

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 905

Short Title: Certificate of Need Amendments.

(Public)

Sponsors: Representative Culpepper.

Referred to: Rules, Calendar, and Operations of the House.

March 28, 2005

A BILL TO BE ENTITLED
AN ACT TO AMEND THE CERTIFICATE OF NEED LAWS.

The General Assembly of North Carolina enacts:

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

"§ 131E-176. Definitions.

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

(1) "Adult care home" means a facility with seven or more beds licensed under G.S. 131D-2 or Chapter 131E of the General Statutes that provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age and disability and for whom medical care is only occasional or incidental.

(1a) **(See note)** "Air ambulance" means aircraft used to provide air transport of sick or injured persons between destinations within the State.

(1b) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under

1 G.S. Chapter 131E, Article 6, Part D, but the performance of
2 incidental, limited ambulatory surgical procedures which do not
3 constitute an ambulatory surgical program as defined in subdivision
4 (1b) and which are performed in a physician's or dentist's office does
5 not make that office an ambulatory surgical facility.

6 (1c) "Ambulatory surgical program" means a formal program for providing
7 on a same-day basis those surgical procedures which require local,
8 regional or general anesthesia and a period of post-operative
9 observation to patients whose admission for more than 24 hours is
10 determined, prior to surgery, to be medically unnecessary.

11 (2) "Bed capacity" means space used exclusively for inpatient care,
12 including space designed or remodeled for licensed inpatient beds even
13 though temporarily not used for such purposes. The number of beds to
14 be counted in any patient room shall be the maximum number for
15 which adequate square footage is provided as established by rules of
16 the Department except that single beds in single rooms are counted
17 even if the room contains inadequate square footage. The term "bed
18 capacity" also refers to the number of dialysis stations in kidney
19 disease treatment centers, including freestanding dialysis units.

20 (2a) "Bone marrow transplantation services" means the process of infusing
21 bone marrow into persons with diseases to stimulate the production of
22 blood cells.

23 (2b) "Burn intensive care services" means services provided in a unit
24 designed to care for patients who have been severely burned.

25 (2c) "Campus" means the adjacent grounds and buildings, or grounds and
26 buildings not separated by more than a public right-of-way, of a health
27 service facility and related health care entities.

28 (2d) "Capital expenditure" means an expenditure for a project, including
29 but not limited to the cost of construction, engineering, and equipment
30 which under generally accepted accounting principles is not properly
31 chargeable as an expense of operation and maintenance. Capital
32 expenditure includes, in addition, the fair market value of an
33 acquisition made by donation, lease, or comparable arrangement by
34 which a person obtains equipment, the expenditure for which would
35 have been considered a capital expenditure under this Article if the
36 person had acquired it by purchase.

37 ~~(2e) "Cardiac angioplasty equipment" means the cardiac catheterization
38 equipment used in surgery for the restoration, repair, or reconstruction
39 of coronary blood vessels.~~

40 (2f) "Cardiac catheterization equipment" means the equipment ~~required to
41 perform diagnostic procedures or therapeutic intervention in which a
42 catheter is introduced into a vein or artery and threaded through the
43 circulatory system to the heart.~~used to provide cardiac catheterization
44 services.

- 1 (2g) "Cardiac catheterization services" means those procedures, excluding
2 pulmonary angiography procedures, in which a catheter is introduced
3 into a vein or artery and threaded through the circulatory system into
4 the heart specifically to diagnose abnormalities in the motion,
5 contraction, and blood flow of the moving heart or to perform surgical
6 therapeutic interventions to restore, repair, or reconstruct the coronary
7 blood vessels of the heart.
- 8 (3) "Certificate of need" means a written order which affords the person so
9 designated as the legal proponent of the proposed project the
10 opportunity to proceed with the development of such project.
- 11 (4) Repealed by Session Laws 1993, c. 7, s. 2.
- 12 (5) "Change in bed capacity" means (i) any relocation of health service
13 facility beds, or dialysis stations from one licensed facility or campus
14 to another, or (ii) any redistribution of health service facility bed
15 capacity among the categories of health service facility bed as defined
16 in G.S. 131E-176(9c), or (iii) any increase in the number of health
17 service facility beds, or dialysis stations in kidney disease treatment
18 centers, including freestanding dialysis units.
- 19 (5a) "Chemical dependency treatment facility" means a public or private
20 facility, or unit in a facility, which is engaged in providing 24-hour a
21 day treatment for chemical dependency or substance abuse. This
22 treatment may include detoxification, administration of a therapeutic
23 regimen for the treatment of chemically dependent or substance
24 abusing persons and related services. The facility or unit may be:
- 25 a. A unit within a general hospital or an attached or freestanding
26 unit of a general hospital licensed under Article 5, Chapter
27 131E, of the General Statutes,
- 28 b. A unit within a psychiatric hospital or an attached or
29 freestanding unit of a psychiatric hospital licensed under Article
30 1A of General Statutes Chapter 122 or Article 2 of General
31 Statutes Chapter 122C,
- 32 c. A freestanding facility specializing in treatment of persons who
33 are substance abusers or chemically dependent licensed under
34 Article 1A of General Statutes Chapter 122 or Article 2 of
35 General Statutes Chapter 122C; and may be identified as
36 "chemical dependency, substance abuse, alcoholism, or drug
37 abuse treatment units," "residential chemical dependency,
38 substance abuse, alcoholism or drug abuse facilities," or by
39 other names if the purpose is to provide treatment of chemically
40 dependent or substance abusing persons, but shall not include
41 social setting detoxification facilities, medical detoxification
42 facilities, halfway houses or recovery farms.
- 43 (5b) "Chemical dependency treatment beds" means beds that are licensed
44 for the inpatient treatment of chemical dependency. Residential

