shall elect each subsequent chair from their members. The commissioners shall elect from their members the first vice-chair and all subsequent vice-chairs.

(d) When a commissioner resigns, is removed from office, completes a term of office, or when there is an increase in the number of commissioners, the remaining commissioners shall submit to the mayor or the chairman of the county board of commissioners a list of nominees for appointment to the commission. The mayor or the chairman of the county board of commissioners shall appoint, only from the nominees, the number of commissioners necessary to fill all vacancies. However, the mayor or the chairman of the county board of commissioners may require the commissioners to submit as many additional lists of nominees as he or she may desire.

(e) The mayor shall file with the city clerk, or the chairman of the county board of commissioners shall file with the county clerk, a certificate of appointment or reappointment of a commissioner. The certificate shall be conclusive evidence of the due and proper appointment of the commissioner.

(f) Commissioners shall receive no compensation for their services, but they shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in the discharge of their duties.

(g) For a county with a population of less than 75,000, according to the most recent decennial federal census, the following exceptions to the provisions of this section shall apply:

(1) the commissioners shall be appointed by the county board of commissioners rather than the chairman of the county board of commissioners;

(2) in making appointments under subsection (d) of this section, the county board of commissioners shall consider the nominations of the commissioners of the authority, but the county board of the

commissioners is not bound by the nominations and may choose any qualified person.

The foregoing exceptions shall not apply when a county with a population of less than 75,000 jointly establishes a hospital authority with a city.

(h) A majority of the commissioners shall constitute a quorum.

"**§ 131E-19. Incorporation of a hospital authority.–**(a) After the commissioners are appointed, they shall present to the Secretary of State an application for incorporation as a hospital authority. The application shall be signed by each of the commissioners and shall set forth:

(1) That the city council or the county board of commissioners has found that it is in the interest of the public health and welfare to create a hospital authority;
(2) That the mayor or the chairman of the county board of commissioners has appointed them as commissioners;
(3) The name and official residence of each of the commissioners;
(4) A certified copy of the appointment evidencing the commissioners' right to office, and the date and place of induction into and taking of office;
(5) That they desire the hospital authority to become a public body and a body corporate and politic under this Part;
(6) The term of office of each of the commissioners;
(7) The name which is proposed for the corporation; and
(8) The location and principal office of the corporation.

The application shall be subscribed and sworn to by each of the commissioners before an officer authorized by the laws of this State to take and certify oaths. This officer shall certify upon the application that he or she personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed to the application and took the oath in the officer's presence.

(b) The Secretary of State shall examine the application. If he or she finds that the name proposed for the corporation is not identical with that of a person or of any other corporation in this State or so nearly similar so as to lead to confusion and uncertainty, the application shall be filed and recorded in the appropriate book of record in the Secretary of State's Office. The Secretary of State shall then make and issue to the commissioners a certificate of incorporation pursuant to this Part, under the Seal of the State, and shall record the certificate with the application.

(c) A hospital authority's name or the location or principal office of the corporation may be changed by the adoption of a resolution by the majority of the authority's commissioners. A copy of the resolution, duly verified by the chair and secretary of the commission before an officer authorized by the laws of this State to take and certify oaths, shall be delivered to the Secretary of State, along with a conformed copy. If the Secretary of State finds that the proposed name is not identical with that of a person or any corporation of this State, or so nearly similar as to lead to confusion and uncertainty, the resolution shall be filed and recorded in the appropriate book of record in the Secretary of State's Office. A resolution changing the location or principal office

of the hospital authority shall be filed and recorded in the appropriate book of record in the Secretary of State's Office. The Secretary of State shall then return to the authority the conformed copy, together with a certificate stating that the attached copy is a true copy of the document in the Secretary of State's Office, that shows the date of filing.

(d) In any legal proceeding, a copy of the certificate of incorporation, certified by the Secretary of State, shall be admissible in evidence and shall be conclusive proof of its filing and contents and the incorporation of the hospital authority in accordance with this Part.

"**§ 131E-20. Boundaries of the authority.–**(a) The territorial boundaries of a hospital authority shall include the city or county creating the authority and the area within 10 miles from the territorial boundaries of that city or county. In no event shall the territorial boundaries of a hospital authority include, in whole or in part, the area of any previously existing hospital authority. All priorities shall be determined on the basis of the time of issuance of the certificates of incorporation by the Secretary of State.

(b) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city or county shall in no way affect the territorial boundaries of the authority.

"**§ 131E-21. Conflict of interest.–**No commissioner or employee of the hospital authority shall:

(1) acquire any interest, direct or indirect, in any hospital facility or in any property included or planned to be included in a hospital facility; or

(2) have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital facility, except an employment contract for an employee. The foregoing restriction shall not apply to any contract, undertaking, or other transaction with a bank or banking institution, savings and loan association or public utility in the regular course of its business; provided that any such contract, undertaking, or other transaction shall be authorized by the commissioners by specific resolution on which no commissioner having an interest, direct or indirect, shall vote.

If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any hospital facility, the commissioner or employee shall immediately disclose the same in writing to the authority and the disclosure shall be entered upon the minutes of the authority. Failure to disclose shall constitute misconduct in office and shall be grounds for a commissioner's removal from office under G.S. 131E-22.

"**§ 131E-22. Removal of commissioners.–**(a) The appointing authority, as stated in G.S. 131E-18, may remove a commissioner for inefficiency, neglect of duty, or misconduct in office. A commissioner may be removed only after he or she has been given a copy of the charges and provided the opportunity to be heard in person or by counsel. A commissioner is entitled to at least 10 days after receipt of the notice to prepare for a hearing before the mayor or the chairman of the county.

(b) An obligee of the authority may file with the mayor or the chairman of the county board of commissioners written charges that the authority is willfully violating the laws of the State or a term, provision, or covenant to any contract to which the

authority is a party. The mayor or the chairman of the county board of commissioners shall give each of the commissioners a copy of the charges at least 10 days prior to the hearing on the charges. The commissioners shall be provided an opportunity to be heard in person or by counsel. The mayor or the chairman of the county board of commissioners shall, within 15 days after receipt of the charges, remove any commissioners of the authority who are found to have acquiesced in any willful violation. If a commissioner has not filed a written statement before the hearing with the authority stating his or her objections to or lack of participation in the violation, the commissioner shall be deemed to have acquiesced in a willful violation.

(c) If, after due and diligent search, a commissioner to whom charges are required to be delivered cannot be found within the county where the authority is located, the charges shall be deemed to be served upon the commissioner when it is mailed to the commissioner at the commissioner's last known address as the same appears on the records of the authority.

(d) In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk, or the chairman of the county board of commissioners shall file with the county clerk, a record of the proceedings together with the charges against the commissioner and the findings.

"**§ 131E-23. Powers of the authority.–**(a) An authority shall have all powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to those powers granted elsewhere in this Part:

(1) To investigate hospital, medical, and health conditions and the means of improving those conditions;

(2) To determine where inadequate hospital and medical facilities exist;

(3) To accept donations of money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation or society;

(4) To acquire by purchase, gift, devise, lease, condemnation, or otherwise any existing hospital facilities;

(5) To purchase, lease, obtain options upon, or otherwise acquire any real or personal property or any interest therein from any person, firm, corporation, city, county, or government;

(6) To sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, city, county or government;

(7) To own, hold, clear and improve property;

(8) To borrow money upon its bonds, notes, debentures, or evidences of indebtedness, as provided for in G.S. 131E-26 and G.S. 131E-27;

(9) To purchase real or personal property pursuant to G.S. 131E-32;

(10) To appoint an administrator of a hospital facility and necessary assistants, and any and all other employees necessary or advisable, to fix their compensation, to adopt necessary rules governing their employment, and to remove employees;

(11) To delegate to its agents or employees any powers or duties as it may deem appropriate;
(12) To employ its own counsel and legal staff;
(13) To adopt, amend and repeal bylaws for the conduct of its business;
(14) To enter into contracts for necessary supplies, equipment, or services for the operation of its business;
(15) To appoint committees or subcommittees as it shall deem advisable, to fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of the authority's business;
(16) To establish procedures for health care providers to secure the privilege of practicing within any hospital operated by the authority pursuant to Part B of Article 5 of this Chapter;
(17) To establish reasonable rules governing the conduct of health care providers while on duty in any hospital operated by the facility pursuant to Part B of Article 5 of this Chapter;
(18) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility, or any part of a facility;
(19) To enter into any contracts or other arrangements with any municipality, other public agency of this or any other State or of the United States, or with any individual, private organization, or nonprofit association for the provision of hospital, clinical, or similar services;
(20) Subject to subsection (c), to lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. Subject to subsection (c), the authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;
(21) To act as an agent for the federal, State or local government in connection with the acquisition, construction, operation or management of a hospital facility, or any part thereof;
(22) To arrange with the State, its subdivisions and agencies, and any county or city, to the extent it is within the scope of their respective functions,
(a) to cause the services customarily provided by each to be rendered for the benefit of the hospital authority,
(b) to furnish, plan, replan, install, open or close streets, roads, alleys, sidewalks or similar facilities and to acquire property, options or property rights for the furnishing of property or services for a hospital facility, and

