

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 740
House Committee Substitute Favorable 6/29/05
House Committee Substitute #2 Favorable 7/12/05**

Short Title: Certificate of Need Amendments.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CERTIFICATE OF NEED LAWS BY REQUIRING A
2 CERTIFICATE OF NEED BEFORE OFFERING CARDIAC
3 CATHETERIZATION SERVICES, REQUIRING HEALTH MAINTENANCE
4 ORGANIZATIONS AND LONG-TERM CARE HOSPITALS TO OBTAIN A
5 CERTIFICATE OF NEED, REQUIRING A CERTIFICATE OF NEED TO
6 PURCHASE CERTAIN EQUIPMENT USED IN CANCER TREATMENT,
7 REQUIRING A CERTIFICATE OF NEED FOR NEW HOSPICE OFFICES
8 AFTER DECEMBER 31, 2005, CHANGING WHO ARE AFFECTED PERSONS
9 ENTITLED TO APPEAL A CERTIFICATE OF NEED DECISION,
10 AUTHORIZING THE FURNISHING OF CARDIAC CATHETERIZATION
11 EQUIPMENT OR SERVICES PURSUANT TO SETTLEMENT AGREEMENTS
12 WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND
13 MAKING OTHER TECHNICAL CHANGES.
14

15 The General Assembly of North Carolina enacts:

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

17 **"§ 131E-176. Definitions.**

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

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

26 (1a) **(See note)** "Air ambulance" means aircraft used to provide air
27 transport of sick or injured persons between destinations within the
28 State.

- 1 (1b) "Ambulatory surgical facility" means a facility designed for the
2 provision of a specialty ambulatory surgical program or a
3 multispecialty ambulatory surgical program. An ambulatory surgical
4 facility serves patients who require local, regional or general
5 anesthesia and a period of post-operative observation. An ambulatory
6 surgical facility may only admit patients for a period of less than 24
7 hours and must provide at least one designated operating room and at
8 least one designated recovery room, have available the necessary
9 equipment and trained personnel to handle emergencies, provide
10 adequate quality assurance and assessment by an evaluation and
11 review committee, and maintain adequate medical records for each
12 patient. An ambulatory surgical facility may be operated as a part of a
13 physician or dentist's office, provided the facility is licensed under
14 G.S. Chapter 131E, Article 6, Part D, but the performance of
15 incidental, limited ambulatory surgical procedures which do not
16 constitute an ambulatory surgical program as defined in subdivision
17 (1b) and which are performed in a physician's or dentist's office does
18 not make that office an ambulatory surgical facility.
- 19 (1c) "Ambulatory surgical program" means a formal program for providing
20 on a same-day basis those surgical procedures which require local,
21 regional or general anesthesia and a period of post-operative
22 observation to patients whose admission for more than 24 hours is
23 determined, prior to surgery, to be medically unnecessary.
- 24 (2) "Bed capacity" means space used exclusively for inpatient care,
25 including space designed or remodeled for licensed inpatient beds even
26 though temporarily not used for such purposes. The number of beds to
27 be counted in any patient room shall be the maximum number for
28 which adequate square footage is provided as established by rules of
29 the Department except that single beds in single rooms are counted
30 even if the room contains inadequate square footage. The term "bed
31 capacity" also refers to the number of dialysis stations in kidney
32 disease treatment centers, including freestanding dialysis units.
- 33 (2a) "Bone marrow transplantation services" means the process of infusing
34 bone marrow into persons with diseases to stimulate the production of
35 blood cells.
- 36 (2b) "Burn intensive care services" means services provided in a unit
37 designed to care for patients who have been severely burned.
- 38 (2c) "Campus" means the adjacent grounds and buildings, or grounds and
39 buildings not separated by more than a public right-of-way, of a health
40 service facility and related health care entities.
- 41 (2d) "Capital expenditure" means an expenditure for a project, including
42 but not limited to the cost of construction, engineering, and equipment
43 which under generally accepted accounting principles is not properly
44 chargeable as an expense of operation and maintenance. Capital

1 expenditure includes, in addition, the fair market value of an
2 acquisition made by donation, lease, or comparable arrangement by
3 which a person obtains equipment, the expenditure for which would
4 have been considered a capital expenditure under this Article if the
5 person had acquired it by purchase.