1 treatment beds for the treatment of chemical dependency or substance
2 abuse are chemical dependency treatment beds. Chemical dependency
3 treatment beds shall not include beds licensed for detoxification.

4 (6) "Department" means the North Carolina Department of Health and
5 Human Services.

6 (7) To "develop" when used in connection with health services, means to
7 undertake those activities which will result in the offering of
8 institutional health service or the incurring of a financial obligation in
9 relation to the offering of such a service.

10 (7a) "Diagnostic center" means a freestanding facility, program, or
11 provider, including but not limited to, physicians' offices, clinical
12 laboratories, radiology centers, and mobile diagnostic programs, in
13 which the total cost of all the medical diagnostic equipment utilized by
14 the facility which cost ten thousand dollars (\$10,000) or more exceeds
15 five hundred thousand dollars (\$500,000). In determining whether the
16 medical diagnostic equipment in a diagnostic center costs more than
17 five hundred thousand dollars (\$500,000), the costs of the equipment,
18 studies, surveys, designs, plans, working drawings, specifications,
19 construction, installation, and other activities essential to acquiring and
20 making operational the equipment shall be included. The capital
21 expenditure for the equipment shall be deemed to be the fair market
22 value of the equipment or the cost of the equipment, whichever is
23 greater.

24 (7b) "Expedited review" means the status given to an application's review
25 process when the applicant petitions for the review and the Department
26 approves the request based on findings that all of the following are
27 met:

28 a. The review is not competitive.

29 b. The proposed capital expenditure is less than five million
30 dollars (\$5,000,000).

31 c. A request for a public hearing is not received within the time
32 frame defined in G.S. 131E-185.

33 d. The agency has not determined that a public hearing is in the
34 public interest.

35 (7c) "Gamma knife" means equipment which emits photon beams from a
36 stationary radioactive cobalt source to treat lesions deep within the
37 brain and is one type of stereotactic radiosurgery.

38 (8), (9) Repealed by Session Laws 1987, c. 511, s. 1.

39 (9a) "Health service" means an organized, interrelated medical, diagnostic,
40 therapeutic, and/or rehabilitative activity that is integral to the
41 prevention of disease or the clinical management of a sick, injured, or
42 disabled person. "Health service" does not include administrative and
43 other activities that are not integral to clinical management.