(c) to provide and maintain parks and sewage, water and other facilities for hospital facilities and to lease and rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents and charges;

(23) To insure the property or the operations of the authority against risks as the authority may deem advisable;

(24) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds under their control;

(25) To sue and be sued;

(26) To have a seal and to alter it at pleasure;

(27) To have perpetual succession;

(28) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(29) To remove vehicles parked on land owned or leased by the hospital authority in areas clearly designated as no parking or restricted parking zones. An owner of a removed vehicle as a condition of regaining possession of the vehicle, shall reimburse the hospital authority for all reasonable costs, not to exceed fifty dollars ($50.00), incidental to the removal and storage of the vehicle provided that the designation of the area as a no parking or restricted parking zone clearly indicates that the owner may be subject to these costs;

(30) To plan and operate hospital facilities;

(31) To provide teaching and instruction programs and schools for medical students, interns, physicians, nurses, technicians and other health care professionals;

(32) To provide and maintain continuous resident physician and intern medical services;

(33) To adopt, amend and repeal rules and regulations governing the admission of patients and the care, conduct, and treatment of patients;

(34) To establish a fee schedule for services received from hospital facilities and make the services available regardless of ability to pay;

(35) To maintain and operate isolation wards for the care and treatment of mental, contagious, or other similar diseases;

(36) To sell a hospital facility pursuant to G.S. 131E- 8; and

(37) To agree to limitations upon the exercise of any powers conferred upon the hospital authority by this Part in connection with any loan by a government.

(b) A hospital authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific hospital facility or facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(c) A hospital authority shall not sell nor convey any rights of ownership the authority has in any hospital facility as defined in G.S. 131E-6(4), including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, land or equipment by a hospital authority to any corporation or other business entity operated for profit.

A hospital authority may lease any hospital facility or part to any corporation, foreign or domestic, authorized to do business in North Carolina, on terms and conditions consistent with the purposes of this Part. The hospital authority shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, land or equipment may be for any length of time determined by the hospital authority. The lease shall provide that the hospital facility will be operated as a community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a hospital authority to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, 'surplus' means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance of ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from the effective date of this Part until June 30, 1984.

(d) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a hospital authority unless otherwise specified by the General Assembly.

"**§ 131E-24. Eminent domain.–**(a) A hospital authority may acquire by eminent domain any real property, including fixtures and improvements, which it deems necessary to carry out the purposes of this Part. The hospital authority may exercise the power of eminent domain under the provisions of Chapter 40A of the General Statutes or any other statute now in force or subsequently enacted for the exercise of the power of eminent domain.

(b) No property belonging to any city, town, or county, any government, religious or charitable organization, or to any existing hospital or clinic may be acquired without its consent. No property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or agency, if any, having regulatory power over the corporation.

(c) The right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for the facility has been issued by the North Carolina Utilities Commission. The proceedings leading up to issuing of the certificate of public convenience and necessity, and the right of appeal from the

proceedings shall be governed by the Public Utilities Act, Chapter 62 of the General Statutes, and the rights under that act are hereby expressly reserved to all interested parties in the proceedings. In addition to the powers now granted by law to the North Carolina Utilities Commission, the Utilities Commission is authorized to investigate and examine all facilities set up or attempted to be set up under this Part and to determine the question of public convenience and necessity for the facility.

"**§ 131E-25. Zoning and building laws.–**All hospital facilities of the authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital facility is situated.

"**§ 131E-26. Revenue bonds and notes.–**(a) A hospital authority shall have the power to issue revenue bonds under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, for the purpose of acquiring, constructing, reconstructing, improving, enlarging, bettering, equipping, extending or operating hospital facilities.

(b) A hospital authority shall have the power to borrow for the purposes above enumerated upon its notes or other evidences of indebtedness, subject to the approval of the Local Government Commission as provided in G.S. 131E-32(c). Such approval shall be required regardless of the amount of any such borrowing. Any borrowing by a hospital authority before the date of ratification of Part B of Article 2 of this Chapter, whether or not approved by the Local Government Commission, is valid, ratified and confirmed.

"**§ 131E-27. Contracts with federal government.–**A hospital authority is authorized:

(1) To borrow money and accept grants from the federal government for or to aid in the construction of a hospital facility;

(2) To acquire any land acquired by the federal government for the construction of a hospital facility; and

(3) To acquire, lease or manage any hospital facility constructed or owned by the federal government. To these ends, a hospital authority is authorized to enter into contracts, mortgages, trust indentures, leases or other agreements giving the federal government the right to supervise and approve the construction, maintenance and operation of the hospital facility. It is the purpose and intent of this Part to authorize every hospital authority to do any and all things necessary to secure the financial aid and cooperation of the federal government in the construction, maintenance, and operation of hospital facilities.

"**§ 131E-28. Tax exemptions.–**(a) Hospital authorities shall be exempt from the payment of taxes or fees to the State or any of its subdivisions, or to any officer or employee of the State or any of its subdivisions.

(b) Hospital authority property used for public purposes shall be exempt from all local and municipal taxes and for the purposes of this tax exemption, an authority shall be deemed to be a municipal corporation.

(c) Bonds, notes, debentures or other evidences of indebtedness of a hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or issued pursuant to the bond and revenue anticipation

provisions of Chapter 159 of the General Statutes, Article 9, or issued pursuant to G.S. 131E-26(b) or contracted pursuant to G.S. 131E-32 and the transfer of and income from such instruments, including profits on sales, shall at all times be free from taxation by the State or any of its subdivisions, except for inheritance or gift taxes.

"**§ 131E-29. Audits and recommendations.–**Each hospital authority shall file with the mayor of the city or the chairman of the county board of commissioners at least annually an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations necessary to carry out the purposes of this Part.

"**§ 131E-30. Appropriations.–**Each year the governing body of a city or county in which the hospital authority is located may appropriate and transfer funds to the authority. The appropriations shall be from the General Fund and may not exceed five percent (5%) of the General Fund. Money appropriated and paid to the hospital authority by a city or county shall be deemed a necessary expense of the city or county. However, the appropriations shall not be deemed to be a revenue of the authority for the purpose of bonds of the hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5.

"**§ 131E-31. Transfers of property by a city or county to a hospital authority.–**(a) A city or county may lease, sell, convey, or otherwise transfer, with or without consideration or with nominal consideration, any property, whether real or personal or mixed, to a hospital authority whose territorial boundaries include at least part of the city or county. A hospital authority is authorized to accept such lease, transfer, assignment or conveyance and to bind itself to the performance and observation of any agreements and conditions required by the city or county.

(b) If a city or county sells, conveys, or otherwise irrevocably transfers to a hospital authority property with a market value in excess of two hundred fifty thousand dollars ($250,000), and if the hospital authority accepts this property, the mayor of the city or the chairman of the county board of commissioners shall have the right to name additional commissioners to serve on the authority. The number of additional commissioners shall be such that the proportion of additional commissioners to existing commissioners is approximately equal to the proportion of the total value being transferred to the hospital authority to the total value of property already held by the authority. The determination of the ratios will be made solely by the governing body of the city or county transferring the property to the hospital authority; however, in no event shall fewer than two nor more than nine commissioners be added to the hospital authority. The total number of commissioners shall be increased by the number of commissioners added under this subsection. The times of commencement and expiration of the initial terms of the commissioners being added shall be determined by agreement between the hospital authority and the governing body of the city or county. After the expiration of the initial terms, subsequent terms will be three years. Copies of the agreement setting out the number of persons being added and the terms of each shall be filed with the clerk of the city or the clerk of the county board of commissioners making the transfer and, thereafter, copies of the reports referred to in G.S. 131E-29

shall be filed with the clerk of the city or the clerk of the county board of commissioners.

"**§ 131E-32. Purchase money security interests.–**(a) An authority shall have the power and authority to purchase real or personal property under installment contracts, purchase money mortgages or deeds of trust, or other instruments, which create in the property purchased a security interest to secure payment of the purchase price and interest thereon. No deficiency judgment may be rendered against any authority for breach of an obligation authorized by this section. Any contract made or entered into by an authority before the date of ratification of Part B of Article 2 of this Chapter which would have been valid hereunder is valid, ratified and confirmed.