6 (2e) ~~"Cardiac angioplasty equipment" means the cardiac catheterization
7 equipment used in surgery for the restoration, repair, or reconstruction
8 of coronary blood vessels.~~

9 (2f) "Cardiac catheterization equipment" means the equipment ~~required to
10 perform diagnostic procedures or therapeutic intervention in which a
11 catheter is introduced into a vein or artery and threaded through the
12 circulatory system to the heart.~~used to provide cardiac catheterization
13 services.

14 (2g) "Cardiac catheterization services" means those procedures, excluding
15 pulmonary angiography procedures, in which a catheter is introduced
16 into a vein or artery and threaded through the circulatory system into
17 the heart specifically to diagnose abnormalities in the motion,
18 contraction, and blood flow of the moving heart or to perform surgical
19 therapeutic interventions to restore, repair, or reconstruct the coronary
20 blood vessels of the heart.

21 (3) "Certificate of need" means a written order which affords the person so
22 designated as the legal proponent of the proposed project the
23 opportunity to proceed with the development of such project.

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

25 (5) "Change in bed capacity" means (i) any relocation of health service
26 facility beds, or dialysis stations from one licensed facility or campus
27 to another, or (ii) any redistribution of health service facility bed
28 capacity among the categories of health service facility bed as defined
29 in G.S. 131E-176(9c), or (iii) any increase in the number of health
30 service facility beds, or dialysis stations in kidney disease treatment
31 centers, including freestanding dialysis units.

32 (5a) "Chemical dependency treatment facility" means a public or private
33 facility, or unit in a facility, which is engaged in providing 24-hour a
34 day treatment for chemical dependency or substance abuse. This
35 treatment may include detoxification, administration of a therapeutic
36 regimen for the treatment of chemically dependent or substance
37 abusing persons and related services. The facility or unit may be:

38 a. A unit within a general hospital or an attached or freestanding
39 unit of a general hospital licensed under Article 5, Chapter
40 131E, of the General Statutes,

41 b. A unit within a psychiatric hospital or an attached or
42 freestanding unit of a psychiatric hospital licensed under Article
43 1A of General Statutes Chapter 122 or Article 2 of General
44 Statutes Chapter 122C,

1 c. A freestanding facility specializing in treatment of persons who
2 are substance abusers or chemically dependent licensed under
3 Article 1A of General Statutes Chapter 122 or Article 2 of
4 General Statutes Chapter 122C; and may be identified as
5 "chemical dependency, substance abuse, alcoholism, or drug
6 abuse treatment units," "residential chemical dependency,
7 substance abuse, alcoholism or drug abuse facilities," or by
8 other names if the purpose is to provide treatment of chemically
9 dependent or substance abusing persons, but shall not include
10 social setting detoxification facilities, medical detoxification
11 facilities, halfway houses or recovery farms.

12 (5b) "Chemical dependency treatment beds" means beds that are licensed
13 for the inpatient treatment of chemical dependency. Residential
14 treatment beds for the treatment of chemical dependency or substance
15 abuse are chemical dependency treatment beds. Chemical dependency
16 treatment beds shall not include beds licensed for detoxification.

17 (6) "Department" means the North Carolina Department of Health and
18 Human Services.

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

23 (7a) "Diagnostic center" means a freestanding facility, program, or
24 provider, including but not limited to, physicians' offices, clinical
25 laboratories, radiology centers, and mobile diagnostic programs, in
26 which the total cost of all the medical diagnostic equipment utilized by
27 the facility which cost ten thousand dollars (\$10,000) or more exceeds
28 five hundred thousand dollars (\$500,000). In determining whether the
29 medical diagnostic equipment in a diagnostic center costs more than
30 five hundred thousand dollars (\$500,000), the costs of the equipment,
31 studies, surveys, designs, plans, working drawings, specifications,
32 construction, installation, and other activities essential to acquiring and
33 making operational the equipment shall be included. The capital
34 expenditure for the equipment shall be deemed to be the fair market
35 value of the equipment or the cost of the equipment, whichever is
36 greater.

37 (7b) "Expedited review" means the status given to an application's review
38 process when the applicant petitions for the review and the Department
39 approves the request based on findings that all of the following are
40 met:

41 a. The review is not competitive.

