§ 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(c) Repealed by Session Laws 1993, c. 7, s. 11.

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

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

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

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

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

(i) If the Department determines that the recipient of a certificate of need, or its successor, is operating a service which materially differs from the representations made in its application for that certificate of need, the Department may bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized for injunctive relief, temporary or permanent, requiring the recipient, or its successor, to materially comply with the representations in its application. The Department may also bring an action in Wake County Superior Court or the superior court of any county in which the certificate of need is to be utilized to enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in accordance with this subsection and G.S. 131E-181(b). (1977, 2nd Sess., c. 1182, s. 2; 1981, c. 651, s. 13; 1983, c. 775, s. 1; 1985 (Reg. Sess., 1986),

c. 968, s. 2; 1987, c. 511, s. 1; 1991, c. 692, s. 9; 1993, c. 7, s. 11; 1997-443, s. 11A.118(a); 1998-215, s. 80.)