(b) A hospital authority may contract pursuant to this section in an amount of less than seven hundred fifty thousand dollars ($750,000), adjusted, as hereinafter provided, in any single transaction without the approval of the Local Government Commission: provided, however, that the approval of the Local Government Commission shall be required for any single contract pursuant to this section if the aggregate dollar amount of all such contracts outstanding after any such single transaction, exclusive of revenue bonds issued pursuant to G.S. 131E-26 and federal contracts entered pursuant to G.S. 131E-27, would exceed ten percent (10%) of the total operating revenues, as hereinafter defined, of the hospital authority for its most recently completed fiscal year as set forth in the audited financial statements of such authority for such fiscal year. The approval of the Local Government Commission shall be required with respect to any single contract pursuant to this section in an amount of seven hundred fifty thousand dollars ($750,000) or more, adjusted as hereinafter provided.

(c) Approval of the Local Government Commission under this section or as required by G.S. 131E-26(b) shall be obtained in accordance with such rules and regulations as the Local Government Commission may prescribe and shall be evidenced by the secretary's certificate on the contract or note or other evidence of indebtedness. In determining whether to approve any such contract or borrowing, the Local Government Commission shall consider whether the hospital authority can demonstrate the financial responsibility and capability of the hospital authority to fulfill its obligations with respect to such contract or borrowing. The Local Government Commission may approve the application without other findings, if it finds that (i) the proposed project or the purpose of the borrowing is necessary and expedient, (ii) the contract or the borrowing, under the circumstances, is preferable to a bond issue for the same purpose, (iii) the sums to fall due under the contract or borrowing are adequate and not excessive for the proposed purpose, (iv) the authority's debt management procedures are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law and (v) the authority is not in default on any of its debt service obligations. Any contract or borrowing subject to this subsection requiring the approval of the Local Government Commission that does not bear the secretary's certificate thereon shall be void, and it shall be unlawful for any officer, employee or agent of a hospital authority to make any payments of money thereunder. An order of the Local Government Commission approving any such contract or borrowing shall not be regarded as an approval of the legality of the contract or borrowing in any respect.

(d) The seven hundred fifty thousand dollar ($750,000) amount referred to in G.S. 131E-32(b) shall be in effect from the date of ratification of Part B of Article 2 of this Chapter through September 30, 1984. For each twelve-month period thereafter, the seven hundred fifty thousand dollar ($750,000) amount shall be the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

(e) For purposes of G.S. 131E-32(b), the 'total operating revenues' of a hospital authority for a fiscal year means patient revenue, less provisions for contractual adjustments, uncompensated care and bad debts, plus other operating revenues, all as determined in accordance with generally accepted accounting principles.

"**§ 131E-33. Part controlling.–**Insofar as the provisions of this Part are inconsistent with the provisions of any other law, the provisions of this Part shall be controlling; however this Part shall not be construed as preventing a city, town, or county from establishing and operating a hospital under the authority of any other law now or hereafter in effect.

"**§ 131E-34. Part applicable_ to City of High Point.–**All the provisions of this Part shall apply to the City of High Point, Guilford County, North Carolina, as fully as if the population of the city exceeded 75,000 inhabitants.

"**§ 131E-35 through 131E-39: Reserved for future codification purposes.**

"Part C. Hospital District Act.

"**§ 131E-40. Title and purpose.–**(a) This Part shall be known as the 'Hospital District Act'.

(b) It is the purpose of this Part to authorize the creation of hospital districts to furnish hospital, clinical and similar services to the people of this State.

(c) This Part provides an additional and alternative method for the provision of hospital, clinical and similar services.

(d) This Part shall be construed liberally to effect its purposes.

"**§ 131E-41. Methods of creation of a hospital district.–**(a) The voters of an area may petition their county board of commissioners and the North Carolina Medical Care Commission for the creation of a hospital district. All of the area proposed to be included within a hospital district must be located within one county. The petition shall be signed by at least 500 voters of the area described in the petition. However, if the area has less than 1,100 voters, then the minimum number of petitioners shall be 250 voters. The petition shall set forth:

(1) A description of the area to be included within the proposed hospital district;
(2) The names of all municipalities located in whole or in part in the proposed hospital district;
(3) The names of all publicly owned hospitals in the proposed hospital district;
(4) The purpose or purposes sought to be accomplished by the creation of the hospital district; and
(5) The proposed name of the hospital district.

The petition shall be delivered to the county board of commissioners of the county in which the proposed hospital district would be located. If the county board of commissioners approves the creation of the hospital district, they shall have the petition delivered to the North Carolina Medical Care Commission for review under G.S. 131E-42.

(b) In the alternative, the county board of commissioners, in its discretion, may create a hospital district by resolution. This authority exists only when one hospital district already exists in the county, or when a special tax levy for hospital purposes has been authorized or is now authorized with respect to a portion of the county. This power is limited to establishing a hospital district in the area lying outside the existing hospital district or outside the portion of the county in which a hospital tax levy has been or is now authorized. When a county board of commissioners exercises its power under this subsection, all other provisions of this Part shall be applicable, except as modified by this subsection.

"**§ 131E-42. Hearing and determination.–**(a) After receipt of a petition for the creation of a hospital district that meets the requirements of G.S. 131E-41(a) and that has been approved by the county board of commissioners, the North Carolina Medical Care Commission shall give notice of a hearing on the creation of a hospital district. The notice of hearing shall be posted at the county courthouse door and at three public places within the proposed district. In addition, notice of hearing shall be published at least once for three successive weeks in a newspaper circulating in the proposed district. The notice of hearing shall specify:

(1) The date of hearing which shall not be earlier than 20 days after the first posting and publication of notice;

(2) The location of the hearing, which shall be within the county in which the proposed district would be located; and

(3) That any interested person may appear and be heard at the hearing.

(b) At the time and place specified in the notice of hearing, the North Carolina Medical Care Commission, or its designee, shall hear all interested persons, and, if necessary, adjourn and reconvene at a later time.

(c) After the hearing, the North Carolina Medical Care Commission shall determine if it is in the public interest and beneficial to the residents of the area to create a hospital district, and, if it is, shall adopt a resolution creating the hospital district. The resolution shall define the area to be included in the hospital district. The area shall either be the one described in the petition or a part of that area. However, no municipality, in whole or in part, shall be included in a hospital district unless the governing body of the municipality shall have approved by resolution the inclusion and shall have filed a certified copy of the resolution with the North Carolina Medical Care Commission.

(d) Each hospital district shall be designated by the North Carolina Medical Care Commission as the '_____ Hospital District of _____County,' inserting in the blank spaces a name identifying the locality and the name of the county.

(e) The North Carolina Medical Care Commission shall give notice of the creation of a hospital district. The notice shall be published at least once for two

successive weeks in the newspaper in which the notice of hearing required by G.S. 131E- 42(a) was published. A notice substantially in the following form, the blanks first being properly filled in, with the printed or written signature of the executive secretary of the North Carolina Medical Care Commission appended, shall be published with the resolution:

> The foregoing resolution was passed by the North Carolina Medical Care Commission on the _____ day of _____, 19__; it was first published on the _____ day of _____, 19__.
>
> Any action or proceeding questioning the validity of the resolution or creation of the _____ Hospital District of _____ County or the inclusion in the district of any of the areas described in the resolution must be commenced within thirty days after the first publication of this resolution.
>
> _____
>
> Secretary
> North Carolina Medical Care Commission.

"**§ 131E-43. Limitation of actions.–**Any action or proceeding in any court to set aside a resolution of the North Carolina Medical Care Commission creating any hospital district, or questioning the validity of the resolution, or the creation of any hospital district, or the inclusion in the district of any of the territory described in the resolution creating the district, must be commenced within 30 days after the first publication of the resolution and notice required by G.S. 131E-42(e). Thereafter, no right of action or defense founded upon the invalidity of a resolution or the creation of a district or the inclusion of any territory in the district shall be asserted, nor shall the validity of the resolution or the creation of the district or the inclusion of any territory be open to question in any court upon any ground, except in any action or proceeding commenced within the 30-day period.

"**§ 131E-44. General powers.–**(a) The inhabitants of a hospital district are a body corporate and politic by the name specified by the North Carolina Medical Care Commission. Under that name they:

(1) are vested with all the property and rights of property belonging to any corporation;
(2) have perpetual succession;
(3) may sue or be sued;
(4) may contract;
(5) may acquire any real or personal property;
(6) may hold, invest, sell or dispose of property;
(7) may have a seal and alter and renew it; and
(8) may exercise the powers conferred upon them by this Part.