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

- 1 c. A request for a public hearing is not received within the time
2 frame defined in G.S. 131E-185.
- 3 d. The agency has not determined that a public hearing is in the
4 public interest.
- 5 (7c) "Gamma knife" means equipment which emits photon beams from a
6 stationary radioactive cobalt source to treat lesions deep within the
7 brain and is one type of stereotactic radiosurgery.
- 8 (8), (9) Repealed by Session Laws 1987, c. 511, s. 1.
- 9 (9a) "Health service" means an organized, interrelated medical, diagnostic,
10 therapeutic, and/or rehabilitative activity that is integral to the
11 prevention of disease or the clinical management of a sick, injured, or
12 disabled person. "Health service" does not include administrative and
13 other activities that are not integral to clinical management.
- 14 (9b) "Health service facility" means a hospital; long-term care hospital;
15 psychiatric facility; rehabilitation facility; nursing home facility; adult
16 care home; kidney disease treatment center, including freestanding
17 hemodialysis units; intermediate care facility for the mentally retarded;
18 home health agency office; chemical dependency treatment facility;
19 diagnostic center; ~~oncology treatment center~~; hospice, hospice office,
20 hospice inpatient facility, hospice residential care facility; and
21 ambulatory surgical facility.
- 22 (9c) "Health service facility bed" means a bed licensed for use in a health
23 service facility in the categories of (i) acute care beds; (ii) psychiatric
24 beds; (iii) rehabilitation beds; (iv) nursing home beds; (v) intermediate
25 care beds for the mentally retarded; (vi) chemical dependency
26 treatment beds; (vii) hospice inpatient facility beds; (viii) hospice
27 residential care facility beds; ~~and~~ (ix) adult care home beds; and
28 (x) long-term care hospital beds.
- 29 (10) "Health maintenance organization (HMO)" means a public or private
30 organization which has received its certificate of authority under
31 Article 67 of Chapter 58 of the General Statutes and which either is a
32 qualified health maintenance organization under Section 1310(d) of
33 the Public Health Service Act or:
- 34 a. Provides or otherwise makes available to enrolled participants
35 health care services, including at least the following basic
36 health care services: usual physician services, hospitalization,
37 laboratory, X ray, emergency and preventive services, and
38 out-of-area coverage;
- 39 b. Is compensated, except for copayments, for the provision of the
40 basic health care services listed above to enrolled participants
41 by a payment which is paid on a periodic basis without regard
42 to the date the health care services are provided and which is
43 fixed without regard to the frequency, extent, or kind of health
44 service actually provided; and

- 1 c. Provides physicians' services primarily (i) directly through
2 physicians who are either employees or partners of such
3 organizations, or (ii) through arrangements with individual
4 physicians or one or more groups of physicians organized on a
5 group practice or individual practice basis.
- 6 (10a) "Heart-lung bypass machine" means the equipment used to perform
7 extra-corporeal circulation and oxygenation during surgical
8 procedures.
- 9 (11) Repealed by Session Laws 1991, c. 692, s. 1.
- 10 (12) "Home health agency" means a private organization or public agency,
11 whether owned or operated by one or more persons or legal entities,
12 which furnishes or offers to furnish home health services.
- 13 "Home health services" means items and services furnished to an
14 individual by a home health agency, or by others under arrangements
15 with such others made by the agency, on a visiting basis, and except
16 for paragraph e. of this subdivision, in a place of temporary or
17 permanent residence used as the individual's home as follows:
- 18 a. Part-time or intermittent nursing care provided by or under the
19 supervision of a registered nurse;
- 20 b. Physical, occupational or speech therapy;
- 21 c. Medical social services, home health aid services, and other
22 therapeutic services;
- 23 d. Medical supplies, other than drugs and biologicals and the use
24 of medical appliances;
- 25 e. Any of the foregoing items and services which are provided on
26 an outpatient basis under arrangements made by the home
27 health agency at a hospital or nursing home facility or
28 rehabilitation center and the furnishing of which involves the
29 use of equipment of such a nature that the items and services
30 cannot readily be made available to the individual in his home,
31 or which are furnished at such facility while he is there to
32 receive any such item or service, but not including
33 transportation of the individual in connection with any such
34 item or service.
- 35 (13) "Hospital" means a public or private institution which is primarily
36 engaged in providing to inpatients, by or under supervision of
37 physicians, diagnostic services and therapeutic services for medical
38 diagnosis, treatment, and care of injured, disabled, or sick persons, or
39 rehabilitation services for the rehabilitation of injured, disabled, or sick
40 persons. The term includes all facilities licensed pursuant to
41 G.S. 131E-77 of the General Statutes, ~~Statutes~~, except long-term care
42 hospitals.
- 43 (13a) "Hospice" means any coordinated program of home care with
44 provision for inpatient care for terminally ill patients and their