- 1 (9b) "Health service facility" means a hospital; long-term care hospital;
2 psychiatric facility; rehabilitation facility; nursing home facility; adult
3 care home; kidney disease treatment center, including freestanding
4 hemodialysis units; intermediate care facility for the mentally retarded;
5 home health agency office; chemical dependency treatment facility;
6 diagnostic center; ~~oncology treatment center; hospice,~~ hospice office,
7 hospice inpatient facility, hospice residential care facility; and
8 ambulatory surgical facility.
- 9 (9c) "Health service facility bed" means a bed licensed for use in a health
10 service facility in the categories of (i) acute care beds; (ii) psychiatric
11 beds; (iii) rehabilitation beds; (iv) nursing home beds; (v) intermediate
12 care beds for the mentally retarded; (vi) chemical dependency
13 treatment beds; (vii) hospice inpatient facility beds; (viii) hospice
14 residential care facility beds; ~~and~~ (ix) adult care home beds; and
15 (x) long-term care hospital beds.
- 16 (10) "Health maintenance organization (HMO)" means a public or private
17 organization which has received its certificate of authority under
18 Article 67 of Chapter 58 of the General Statutes and which either is a
19 qualified health maintenance organization under Section 1310(d) of
20 the Public Health Service Act or:
- 21 a. Provides or otherwise makes available to enrolled participants
22 health care services, including at least the following basic
23 health care services: usual physician services, hospitalization,
24 laboratory, X ray, emergency and preventive services, and
25 out-of-area coverage;
- 26 b. Is compensated, except for copayments, for the provision of the
27 basic health care services listed above to enrolled participants
28 by a payment which is paid on a periodic basis without regard
29 to the date the health care services are provided and which is
30 fixed without regard to the frequency, extent, or kind of health
31 service actually provided; and
- 32 c. Provides physicians' services primarily (i) directly through
33 physicians who are either employees or partners of such
34 organizations, or (ii) through arrangements with individual
35 physicians or one or more groups of physicians organized on a
36 group practice or individual practice basis.
- 37 (10a) "Heart-lung bypass machine" means the equipment used to perform
38 extra-corporeal circulation and oxygenation during surgical
39 procedures.
- 40 (11) Repealed by Session Laws 1991, c. 692, s. 1.
- 41 (12) "Home health agency" means a private organization or public agency,
42 whether owned or operated by one or more persons or legal entities,
43 which furnishes or offers to furnish home health services.

1 "Home health services" means items and services furnished to an
2 individual by a home health agency, or by others under arrangements
3 with such others made by the agency, on a visiting basis, and except
4 for paragraph e. of this subdivision, in a place of temporary or
5 permanent residence used as the individual's home as follows:

- 6 a. Part-time or intermittent nursing care provided by or under the
7 supervision of a registered nurse;
8 b. Physical, occupational or speech therapy;
9 c. Medical social services, home health aid services, and other
10 therapeutic services;
11 d. Medical supplies, other than drugs and biologicals and the use
12 of medical appliances;
13 e. Any of the foregoing items and services which are provided on
14 an outpatient basis under arrangements made by the home
15 health agency at a hospital or nursing home facility or
16 rehabilitation center and the furnishing of which involves the
17 use of equipment of such a nature that the items and services
18 cannot readily be made available to the individual in his home,
19 or which are furnished at such facility while he is there to
20 receive any such item or service, but not including
21 transportation of the individual in connection with any such
22 item or service.

23 (13) "Hospital" means a public or private institution which is primarily
24 engaged in providing to inpatients, by or under supervision of
25 physicians, diagnostic services and therapeutic services for medical
26 diagnosis, treatment, and care of injured, disabled, or sick persons, or
27 rehabilitation services for the rehabilitation of injured, disabled, or sick
28 persons. The term includes all facilities licensed pursuant to
29 G.S. 131E-77 of the General Statutes, ~~Statutes~~, except long-term care
30 hospitals.

31 (13a) "Hospice" means any coordinated program of home care with
32 provision for inpatient care for terminally ill patients and their
33 families. This care is provided by a medically directed
34 interdisciplinary team, directly or through an agreement under the
35 direction of an identifiable hospice administration. A hospice program
36 of care provides palliative and supportive medical and other health
37 services to meet the physical, psychological, social, spiritual and
38 special needs of patients and their families, which are experienced
39 during the final stages of terminal illness and during dying and
40 bereavement.

41 (13b) "Hospice inpatient facility" means a freestanding licensed hospice
42 facility or a designated inpatient unit in an existing health service
43 facility which provides palliative and supportive medical and other
44 health services to meet the physical, psychological, social, spiritual,

1 and special needs of terminally ill patients and their families in an
2 inpatient setting. For purposes of this Article only, a hospital which
3 has a contractual agreement with a licensed hospice to provide
4 inpatient services to a hospice patient as defined in G.S. 131E-201(4)
5 and provides those services in a licensed acute care bed is not a
6 hospice inpatient facility and is not subject to the requirements in
7 G.S. 131E-176(5)(ii) for hospice inpatient beds.

8 (13c) "Hospice residential care facility" means a freestanding licensed
9 hospice facility which provides palliative and supportive medical and
10 other health services to meet the physical, psychological, social,
11 spiritual, and special needs of terminally ill patients and their families
12 in a group residential setting.