(b) A hospital district is vested with all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere:

(1) Those powers granted under the Municipal Hospital Act, Chapter 131E of the General Statutes, Article 2, Part A;
(2) To issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes;
(3) To issue tax and revenue anticipation notes pursuant to Chapter 159 of the General Statutes, Article 9, Part 2; and
(4) All other powers as are necessary and incidental to the exercise of the powers of this Part.

"**§ 131E-45. County taxes.–**The county board of commissioners may levy a tax for the financing of the operation, equipment, and maintenance of any hospital operated by the district, including any public or nonprofit hospital, if the tax is approved by a majority of the qualified voters of the hospital district who shall vote on the question of levying the tax. The county board of commissioners shall determine the rate or amount of taxes that will be levied if approved by the voters of the district. The election on the question of levying the tax may be held at any time fixed by the county board of commissioners and shall be conducted in the same manner as bond elections held under G.S. 159-61.

"**§ 131E-46. Referendum on repeal of tax levy.–**(a) The board of commissioners of the county in which a hospital district was created under the provisions of this Part may, if a tax levy was authorized by referendum under G.S. 131E-45, call a referendum on the repeal of the authority to levy a tax. Such referendum may be called only if there are no outstanding general obligation bonds of the district.

(b) The question on the ballot shall be:

'@ FOR removal of the right of the board of county commissioners to levy and collect a tax in _____Hospital District of _____County,

@ AGAINST removal of the right of the board of county commissioners to levy and collect a tax in _____ Hospital District of _____ County.'

(c) The referendum shall be conducted in the same manner as bond elections held under G.S. 159-61. No new registration of voters shall be required.

(d) If a majority of the votes cast are in favor of the question, then beginning on the first day of the fiscal year following the date of the referendum, the board of county commissioners shall have no authority to levy a tax in the hospital district unless the voters approve under G.S. 131E-45. No referendum may be held within one year of the date of a referendum under this section.

"**§ 131E-47. Governing body.–**The board of county commissioners of the county in which a hospital district is located shall be the governing body of the district. All of the provisions of the Municipal Hospital Act, Chapter 131E, Article 2, Part A, shall apply to the hospital district and to the county board of commissioners as the governing body.

"**§ 131E-48 through 131E-54. Reserved for future codification purposes.**

"Article 3.

"North Carolina Specialty Hospitals.

"Part A. Lenox Baker Children's Hospital.

"**§ 131E-55. Intent; application for admission.–**(a) The Lenox Baker Children's Hospital may treat, care for, train and educate children from birth to age 21 in the State

who have cerebral palsy, and other chronic or subacute orthopedic, neuromuscular and pediatric disabilities who are capable of being habilitated or rehabilitated. The Lenox Baker Children's Hospital shall disseminate knowledge concerning the extent, nature, and prevention of such disabling ailments.

(b) Application for the admission of a child must be made by a parent, guardian, or person standing in loco parentis.

"**§ 131E-56. Authority of Board of Directors of hospital.–**(a) The Board of Directors is authorized to adopt rules necessary for the operation of the hospital in a manner consistent with the intent and purpose of this Article.

(b) The Board of Directors is authorized to accept and use donations to further the intent of this Article.

"**§ 131E-57. Control and management of hospital.–**The Department shall have the general superintendence, management, and control of the hospital, its grounds and buildings, its officers and employees, and its patients and all matters relating to its government, discipline, contracts, and fiscal concerns.

"**§ 131E-58. Authority of the Department.–**The Department, with the approval of the Governor and the Council of State, is authorized to secure by gift or purchase suitable real estate within the State and to erect or improve buildings for carrying out the purposes of the hospital. No real estate shall be purchased nor any commitments made for the erection or permanent improvements of any buildings involving the use of State funds until an appropriation for permanent improvements of the hospital is expressly authorized by the General Assembly.

"**§ 131E-59 to 131E-64: Reserved for future codification purposes.**

"Part B. Other Programs Controlled by the Department.

"**§ 131E-65. Alcohol Detoxification Program.–**There shall be no reduction of services offered, no contracting of primary services, nor removal of this facility from Buncombe County without prior approval of the General Assembly.

"**§ 131E-66. Funds of deceased inmates.–**The Department of Human Resources shall apply the funds of deceased patients or inmates of State hospitals or other charitable institutions to satisfy the debts of the patient or inmate to the hospital or charitable institution if:

(1) the patient or inmate dies while a patient or inmate of or dies after having left a State hospital or other charitable institution;

(2) the deceased patient or inmate had deposited or placed funds with the officials of the State hospital or other charitable institution; and

(3) the funds have remained unclaimed for three years following the death of the patient or inmate. The Department of Human Resources shall apply the funds, or such portion of funds as necessary, to satisfy the patient's or inmate's indebtedness to the State hospital or charitable institution for services and care rendered. Any excess of funds over indebtedness shall be held by the officials and paid out as required by law.

"**§ 131E-67. Specialty hospitals.–**All functions, powers, duties, and obligations heretofore vested in the Board of Directors of the North Carolina Specialty Hospitals and Eastern North Carolina Hospital are hereby transferred to and vested in the Department. All appropriations heretofore made to such Board of Directors or to any of

the hospitals are hereby transferred to the Department. The Secretary of the Department shall have the power and duty to adopt rules for the operation of these facilities.

"**§ 131E-68 through 131E-69: Reserved for future codification purposes.**

"Article 4.

"Construction and Enlargement of Hospitals.

"**§ 131E-70. Construction and enlargement of local hospitals.–** (a) The Department is authorized to continue surveys of all counties in the State to determine:

(1) The hospital needs of the county;

(2) The economic ability of various areas to support adequate hospital service;

(3) What assistance by the State, if any, is necessary to supplement other available funds; to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers; and to finance equipment necessary to provide adequate hospital service for the citizens of the county;

and to periodically report this information, together with its recommendations, to the Governor, who shall transmit the reports to the General Assembly for any legislative action necessary to ensure an adequate statewide hospital program.

(b) The Department is authorized to act as the agency of the State to develop and administer a statewide plan in accordance with rules adopted by the Medical Care Commission for the construction and maintenance of hospitals, public health centers and related facilities and to receive and administer funds which may be provided by the General Assembly and by the federal government.

(c) The Department is authorized to develop statewide plans for the construction and maintenance of hospitals, medical centers and related facilities, or other plans necessary in order to meet the requirements and receive the benefits of applicable federal legislation.

(d) The Department is authorized to adopt rules to carry out the intent and purposes of this Article.

(e) The Department shall be responsible for doing all acts necessary to authorize the State to receive the full benefits of any federal statutes enacted for the construction and maintenance of hospitals, health centers or allied facilities.

(f) The Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities acquired by municipalities or subdivisions of government for use as community hospitals. These appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes of this Article and for other purposes in accordance with the rules adopted by the Medical Care Commission. The Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as this aid and financial assistance is granted to municipalities and subdivisions of government.

(g) The Department may make available to any eligible hospital, clinic, or other medical facility operated by the State any unallocated federal sums or balances remaining after all grants-in-aid for local approvable projects made by the Department have been completed, disbursed or encumbered.

"**§ 131E-71 through 131E-74: Reserved for future codification purposes.**

"Article 5.

"Hospital Licensure Act.

"**§ 131E-75. Title; purpose.–**(a) This Article shall be known as the 'Hospital Licensure Act.'

(b) The purpose of this Article is to establish hospital licensing requirements which promote public health, safety and welfare and to provide for the development, establishment and enforcement of basic standards for the care and treatment of patients in hospitals.

"**§ 131E-76. Definitions.–**As used in this Article, unless otherwise specified:

(1) 'Commission' means the North Carolina Medical Care Commission.

(2) 'Governing body' means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.

(3) 'Hospital' means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under G.S. 122-72, nursing homes licensed under G.S. 131E-102, and domiciliary homes licensed under G.S. 131D-2.

(4) 'Infirmary' means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.

(5) 'Medical review committee' means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing.

"Part A. Hospital Licensure.

"**§ 131E-77. Licensure requirement.–**(a) No person or governmental unit shall establish or operate a hospital in this State without a license. An infirmary is not required to obtain a license under this Part.

(b) The Commission shall prescribe by rule that any licensee or prospective applicant seeking to make specified types of alteration or addition to its facilities or to construct new facilities shall submit plans and specifications before commencement to

the Department for preliminary inspection and approval or recommendations with respect to compliance with the applicable rules under this Part.

(c) An applicant for licensing under this Part shall provide information related to hospital operations as requested by the Department. The required information shall be submitted by the applicant on forms provided by the Department and established by rule.

(d) Upon receipt of an application for a license, the Department shall issue a license if it finds that the applicant complies with the provisions of this Article and the rules of the Commission. The Department shall renew each license in accordance with the rules of the Commission.