1 families. This care is provided by a medically directed
2 interdisciplinary team, directly or through an agreement under the
3 direction of an identifiable hospice administration. A hospice program
4 of care provides palliative and supportive medical and other health
5 services to meet the physical, psychological, social, spiritual and
6 special needs of patients and their families, which are experienced
7 during the final stages of terminal illness and during dying and
8 bereavement.

9 (13b) "Hospice inpatient facility" means a freestanding licensed hospice
10 facility or a designated inpatient unit in an existing health service
11 facility which provides palliative and supportive medical and other
12 health services to meet the physical, psychological, social, spiritual,
13 and special needs of terminally ill patients and their families in an
14 inpatient setting. For purposes of this Article only, a hospital which
15 has a contractual agreement with a licensed hospice to provide
16 inpatient services to a hospice patient as defined in G.S. 131E-201(4)
17 and provides those services in a licensed acute care bed is not a
18 hospice inpatient facility and is not subject to the requirements in
19 G.S. 131E-176(5)(ii) for hospice inpatient beds.

20 (13c) "Hospice residential care facility" means a freestanding licensed
21 hospice facility which provides palliative and supportive medical and
22 other health services to meet the physical, psychological, social,
23 spiritual, and special needs of terminally ill patients and their families
24 in a group residential setting.

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

26 (14a) "Intermediate care facility for the mentally retarded" means facilities
27 licensed pursuant to Article 2 of Chapter 122C of the General Statutes
28 for the purpose of providing health and habilitative services based on
29 the developmental model and principles of normalization for persons
30 with mental retardation, autism, cerebral palsy, epilepsy or related
31 conditions.

32 (14a1) "Kidney disease treatment center" means a facility that is certified as
33 an end-stage renal disease facility by the Centers for Medicare and
34 Medicaid Services, Department of Health and Human Services,
35 pursuant to 42 C.F.R. § 405.

36 (14b) Repealed by Session Laws 1991, c. 692, s. 1.

37 (14b1) "Linear accelerator" means a machine used to produce ionizing
38 radiation in excess of 1,000,000 electron volts in the form of a beam of
39 electrons or photons to treat cancer patients.

40 (14c) "Lithotripter" means extra-corporeal shock wave technology used to
41 treat persons with kidney stones and gallstones.

42 (14c1) "Long-term care hospital" means a hospital that has been classified
43 and designated as a long-term care hospital by the Centers for

1 Medicare and Medicaid Services, Department of Health and Human
2 Services, pursuant to 42 C.F.R. § 412.

3 (14d) Repealed by Session Laws 2001-234, s. 2, effective January 1, 2002.

4 (14e) "Magnetic resonance imaging scanner" means medical imaging
5 equipment that uses nuclear magnetic resonance.

6 (14f) "Major medical equipment" means a single unit or single system of
7 components with related functions which is used to provide medical
8 and other health services and which costs more than seven hundred
9 fifty thousand dollars (\$750,000). In determining whether the major
10 medical equipment costs more than seven hundred fifty thousand
11 dollars (\$750,000), the costs of the equipment, studies, surveys,
12 designs, plans, working drawings, specifications, construction,
13 installation, and other activities essential to acquiring and making
14 operational the major medical equipment shall be included. The capital
15 expenditure for the equipment shall be deemed to be the fair market
16 value of the equipment or the cost of the equipment, whichever is
17 greater. Major medical equipment does not include replacement
18 equipment as defined in this section.

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

20 (15a) "Multispecialty ambulatory surgical program" means a formal program
21 for providing on a same-day basis surgical procedures for at least three
22 of the following specialty areas: gynecology, otolaryngology, plastic
23 surgery, general surgery, ophthalmology, orthopedic, or oral surgery.

24 (15b) "Neonatal intensive care services" means those services provided by a
25 health service facility to high-risk newborn infants who require
26 constant nursing care, including but not limited to continuous
27 cardiopulmonary and other supportive care.