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

14 (14a) "Intermediate care facility for the mentally retarded" means facilities
15 licensed pursuant to Article 2 of Chapter 122C of the General Statutes
16 for the purpose of providing health and habilitative services based on
17 the developmental model and principles of normalization for persons
18 with mental retardation, autism, cerebral palsy, epilepsy or related
19 conditions.

20 (14a1) "Kidney disease treatment center" means a facility that is certified as
21 an end-stage renal disease facility by the Centers for Medicare and
22 Medicaid Services, Department of Health and Human Services,
23 pursuant to 42 C.F.R. § 405.

24 (14b) Repealed by Session Laws 1991, c. 692, s. 1.

25 (14b1) "Linear accelerator" means a machine used to produce ionizing
26 radiation in excess of one million electron volts in the form of a beam
27 of electrons or photons to treat cancer patients.

28 (14c) "Lithotripter" means extra-corporeal shock wave technology used to
29 treat persons with kidney stones and gallstones.

30 (14c1) "Long-term care hospital" means a hospital that has been classified
31 and designated as a long-term care hospital by the Centers for
32 Medicare and Medicaid Services, Department of Health and Human
33 Services, pursuant to 42 C.F.R. § 412.

34 (14d) Repealed by Session Laws 2001-234, s. 2, effective January 1, 2002.

35 (14e) "Magnetic resonance imaging scanner" means medical imaging
36 equipment that uses nuclear magnetic resonance.

37 (14f) "Major medical equipment" means a single unit or single system of
38 components with related functions which is used to provide medical
39 and other health services and which costs more than seven hundred
40 fifty thousand dollars (\$750,000). In determining whether the major
41 medical equipment costs more than seven hundred fifty thousand
42 dollars (\$750,000), the costs of the equipment, studies, surveys,
43 designs, plans, working drawings, specifications, construction,
44 installation, and other activities essential to acquiring and making

1 operational the major medical equipment shall be included. The capital
2 expenditure for the equipment shall be deemed to be the fair market
3 value of the equipment or the cost of the equipment, whichever is
4 greater. Major medical equipment does not include replacement
5 equipment as defined in this section.

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

7 (15a) "Multispecialty ambulatory surgical program" means a formal program
8 for providing on a same-day basis surgical procedures for at least three
9 of the following specialty areas: gynecology, otolaryngology, plastic
10 surgery, general surgery, ophthalmology, orthopedic, or oral surgery.

11 (15b) "Neonatal intensive care services" means those services provided by a
12 health service facility to high-risk newborn infants who require
13 constant nursing care, including but not limited to continuous
14 cardiopulmonary and other supportive care.

15 (16) "New institutional health services" means any of the following:

16 a. The construction, development, or other establishment of a new
17 health service facility.

18 b. The obligation by any person of a capital expenditure exceeding
19 two million dollars (\$2,000,000) to develop or expand a health
20 service or a health service facility, or which relates to the
21 provision of a health service. The cost of any studies, surveys,
22 designs, plans, working drawings, specifications, and other
23 activities, including staff effort and consulting and other
24 services, essential to the acquisition, improvement, expansion,
25 or replacement of any plant or equipment with respect to which
26 an expenditure is made shall be included in determining if the
27 expenditure exceeds two million dollars (\$2,000,000).

28 c. Any change in bed capacity as defined in G.S. 131E-176(5).

29 d. The offering of dialysis services or home health services by or
30 on behalf of a health service facility if those services were not
31 offered within the previous 12 months by or on behalf of the
32 facility.

33 e. A change in a project that was subject to certificate of need
34 review and for which a certificate of need was issued, if the
35 change is proposed during the development of the project or
36 within one year after the project was completed. For purposes
37 of this subdivision, a change in a project is a change of more
38 than fifteen percent (15%) of the approved capital expenditure
39 amount or the addition of a health service that is to be located in
40 the facility, or portion thereof, that was constructed or
41 developed in the project.

42 f. The development or offering of a health service as listed in this
43 subdivision by or on behalf of any person:

44 1. Bone marrow transplantation services.

1 in North Carolina prior to the adoption of this provision, if such
2 equipment would otherwise be subject to review in accordance
3 with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had
4 been acquired in North Carolina.

5 t. Repealed by Session Laws 2001-242, s. 4, effective June 23,
6 2001.

7 u. **(See note)** The construction, development, establishment,
8 increase in the number, or relocation of an operating room or
9 operating rooms, other than the relocation of an operating room
10 or operating rooms within the same building or on the same
11 grounds or to grounds not separated by more than a public
12 right-of-way adjacent to the grounds where the operating room
13 is or operating rooms are currently located.