(e) The Department shall issue the license to the operator of the hospital who shall not transfer or assign it except with the written approval of the Department.

(f) The operator shall post the license on the licensed premises in an area accessible to the public.

"**§ 131E-78. Adverse action on a license.–**(a) The Department shall have the authority to deny, suspend, revoke, annul, withdraw, recall, cancel, or amend a license in any case when it finds a substantial failure to comply with the provisions of this Part or any rule promulgated under this Part.

(b) The Department shall conduct a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, when:

(1) The Department denies an application and the applicant requests a hearing; or

(2) The Department initiates proceedings under subsection (a).

(c) Any applicant or operator who is dissatisfied with the decision of the Department as a result of the hearing provided in this section and after a written copy of the decision is served, may request a judicial review under Chapter 150A of the General Statutes, the Administrative Procedure Act.

"**§ 131E-79. Rules and enforcement.–**(a) The Commission shall promulgate rules necessary to implement this Article.

(b) The Department shall enforce this Article and the rules of the Commission.

"**§ 131E-80. Inspections.–**(a) The Department shall make or cause to be made inspections as it may deem necessary. Any hospital licensed under this Part shall at all times be subject to inspections by the Department according to the rules of the Commission.

(b) The Department may delegate to any state officer or agency the authority to inspect hospitals. The Department may revoke this delegated authority at its discretion and make its own inspections.

(c) Authorized representatives of the Department shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission; and it shall be unlawful for any person to resist a proper entry by such authorized representative upon any premises other than a private dwelling. However, no representative shall, by this entry onto the premises, endanger the health or well being of any patient being treated in the hospital.

(d) To enable the Department to determine compliance with this Part and the rules promulgated under the authority of this Part and to investigate complaints made against a hospital licensed under this Part, while maintaining the confidentiality of the complainant, the Department shall have the authority to review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the hospital licensed under this Part and the personnel records of those individuals employed by the licensed hospital. The examinations of these records is permitted notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient', or any other provision of law relating to the confidentiality of communications between physician and patient. Proceedings of medical review committees are exempt from the provisions of this section. The hospital, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient, employee or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a hospital without the consent of that person. Any officer, administrator, or employee of the Department who willfully discloses confidential or privileged information without appropriate authorization or court order shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, 'Public Records' defined.

(e) Information received by the Commission and the Department through filed reports, license applications, or inspections that are required or authorized by the provisions of this Part, may be disclosed publicly except where this disclosure would violate the confidential relationship existing between physician and patient. However, no such public disclosure shall identify the patient involved without permission of the patient or court order.

"**§ 131E-81. Penalties.–**(a) Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Except as otherwise provided in this Part, any person who willfully violates any provision of this Part or who willfully fails to perform any act required, or who willfully performs any act prohibited by this Part, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by imprisonment for a period not

to exceed two years or by both such fine and imprisonment in the discretion of the court. However, any person who willfully violates any rule adopted by the Commission under this Part or who willfully fails to perform any act required by, or who willfully does any act prohibited by, these rules shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed fifty dollars ($50.00) or by imprisonment for a period not to exceed 30 days.

"**§ 131E-82. Injunction.–**(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes, and Rule 65 of the Rules of Civil Procedure.

"**§ 131E-83 through 131E-84: Reserved for future codification purposes.**

"Part B. Hospital Privileges.

"**§ 131E-85. Hospital privileges and procedures.–**(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, dentists and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals.

(b) The procedures to be followed by a licensed hospital in considering applications of dentists and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

(c) In addition to the granting or denial of privileges, the governing body of each hospital may suspend, revoke, or modify privileges.

(d) All applicants or individuals who have privileges shall comply with all applicable medical staff bylaws, rules and regulations, including the policies and procedures governing the qualifications of applicants and the scope and delineation of privileges.

"**§ 131E-86. Limited privileges.–**(a) It shall be unlawful for an individual who is not licensed under Chapter 90 of the General Statutes, Article 1, to admit a patient to a hospital without written proof in accordance with the policy of the governing body of the hospital that a physician licensed under Chapter 90 of the General Statutes, Article 1, who is a member of the medical staff will be responsible for the performance of a

basic medical appraisal and for the medical needs of the patient. The governing body of a hospital may waive this requirement for a dentist licensed under Chapter 90 of the General Statutes, Article 2, to the extent authorized by this statute, who has successfully completed a postgraduate program in oral and maxillofacial surgery accredited by the American Dental Association.

(b) The governing body of each hospital shall not grant privileges that exceed the scope of a license.

"**§ 131E-87. Reports of disciplinary action; immunity from liability.–**The chief administrative officer of every licensed hospital in the State shall report to the appropriate occupational licensing board any revocation, suspension, or limitation of privileges to practice in that hospital. Each hospital shall also report to the board its medical staff resignations. Any person making a report required by this section shall be immune from any resulting criminal prosecution or civil liability unless the person knew the report was false or acted in reckless disregard of whether the report was false.

"**§ 131E-88 through 131E-89: Reserved for future codification purposes.**

"Part C. Discharge from Hospital.

"**§ 131E-90. Authority of administrator; refusal to leave after discharge.–**The case of a patient who refuses or fails to leave the hospital upon discharge by the attending physician shall be reviewed by two physicians licensed to practice medicine in this State, one of whom may be the attending physician. If in the opinion of the physicians, the patient should be discharged as cured or as no longer needing treatment or for the reason that treatment cannot benefit the patient's case or for other good and sufficient reasons, the patient's refusal to leave shall constitute a trespass. The patient shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed fifty dollars ($50.00) or imprisoned not more than 30 days.

"**§ 131E-91 through 131E-94: Reserved for future codification purposes.**

"Part D. Medical Review Committee.

"**§ 131E-95. Medical review committee.–**(a) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(b) The proceedings of a medical review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, 'Public Records' defined, and shall not be subject to discovery or introduction into evidence in any civil action against a hospital or a provider of professional health services which results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the

committee or a person who testifies before the committee may testify in a civil action but cannot be asked about his testimony before the committee or any opinions formed as a result of the committee hearings.

"**§ 131E-96 through 131E-99: Reserved for future codification purposes.**

"Article 6.

"Health Care Facility Licensure Act.

"Part A. Nursing Home Licensure Act.

"**§ 131E-100. Title; purpose.–**(a) This Part shall be known as the 'Nursing Home Licensure Act'.

(b) The purpose of the Nursing Home Licensure Act is to establish authority and duty for the Department to inspect and license private nursing homes.

"**§ 131E-101. Definitions.–**As used in this Part, unless otherwise specified:

(a) 'Combination home' means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and domiciliary home.

(b) 'Commission' means the North Carolina Medical Care Commission.

(c) 'Community advisory committee' means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part B) in accordance with G.S. 143B-181.1.

(d) 'Domiciliary home', as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the sheltered or personal care their age or disability requires. Medical care in a domiciliary home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Domiciliary homes are to be distinguished from nursing homes subject to licensure under this Part. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.

(e) 'Medical review committee' means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.

(f) 'Nursing home' means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A 'nursing home' is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A 'nursing home' provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general

hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

(g) 'Peer review committee' means any committee appointed in accordance with G.S. 131E-108, 'Peer review'.

"**§ 131E-102. Licensure requirements.–**(a) No person shall operate a nursing home without a license obtained from the Department. Any person may operate a nursing home or a combination home, as defined in this Part, in the same building or in two or more buildings adjoining or next to each other on the same site. Both a nursing home and a combination home must be licensed by the Department under this Part.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part.

(c) A license to operate a nursing home shall be annually renewed upon the filing and the Department's approval of the renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) In order for a nursing home to maintain its license it shall not intentionally impede the proper performance of the duties of a lawfully appointed community advisory committee as set forth in G.S. 131E-128(h).

"**§ 131E-103. Adverse action on a license.–**(a) Subject to subsection (b), the Department shall have the authority to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a).

"**§ 131E-104. Rules and enforcement.–**(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the domiciliary portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding domiciliary homes. The domiciliary portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes.

"**§ 131E-105. Inspections.–**(a) The Department shall inspect any nursing home and any domiciliary home operated as a part of a nursing home in accordance with rules adopted by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient', or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department, when necessary for investigating compliance with this Part or rules promulgated by the Commission, may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, 'Communications between physician and patient', or any other rules of law, if the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information which is provided without malice or fraud to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, 'Public Records' defined. Prior to releasing any information or allowing any inspections referred to in this subsection, the patient must upon admission be advised in writing by the facility that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

(c) Authorized representatives of the Department with identification to this effect shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission. It shall be unlawful for any person to resist a proper entry by an authorized representative upon any premises other than a private dwelling.