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

29 a. The construction, development, or other establishment of a new
30 health service facility.

31 b. The obligation by any person of a capital expenditure exceeding
32 two million dollars (\$2,000,000) to develop or expand a health
33 service or a health service facility, or which relates to the
34 provision of a health service. The cost of any studies, surveys,
35 designs, plans, working drawings, specifications, and other
36 activities, including staff effort and consulting and other
37 services, essential to the acquisition, improvement, expansion,
38 or replacement of any plant or equipment with respect to which
39 an expenditure is made shall be included in determining if the
40 expenditure exceeds two million dollars (\$2,000,000).

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

42 d. The offering of dialysis services or home health services by or
43 on behalf of a health service facility if those services were not

- 1 offered within the previous 12 months by or on behalf of the
2 facility.
- 3 e. A change in a project that was subject to certificate of need
4 review and for which a certificate of need was issued, if the
5 change is proposed during the development of the project or
6 within one year after the project was completed. For purposes
7 of this subdivision, a change in a project is a change of more
8 than fifteen percent (15%) of the approved capital expenditure
9 amount or the addition of a health service that is to be located in
10 the facility, or portion thereof, that was constructed or
11 developed in the project.
- 12 f. The development or offering of a health service as listed in this
13 subdivision by or on behalf of any person:
- 14 1. Bone marrow transplantation services.
15 2. Burn intensive care services.
16 2a. Cardiac catheterization services.
17 3. Neonatal intensive care services.
18 4. Open-heart surgery services.
19 5. Solid organ transplantation services.
- 20 fl. The acquisition by purchase, donation, lease, transfer, or
21 comparable arrangement of any of the following equipment by
22 or on behalf of any person:
- 23 1. Air ambulance.
24 ~~2. Cardiac angioplasty equipment.~~
25 3. Cardiac catheterization equipment.
26 4. Gamma knife.
27 5. Heart-lung bypass machine.
28 5a. Linear accelerator.
29 6. Lithotripter.
30 7. Magnetic resonance imaging scanner.
31 8. Positron emission tomography scanner.
32 9. Simulator.
- 33 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- 34 l. The purchase, lease, or acquisition of any health service facility,
35 or portion thereof, or a controlling interest in the health service
36 facility or portion thereof, if the health service facility was
37 developed under a certificate of need issued pursuant to
38 G.S. 131E-180.
- 39 m. Any conversion of nonhealth service facility beds to health
40 service facility beds.
- 41 n. The construction, development or other establishment of a
42 hospice, hospice inpatient facility, or hospice residential care
43 facility;

- 1 o. The opening of an additional office by an existing home health
2 agency or hospice within its service area as defined by rules
3 adopted by the Department; or the opening of any office by an
4 existing home health agency or hospice outside its service area
5 as defined by rules adopted by the Department.
- 6 p. The acquisition by purchase, donation, lease, transfer, or
7 comparable arrangement by any person of major medical
8 equipment.
- 9 q. The relocation of a health service facility from one service area
10 to another.
- 11 r. The conversion of a specialty ambulatory surgical program to a
12 multispecialty ambulatory surgical program or the addition of a
13 specialty to a specialty ambulatory surgical program.
- 14 s. The furnishing of mobile medical equipment to any person to
15 provide health services in North Carolina, which was not in use
16 in North Carolina prior to the adoption of this provision, if such
17 equipment would otherwise be subject to review in accordance
18 with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had
19 been acquired in North Carolina.
- 20 t. Repealed by Session Laws 2001-242, s. 4, effective June 23,
21 2001.
- 22 u. **(See note)** The construction, development, establishment,
23 increase in the number, or relocation of an operating room or
24 operating rooms, other than the relocation of an operating room
25 or operating rooms within the same building or on the same
26 grounds or to grounds not separated by more than a public
27 right-of-way adjacent to the grounds where the operating room
28 is or operating rooms are currently located.
- 29 (17) "North Carolina State Health Coordinating Council" means the
30 Council that prepares, with the Department of Health and Human
31 Services, the State Medical Facilities Plan.
- 32 (17a) "Nursing care" means:
- 33 a. Skilled nursing care and related services for residents who
34 require medical or nursing care;
- 35 b. Rehabilitation services for the rehabilitation of injured,
36 disabled, or sick persons; or
- 37 c. Health-related care and services provided on a regular basis to
38 individuals who because of their mental or physical condition
39 require care and services above the level of room and board,
40 which can be made available to them only through institutional
41 facilities.
- 42 These are services which are not primarily for the care and treatment
43 of mental diseases.