14 (17) "North Carolina State Health Coordinating Council" means the
15 Council that prepares, with the Department of Health and Human
16 Services, the State Medical Facilities Plan.

17 (17a) "Nursing care" means:

- 18 a. Skilled nursing care and related services for residents who
19 require medical or nursing care;
20 b. Rehabilitation services for the rehabilitation of injured,
21 disabled, or sick persons; or
22 c. Health-related care and services provided on a regular basis to
23 individuals who because of their mental or physical condition
24 require care and services above the level of room and board,
25 which can be made available to them only through institutional
26 facilities.

27 These are services which are not primarily for the care and treatment
28 of mental diseases.

29 (17b) "Nursing home facility" means a health service facility whose bed
30 complement of health service facility beds is composed principally of
31 nursing home facility beds.

32 (18) To "offer," when used in connection with health services, means that
33 the person holds himself out as capable of providing, or as having the
34 means for the provision of, specified health services.

35 ~~(18a) "Oncology treatment center" means a facility, program, or provider,~~
36 ~~other than an existing health service facility that provides services for~~
37 ~~diagnosis, evaluation, or treatment of cancer and its aftereffects or~~
38 ~~secondary results and for which the total cost of all the medical~~
39 ~~equipment utilized by the center, exceeds two hundred fifty thousand~~
40 ~~dollars (\$250,000). In determining whether costs are more than two~~
41 ~~hundred fifty thousand dollars (\$250,000), the costs of equipment,~~
42 ~~studies, surveys, designs, plans, working drawings, specifications,~~
43 ~~construction, installation, and other activities essential to acquiring and~~
44 ~~making operational the facility, program, or provider shall be included.~~

~~The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.~~

(18b) "Open-heart surgery services" means the provision of surgical procedures that utilize a heart-lung bypass machine during surgery to correct cardiac and coronary artery disease or defects.

(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.

(19a) "Positron emission tomography scanner" means equipment that utilizes a computerized radiographic technique that employs radioactive substances to examine the metabolic activity of various body structures.

(20) "Project" or "capital expenditure project" means a proposal to undertake a capital expenditure that results in the offering of a new institutional health service as defined by this Article. A project, or capital expenditure project, or proposed project may refer to the project from its earliest planning stages up through the point at which the specified new institutional health service may be offered. In the case of facility construction, the point at which the new institutional health service may be offered must take place after the facility is capable of being fully licensed and operated for its intended use, and at that time it shall be considered a health service facility.

(21) "Psychiatric facility" means a public or private facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes and which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

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

(22a) "Replacement equipment" means equipment that costs less than two million dollars (\$2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital expenditure for

1 the equipment shall be deemed to be the fair market value of the
2 equipment or the cost of the equipment, whichever is greater.

3 (23) Repealed by Session Laws 1991, c. 692, s. 1.

4 (24) Repealed by Session Laws 1993, c. 7, s. 2.

5 (24a) "Service area" means the area of the State, as defined in the State
6 Medical Facilities Plan or in rules adopted by the Department, which
7 receives services from a health service facility.

8 (24a1) "Simulator" means a machine that produces high quality diagnostic
9 radiographs and precisely reproduces the geometric relationships of
10 megavoltage radiation therapy equipment to the patient.

11 (24b) "Solid organ transplantation services" means the provision of surgical
12 procedures and the interrelated medical services that accompany the
13 surgery to remove an organ from a patient and surgically implant an
14 organ from a donor.

15 (24c) "Specialty ambulatory surgical program" means a formal program for
16 providing on a same-day basis surgical procedures for only the
17 specialty areas identified on the ambulatory surgical facility's 1993
18 Application for Licensure as an Ambulatory Surgical Center and
19 authorized by its certificate of need.

20 (25) "State Medical Facilities Plan" means the plan prepared by the
21 Department of Health and Human Services and the North Carolina
22 State Health Coordinating Council, and approved by the Governor. In
23 preparing the Plan, the Department and the State Health Coordinating
24 Council shall maintain a mailing list of persons who have requested
25 notice of public hearings regarding the Plan. Not less than 15 days
26 prior to a scheduled public hearing, the Department shall notify
27 persons on its mailing list of the date, time, and location of the hearing.
28 The Department shall hold at least one public hearing prior to the
29 adoption of the proposed Plan and at least six public hearings after the
30 adoption of the proposed Plan by the State Health Coordinating
31 Council. The Council shall accept oral and written comments from the
32 public concerning the Plan.