"**§ 131E-106. Evaluation of residents in domiciliary homes.–** The Department shall prescribe the method of evaluation of residents in the domiciliary portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes.

"**§ 131E-107. Medical or peer review committees.–**A member of a duly appointed medical or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or

performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131E-108.

"**§ 131E-108. Peer review.–**It is not a violation of G.S. 131E- 117(5) for medical records to be disclosed to a private peer review committee if:

(1) The peer review committee has been approved by the Department;

(2) The purposes of the peer review committee are to:

(a) Survey facilities to verify a high level of quality care through evaluation and peer assistance;

(b) Resolve written complaints in a responsible and professional manner; and

(c) Develop a basic core of knowledge and standards useful in establishing a means of measuring quality of care; and

(3) The peer review committee keeps such records confidential.

"**§ 131E-109. Penalties.–**(a) Any person establishing, conducting, managing or operating any nursing home without a license shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than five hundred dollars ($500.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Any person acting under the authority of the Department who gives advance notice to an operator of a nursing home of the date or time that the nursing home is to be inspected shall be guilty of a misdemeanor, and upon conviction shall be liable for a fine of not more than five hundred dollars ($500.00) or imprisonment for a period not to exceed 30 days, or both. The inspection of a nursing home for initial licensure shall be exempt from the prohibition of prior notice. All subsequent inspections must comply with the provisions of this subsection.

(c) The Secretary or a designee may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. This suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection shall be in addition to authority to suspend or revoke the license of the home.

(d) Except as otherwise provided in this Part, any person who violates any provision of this Part or who willfully fails to perform any act required, or who willfully performs any act prohibited by this Part, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine or by imprisonment for a period not to exceed two years or by both such fine and imprisonment in the discretion of the court; provided, however, that any person who willfully violates any rule adopted by the Commission under this Part or who willfully fails to perform any act required by, or who willfully performs any act prohibited by, these rules shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed fifty dollars ($50.00) or by imprisonment for a period not to exceed 30 days.

"**§ 131E-110. Injunction.–**(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a nursing home without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"**§ 131E-111 through 131E-114: Reserved for future codification purposes.**

"Part B. Nursing Home Patients' Bill of Rights.

"**§ 131E-115. Legislative intent.–**It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and homes for the aged and disabled licensed pursuant to G.S. 131E-102. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights.

"**§ 131E-116. Definitions.–**As used in this Part, unless otherwise specified:

(a) 'Administrator' means an administrator of a facility.

(b) 'Facility' means a nursing home and a home for the aged or disabled licensed pursuant to G.S. 131E-102.

(c) 'Patient' means a person who has been admitted to a facility.

(d) 'Representative payee' means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance.

"**§ 131E-117. Declaration of patients' rights.–**All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

(1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;

(2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;

(3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;

(4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment. The patient shall give prior informed consent to participation in experimental research.

Written evidence of compliance with this subdivision, including signed acknowledgements by the patient, shall be retained by the facility in the patient's file;

(5) To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;

(6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;

(7) To receive from the administrator or staff of the facility a reasonable response to all requests;

(8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;

(9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.

(10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;

(11) To enjoy privacy in the patient's room;

(12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;

(13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;

(14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;

(15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid)

of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record.

"**§ 131E-118. Transfer of management responsibilities.–**The patient's representative who has been given the power in writing by the patient to manage the patient's financial affairs or the patient's legal guardian as appointed by a court or the patient's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by the provisions of this Part, may perform any other act, and may receive or furnish any information required by this Part.

"**§ 131E-119. No waiver of rights.–**No facility may require a patient to waive the rights specified in this Part.

"**§ 131E-120. Notice to patient.–**(a) A copy of G.S. 131E-115 through G.S. 131E-127 shall be posted conspicuously in a public place in all facilities. Copies of G.S. 131E-115 through G.S. 131E-127 shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 131E-118, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department responsible for the enforcement of the provisions of this Part shall be posted and distributed with copies of the Part. The address and telephone number of the county social services department shall also be posted and distributed.

"**§ 131E-121. Responsibility of administrator.–**Responsibility for implementing the provisions of this Part shall rest on the administrator of the facility.

"**§ 131E-122. Staff training.–**Each facility shall provide appropriate staff training to implement each patient's rights included in this Part.

"**§ 131E-123. Civil action.–**Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Part. The Department, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person named above may enforce the rights of the patient specified in this Part which the patient is unable to personally enforce.

"**§ 131E-124. Enforcement and investigation; confidentiality.–** (a) The Department shall be responsible for the enforcement of the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.

(b) The Department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Part.

(c) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department.

"**§ 131E-125. Revocation of a license.–**The Department shall have the authority to revoke a license issued pursuant to G.S. 131E-102 in any case where it finds that there

has been a substantial failure to comply with the provisions of this Part or any failure that endangers the health, safety or welfare of patients.

Such revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed.

"**§ 131E-126. Penalties.–**(a) The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility:

(1) Which fails to comply with either the entire section of patients' rights listed in G.S. 131E-117 or with any one of these rights which endangers the health, safety or welfare of a patient.

(2) Which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars ($10.00) per day per patient affected by the violation.

(c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150A of the General Statutes.

(d) The Secretary may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150A-36.

"**§ 131E-127. No interference with practice of medicine or physician-patient relationship.–**Nothing in this Part shall be construed to interfere with the practice of medicine or the physician-patient relationship.

"**§ 131E-128. Nursing home advisory committees.–**(a) It is the purpose of the General Assembly that community advisory committees work to maintain the intent of this Part within the nursing homes in this State. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

(b) (1) A community advisory committee shall be established in each county which has a nursing home, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more

nursing homes, the committee shall have one additional member for each nursing home in excess of three.

(2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.

(3) Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county. If the nursing home administrators fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.

(c) Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators, or who were appointed by the board of county commissioners when the nursing home administrators failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators within the county. If the nursing home chief administrators fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

(d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators or a person appointed when the chief administrators failed to make a nomination shall be selected from among persons nominated by the administrators, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators is not required. If nominations or approval of the nursing home administrators is required, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the nursing home administrators' 45-day period for action has expired.

(e) The committee shall elect from its members a chair, to serve a one-year term.

(f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office

as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facility Services.

(g) The Division of Aging, Department of Human Resources, shall develop training materials which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.

(2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.

(3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.

(4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The names of all complaining persons shall remain confidential unless written permission is given for disclosure.

(5) Each home shall cooperate with the committee as it carries out its duties.

(6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.

"**§ 131E-129 through 131E-134: Reserved for future codification purposes.**

"Part C. Home Health Agency Licensure Act.

"**§ 131E-135. Title; purpose.–**(a) This Part shall be known as 'Home Health Agency Licensure Act'.

(b) The purpose of this Part is to establish licensing requirements for home health agencies.

"**§ 131E-136. Definitions.–**As used in this Part, unless otherwise specified:

(a) 'Commission' means the Commission for Health Services.

(b) 'Home health agency' means a private organization which provides home health services.

(c) 'Home health services' means health care and medical services and medical supplies provided to an individual by a home health agency or by others under arrangements with the agency, on a visiting basis, in a place of temporary or permanent residence used as an individual's home. The services may include but are not limited to the following:

(1) Part-time or intermittent nursing care provided by or under the supervision of a registered nurse;
(2) Physical, occupational or speech therapy;
(3) Medical social services, home health aid services, and other therapeutic services;
(4) Medical supplies, other than drugs and biologicals, and the use of medical appliances.

"**§ 131E-137. Home health services to be provided in all counties.–**(a) Every county shall provide home health services as defined in this Part.

(b) For purposes of this section, home health services shall be as defined in this Part, except that these services may be provided by any organization listed in subsection (c) of this section.

(c) Home health services may be provided by a county health department, by a district health department, by a home health agency licensed under this Part, or by a public agency. The county may provide home health services by contract with another health department or with a home health agency or public agency in another county.

(d) After December 31, 1979, the provisions of this section shall not apply to Pamlico County as long as it continues to furnish an equivalent home health service to clients as provided by this section.

"**§ 131E-138. Licensure requirements.–**(a) No person shall operate a home health agency without a license obtained from the Department.

(b) An applicant shall provide nursing service and at least one other home health service, as stated in G.S. 131E-136(c).

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part.

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises.

"**§ 131E-139. Adverse action on a license.–**(a) The Department may suspend, revoke, annul, withdraw, recall, cancel or amend a license when there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, The Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a).

"**§ 131E-140. Rules and enforcement.–**(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home health agencies.

"**§ 131E-141. Inspection.–**(a) The Department shall inspect home health agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient,' or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, 'Communication between physician and patient,' or any other rule of law; provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, 'Public Records' defined. Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency

that the client has the right to object in writing to release of information or review of the client's records and that by an objection in writing the client may prohibit the inspection or release of the records.

"**§ 131E-142. Injunction.–** (a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home health agency without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"**§ 131E-143 through 131E-144: Reserved for future codification purposes.**

"Part D. Ambulatory Surgical Facility Licensure.

"**§ 131E-145. Title; purpose.–**(a) This Part shall be known as the 'Ambulatory Surgical Facility Licensure Act'.

(b) The purpose of this Part is to provide for the development, establishment and enforcement of basic standards:

(1) For the care and treatment of individuals in ambulatory surgical facilities; and

(2) For the maintenance and operation of ambulatory surgical facilities so as to ensure safe and adequate treatment of such individuals in ambulatory surgical facilities.

"**§ 131E-146. Definitions.–**As used in this Part, unless otherwise specified:

(a) 'Ambulatory surgical facility' means a public or private facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This term does not include the offices of private physicians or dentists, whether for individual or group practice, unless they elect to apply for licensing.

(b) 'Commission' means the North Carolina Medical Care Commission.

"**§ 131E-147. Licensure requirement.–**(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part.

(c) A license to operate an ambulatory surgical facility shall be annually renewed upon the filing and the department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises.

"**§ 131E-148. Adverse action on a license.–**(a) Subject to subsection (b), the Department is authorized to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a).

"**§ 131E-149. Rules and enforcement.–**(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Hospital Licensing Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to ambulatory surgical facilities.

"**§ 131E-150. Inspections.–**(a) The Department shall make or cause to be made inspections of ambulatory surgical facilities as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient,' or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, 'Communication between physician and patient,' or any other rule of law; provided the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished

information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, 'Public records' defined. Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object in writing to this release of information or review of the records and that by objecting in writing, the patient may prohibit the inspection or release of the records.

"**§131E-151. Penalties.–**A person who owns in whole or in part or operates an ambulatory surgical facility without a license is guilty of a misdemeanor, and upon conviction will be subject to a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense.

"**§ 131E-152. Injunction.–**(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an ambulatory surgical facility without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"**§ 131E-153 through 131E-154: Reserved for future codification purposes.**

"Article 7.

"Regulation of Ambulance Services.

"**§ 131E-155. Definitions.–**As used in this Article, unless otherwise specified:

(a) 'Ambulance' means any privately or publicly owned motor vehicle, aircraft, or vessel that is specially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation on the streets or highways, waterways or airways of this State of persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

(b) 'Ambulance attendant' means an individual who has completed a training program in emergency medical care and first aid approved by the Department and has been certified as an ambulance attendant by the Department.

(c) 'Ambulance provider' means an individual, firm, corporation or association who engages or professes to engage in the business or service of transporting patients in an ambulance.

(d) 'Commission' means the North Carolina Medical Care Commission.

(e) 'Emergency medical technician' means an individual who has completed a training program in emergency medical care at least equal to the National Standard Training Program for emergency medical technicians as defined by the United States

Department of Transportation and has been certified as an emergency medical technician by the Department.

(f) 'Patient' means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless such that the need for some medical assistance might be anticipated while being transported to or from a medical facility.

(g) 'Practical examination' means a test where an applicant for certification or recertification as an emergency medical technician or ambulance attendant demonstrates the ability to perform specified emergency medical care skills.

"**§ 131E-156. Permit required to operate ambulance.–**(a) No person, firm, corporation, or association, either as owner, agent, provider, or otherwise, shall furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of transporting patients upon the streets or highways, waterways or airways in North Carolina unless a valid permit from the Department has been issued for each ambulance used in the business or service.

(b) Before a permit may be issued for a vehicle to be operated as an ambulance, the ambulance provider must apply to the Department for an ambulance permit. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal permit for an ambulance, the Department shall determine that the vehicle for which the permit is issued meets all requirements as to equipment, design, supplies and sanitation as set forth in this Article and in the rules of the Commission and that the ambulance provider has the certified personnel necessary to operate the ambulance in accordance with this Article. Permits issued for ambulances shall be valid for a period specified by the Department, not to exceed one year.

(c) Duly authorized representatives of the Department may issue temporary permits for vehicles not meeting required standards for a period not to exceed 60 days, when it determines the public interest will be served.

(d) When a permit has been issued for an ambulance as specified by this Article, the vehicle and records relating to the maintenance and operation of the vehicle shall be open to inspection by duly authorized representatives of the Department at all reasonable times.

"**§ 131E-157. Standards for equipment; inspection of equipment and supplies required for ambulances.–**(a) The Commission shall adopt rules specifying equipment, sanitation, supply and design requirements for ambulances.

(b) The Department shall inspect each ambulance for compliance with the requirements set forth by the Commission and this Article when it deems an inspection is necessary. The Department shall maintain a record of the inspection.

(c) Upon a determination, based upon an inspection, that an ambulance fails to meet the requirements of this Article or rules adopted under this Article, the Department may suspend or revoke the permit for the ambulance concerned until these requirements are met.

"**§ 131E-158. Certified personnel required.–**(a) Every ambulance when transporting a patient on an emergency mission shall be occupied at a minimum by the following:

(1) At least one emergency medical technician who shall be responsible for the medical aspects of the mission prior to arrival at the medical facility, assuming no other individual of higher certification or license is available; and

(2) One ambulance attendant who is responsible for the operation of the vehicle and rendering assistance to the emergency medical technician.

(b) The Commission shall adopt rules setting forth exemptions to the requirements stated in (a) of this section applicable to situations where exemptions are considered by the Commission to be in the public interest.

"**§ 131E-159. Requirements for certification.–**(a) An individual seeking certification as an emergency medical technician or ambulance attendant shall apply to the Department using forms prescribed by that agency. The Department's representatives shall examine the applicant for emergency medical technician by written and practical examination and the applicant for ambulance attendant by written (or oral if requested) and practical examination. The Department shall issue a certificate to the applicant who meets all the requirements set forth in this Article and the rules adopted for this Article and who successfully completes the examinations required for certification. Emergency medical technician and ambulance attendant certificates shall be valid for a period not to exceed two years and may be renewed after reexamination if the holder meets the requirements set forth in the rules of the Commission. The Department is authorized to revoke or suspend a certificate at any time it determines that the holder no longer meets the qualifications prescribed for emergency medical technicians or for ambulance attendants.

(b) The Commission shall adopt rules setting forth the qualifications required for certification of ambulance attendants and emergency medical technicians.

(c) Duly authorized representatives of the Department may issue temporary certificates with or without examination upon finding that this action will be in the public interest. Temporary certificates shall be valid for a period not exceeding 90 days.

"**§ 131E-160. Exemptions.–**The following vehicles are exempt from the provisions of this Article:

(1) Privately owned vehicles not regularly used in the business of transporting patients;

(2) A vehicle rendering service as an ambulance in case of a major catastrophe or emergency, when the permitted ambulances based in the locality of the catastrophe or emergency are insufficient to render the services required;

(3) Any ambulance based outside this State, except that an ambulance which receives a patient within this State for transportation to a location within this State shall comply with the provisions of this Article;

(4) Ambulances owned and operated by an agency of the United States government; and

(5) Vehicles owned and operated by rescue squads chartered by the State of North Carolina as nonprofit corporations or associations which are not regularly used to transport sick, injured, wounded or otherwise incapacitated or helpless persons except as a part of rescue operations.

"**§ 131E-161. Violation declared misdemeanor.–**It shall be the responsibility of the ambulance provider to ensure that the ambulance operation complies with the provisions of this Article and all rules adopted for this Article. Upon the violation of any part of this Article or any rule adopted under authority of this Article, the Department shall have the power to revoke or suspend the permits of all vehicles owned or operated by the violator. The operation of an ambulance without a valid permit or after a permit has been suspended or revoked or without an emergency medical technician and ambulance attendant aboard as required by G.S. 131E-158, shall constitute a misdemeanor punishable by a fine or imprisonment or both in the discretion of the court.

"**§ 131E-162 through 131E-164: Reserved for future codification purposes.**

"Article 8.

"Cardiac Rehabilitation Certification Program.

"**§ 131E-165. Title; purpose.–**(a) This Article shall be known as the 'Cardiac Rehabilitation Certification Program'.

(b) The purpose of this Article is to provide for the development, establishment, and enforcement of basic rules and certification:

(1) For the care and treatment of individuals in out- of-hospital cardiac rehabilitation programs; and

(2) For the maintenance and operation of cardiac rehabilitation programs to ensure safe and adequate treatment of individuals in cardiac rehabilitation programs.