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

34 (27) Repealed by Session Laws 1987, c. 511, s. 1."

35 **SECTION 2.** G.S. 131E-180 is repealed.

36 **SECTION 3.** G.S. 131E-182(a) reads as rewritten:

37 "(a) The Department in its rules shall establish schedules for submission and
38 review of completed applications. The schedules shall provide that applications for
39 similar proposals in the same ~~health~~-service area will be reviewed together."

40 **SECTION 4.** G.S. 131E-185(a1) reads as rewritten:

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

- 1 (1) Any person may file written comments and exhibits concerning a
2 proposal under review with the Department, not later than 30 days
3 after the date on which the application begins review. These written
4 comments may include:
- 5 a. Facts relating to the service area proposed in the application;
 - 6 b. Facts relating to the representations made by the applicant in its
7 application, and its ability to perform or fulfill the
8 representations made;
 - 9 c. Discussion and argument regarding whether, in light of the
10 material contained in the application and other relevant factual
11 material, the application complies with relevant review criteria,
12 plans, and standards.
- 13 (2) No more than 20 days from the conclusion of the written comment
14 period, the Department shall ensure that a public hearing is conducted
15 at a place within the appropriate ~~health~~-service area if one or more of
16 the following circumstances apply; the review to be conducted is
17 competitive; the proponent proposes to spend five million dollars
18 (\$5,000,000) or more; a written request for a public hearing is received
19 before the end of the written comment period from an affected party as
20 defined in G.S. 131E-188(c); or the agency determines that a hearing is
21 in the public interest. At such public hearing oral arguments may be
22 made regarding the application or applications under review; and this
23 public hearing shall include the following:
- 24 a. An opportunity for the proponent of each application under
25 review to respond to the written comments submitted to the
26 Department about its application;
 - 27 b. An opportunity for any ~~affected person as defined in~~
28 ~~G.S. 131E-188(e),~~ person, except one of the proponents, to
29 ~~present comments regarding comment on the~~ applications under
30 review;
 - 31 c. An opportunity for a representative of the Department, or such
32 other person or persons who are designated by the Department
33 to conduct the hearing, to question each proponent of
34 applications under review with regard to the contents of the
35 application;
- 36 The Department shall maintain a recording of any required public
37 hearing on an application until such time as the Department's final
38 decision is issued, or until a final agency decision is issued pursuant to
39 a contested case hearing, whichever is later; and any person may
40 submit a written synopsis or verbatim statement that contains the oral
41 presentation made at the hearing.
- 42 (3) The Department may contract or make arrangements with a person or
43 persons located within each ~~health~~-service area for the conduct of such
44 public hearings as may be necessary. The Department shall publish, in

1 each ~~health~~-service area, notice of the contracts that it executes for the
2 conduct of those hearings.

3 (4) Within 15 days from the beginning of the review of an application or
4 applications proposing the same service within the same service area,
5 the Department shall publish notice of the deadline for receipt of
6 written comments, of the time and place scheduled for the public
7 hearing regarding the application or applications under review, and of
8 the name and address of the person or agency that will preside.

9 (5) The Department shall maintain all written comments submitted to it
10 during the written comment stage and any written submissions
11 received at the public hearing as part of the Department's file
12 respecting each application or group of applications under review by it.
13 The application, written comments, and public hearing comments,
14 together with all documents that the Department used in arriving at its
15 decision, from whatever source, and any documents that reflect or set
16 out the Department's final analysis of the application or applications
17 under review, shall constitute the Department's record for the
18 application or applications under review."

19 **SECTION 5.** G.S. 131E-188(c) reads as rewritten:

20 "(c) The term "affected persons" includes: the applicant; any person residing
21 within the geographic area served or to be served by the applicant; any person who
22 regularly uses health service facilities within that geographic area; health service
23 facilities and health maintenance organizations (HMOs) located in the ~~health~~-service
24 area in which the project is proposed to be located, which provide services similar to the
25 services of the facility under review; health service facilities and HMOs which, prior to
26 receipt by the agency of the proposal being reviewed, have formally indicated an
27 intention to provide similar services to residents of the service area in the future; third
28 party payers who reimburse health service facilities for services in the ~~health~~-service
29 area in which the project is proposed to be located; and any agency which establishes
30 rates for health service facilities or HMOs located in the ~~health~~-service area in which the
31 project is proposed to be located."

32 **SECTION 6.** This act is effective when it becomes law.