"**§ 131E-166. Definitions.–**As used in this Article, unless otherwise specified:

(1) 'Cardiac Rehabilitation Program' means a program certified under this Article for the delivery of cardiac rehabilitation services to clients in environments other than hospitals and includes, but shall not be limited to, coordinated, physician- directed, individualized programs of therapeutic activity and adaption designed to assist the cardiac patient in attaining the highest rehabilitative potential.

(2) 'Certification' means the issuance of a certificate by the Department upon determination that cardiac rehabilitation services offered at a given program site meet all cardiac rehabilitation program rules.

"**§ 131E-167. Certificate requirement.–**(a) Applications for certification shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A certificate shall be granted to the applicant for a period not to exceed two years upon a determination by the Department that the applicant has substantially complied with the provisions of this Article and the rules promulgated by the Department under this Article.

(b) A provisional certificate may be issued for a period not to exceed six months to a program:

(1) That does not substantially comply with the rules, when failure to comply does not endanger the health, safety, or welfare of the clients being served by the program;

(2) During the initial stages of operation if determined appropriate by the Department.

(c) Prior to offering a cardiac rehabilitation program as defined in this Article, such a program must be inspected, evaluated, and certified as having substantially met the rules adopted by the Department under this Article.

(d) A certificate to operate a Cardiac Rehabilitation Program shall be renewed upon the successful re-evaluation of the program as stated in the rules adopted pursuant to this Article.

(e) Each certificate shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(f) A certificate shall be posted in a conspicuous place on the certified premises.

"**§ 131E-168. Adverse action on a certificate.–**(a) Subject to subsection (b), the Department is authorized to deny a new or renewal certificate and to suspend or revoke an existing certificate upon determination that there has been a substantial failure to comply with the provisions of this Article or the rules promulgated under this Article.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a).

"**§ 131E-169. Rules and enforcement.–**(a) The Department is authorized to adopt, amend, and repeal all rules as may be designed to further the accomplishment of this Article.

(b) The Department shall enforce the rules adopted for the certification of cardiac rehabilitation programs.

"**§ 131E-170. Inspections.–**(a) The Department shall make or cause to be made inspections of Cardiac Rehabilitation Programs as it deems necessary. The Department is empowered to delegate to a State officer, agent, board, bureau or division of State government the authority to make these inspections according to the rules promulgated by the Department. In addition, an individual who is not a State officer or agent and who is delegated the authority to make these inspections must be approved by the Department. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient,' or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the program being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through a program who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, 'Communication between physician and patient,' or any other rule of law, provided the patient has not made written objection to this disclosure. The program, its employees, and any person

interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, 'Public Records' defined. Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the program that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

"**§ 131E-171 through 131E-174: Reserved for future codification purposes.**

"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.

(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 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 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.

"**§ 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 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, unless they elect to apply for licensure under Chapter 131E, Article 6, Part D of the General Statutes.

(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.

(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) an increase or decrease in the total number of beds, (ii) a redistribution of beds among different categories, or (iii) a relocation of beds from one physical facility or site to another, if the change exceeds 10 beds or ten percent (10%) of bed capacity, whichever is less, in any two-year period.

(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; 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; and ambulatory surgical facilities.

(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 organization, 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.

(12) '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 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. Such term does include psychiatric hospitals, as defined in subdivision (21) of this section, or tuberculosis hospitals, as defined in subdivision (27) of this section.

(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. This term includes intermediate care facilities for the mentally retarded or persons with related conditions such as epilepsy, cerebral palsy, or autism.

(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 four hundred thousand dollars ($400,000). This does not include medical equipment acquired by or on behalf of a clincial laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of Section 1861(s) of that act. In determining whether medical equipment costs more than four hundred thousand dollars ($400,000), 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 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 six hundred thousand dollars ($600,000) 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. 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;

c. The obligation of any capital expenditure by or on behalf of any health care facility which is associated with a change in bed capacity;

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;

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;

f. The offering of a health service by or on behalf of a health care facility if the service was not offered by or behalf of the health care facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum. 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;

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;

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;

m. Any conversion of nonhealth care facility beds to health care 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.

(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.

(18) 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.

(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 facility.

(21) '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.

(22) 'Rehabilitation facility' means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision.

(23) 'Skilled nursing 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 Health Plan' means the plan required by Title XV of the Public Health Service Act, as amended, and rules and regulations implementing that act.

(25) '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 Title XV of the Public Health Service Act, 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.

"**§ 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 of the General Statutes;

(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. 131E-188.

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.

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

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the Department. An obligation for a capital expenditure is incurred 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 for the construction, acquisition, lease or financing of a capital asset;

(2) The governing body of a health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its 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 facility may acquire major medical equipment to be used solely for research, offer 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 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 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 facility has received an exemption pursuant to subsection (a) of this section, it shall not use the major medical equipment, offer the institutional health services, or use the equipment or 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, 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 facility controlled, directly or indirectly, by a health maintenance organization, 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 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 shall 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 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 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 facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the Department shall 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 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.

"**§ 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.

"**§ 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:

(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, if any, 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, 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.

(3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that 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.

(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 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.

(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 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.

(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 HMOs. These needs and circumstances shall be limited to:

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 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.

(13) The contribution of the proposed service in meeting the health-related needs of members of medically underserved groups, such as low income persons, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to 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:

a. The extent to which medically underserved populations currently use the applicant's proposed 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 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; and

d. The extent to which 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.

(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.

(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.

(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.

"**§ 131E-184. Required approvals.–**(a) Except as provided in subsection (b), the Department shall issue a certificate of need for a proposed capital expenditure if:

(1) The capital expenditure is required (i) 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 comply with State licensure standards, or (iii) 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.

(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 are subject to review under the criteria developed under G.S. 131E-183.

"**§ 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.

(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 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.

"**§ 131E-186. 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.

"**§ 131E-187. 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 its decision.

"**§ 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 shall be entitled to a contested case hearing under Article 3 of Chapter 150A of the General Statues, if the Department receives a request therefor within 30 days after its decision.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review of the final agency decision pursuant to Article 4 of Chapter 150A of the General Statutes.

(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 facilities within that geographic area; health care 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 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 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 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 holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the Department. If, after reviewing the progress, the Department determines that the holder of the certificate is not meeting the timetable and not making a good faith effort to meet it, the Department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate.

(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.

(c) The Department may 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. 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 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 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.

(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 licensure for such facility may be revoked or suspended by the Medical Care Commission, or the Commission for Health Services, as appropriate.

(f) 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 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 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.

"**§ 131E-191. 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. 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 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.

"**§ 131E-192 through 131E-199: Reserved for future codification purposes.**"

Sec. 2. Section 4 of Chapter 1182, Session Laws of 1977 (Second Session 1978), as amended by Section 30 of Chapter 1127, Session Laws of 1981, and as amended by Section 1(a) of Chapter 1242, Session Laws of 1981 (Regular Session, 1982), is not repealed and is hereby reenacted to apply to Article 9 of Chapter 131E of the General Statutes as of the effective date of this act. Section 1(b) of Chapter 1242, Session Laws of 1981 (Regular Session, 1982) is not repealed and is hereby reenacted to apply to Article 9 of Chapter 131E of the General Statutes as of the effective date of this act.

Sec. 3. Notwithstanding the foregoing, any unit of government, or units of government acting jointly, that as of December 31, 1983, is operating a hospital or hospitals pursuant to Articles 2 or 2A of Chapter 131 of the General Statutes may continue to operate pursuant to the provisions of those Articles as they existed on December 31, 1983, to the extent that those Articles are inconsistent with this Chapter. However, a unit of government that has been operating a hospital pursuant to those Articles may choose to continue operations under the provisions of one of the Parts of Article 2 of this Chapter by adopting an appropriate resolution and by satisfying all other requirements of the relevant Part of Article 2 of this Chapter.

Sec. 4. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 5. Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes, all of Chapter 131 except for Article 12, and Chapter 131B of the General Statutes shall remain in full force and effect from the date of ratification of this act until December 31, 1983. This act shall not affect any litigation pending under any of those provisions on or before December 31, 1983.

Sec. 6. Chapter 143 of the 1983 Session Laws and all other Chapters of the 1983 Session Laws amending Chapters 131 or 131B of the General Statutes or Sections 3(a), 9(e), 9.5, 9.7, 170.1, 170.2, 230, 232 through 235, and 264 through 277 of Chapter 130 of the General Statutes are not repealed by this act but are hereby reenacted and

shall be inserted in the appropriate place in Chapter 131E of the General Statutes by the codifier of statutes.

Sec. 7. This act shall become effective January 1, 1984, except that Part B of Article 2 of Chapter 131E of the General Statutes is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1983.