- 1 (17b) "Nursing home facility" means a health service facility whose bed
2 complement of health service facility beds is composed principally of
3 nursing home facility beds.
- 4 (18) To "offer," when used in connection with health services, means that
5 the person holds himself out as capable of providing, or as having the
6 means for the provision of, specified health services.
- 7 ~~(18a) "Oncology treatment center" means a facility, program, or provider,
8 other than an existing health service facility that provides services for
9 diagnosis, evaluation, or treatment of cancer and its aftereffects or
10 secondary results and for which the total cost of all the medical
11 equipment utilized by the center, exceeds two hundred fifty thousand
12 dollars (\$250,000). In determining whether costs are more than two
13 hundred fifty thousand dollars (\$250,000), the costs of equipment,
14 studies, surveys, designs, plans, working drawings, specifications,
15 construction, installation, and other activities essential to acquiring and
16 making operational the facility, program, or provider shall be included.
17 The capital expenditure for the equipment shall be deemed to be the
18 fair market value of the equipment or the cost of the equipment,
19 whichever is greater.~~
- 20 (18b) "Open-heart surgery services" means the provision of surgical
21 procedures that utilize a heart-lung bypass machine during surgery to
22 correct cardiac and coronary artery disease or defects.
- 23 (19) "Person" means an individual, a trust or estate, a partnership, a
24 corporation, including associations, joint stock companies, and
25 insurance companies; the State, or a political subdivision or agency or
26 instrumentality of the State.
- 27 (19a) "Positron emission tomography scanner" means equipment that utilizes
28 a computerized radiographic technique that employs radioactive
29 substances to examine the metabolic activity of various body
30 structures.
- 31 (20) "Project" or "capital expenditure project" means a proposal to
32 undertake a capital expenditure that results in the offering of a new
33 institutional health service as defined by this Article. A project, or
34 capital expenditure project, or proposed project may refer to the
35 project from its earliest planning stages up through the point at which
36 the specified new institutional health service may be offered. In the
37 case of facility construction, the point at which the new institutional
38 health service may be offered must take place after the facility is
39 capable of being fully licensed and operated for its intended use, and at
40 that time it shall be considered a health service facility.
- 41 (21) "Psychiatric facility" means a public or private facility licensed
42 pursuant to Article 2 of Chapter 122C of the General Statutes and
43 which is primarily engaged in providing to inpatients, by or under the

1 supervision of a physician, psychiatric services for the diagnosis and
2 treatment of mentally ill persons.

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

8 (22a) "Replacement equipment" means equipment that costs less than two
9 million dollars (\$2,000,000) and is purchased for the sole purpose of
10 replacing comparable medical equipment currently in use which will
11 be sold or otherwise disposed of when replaced. In determining
12 whether the replacement equipment costs less than two million dollars
13 (\$2,000,000), the costs of equipment, studies, surveys, designs, plans,
14 working drawings, specifications, construction, installation, and other
15 activities essential to acquiring and making operational the
16 replacement equipment shall be included. The capital expenditure for
17 the equipment shall be deemed to be the fair market value of the
18 equipment or the cost of the equipment, whichever is greater.

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

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

21 (24a) "Service area" means the area of the State, as defined in the State
22 Medical Facilities Plan or in rules adopted by the Department, which
23 receives services from a health service facility.

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

27 (24b) "Solid organ transplantation services" means the provision of surgical
28 procedures and the interrelated medical services that accompany the
29 surgery to remove an organ from a patient and surgically implant an
30 organ from a donor.

31 (24c) "Specialty ambulatory surgical program" means a formal program for
32 providing on a same-day basis surgical procedures for only the
33 specialty areas identified on the ambulatory surgical facility's 1993
34 Application for Licensure as an Ambulatory Surgical Center and
35 authorized by its certificate of need.

36 (25) "State Medical Facilities Plan" means the plan prepared by the
37 Department of Health and Human Services and the North Carolina
38 State Health Coordinating Council, and approved by the Governor. In
39 preparing the Plan, the Department and the State Health Coordinating
40 Council shall maintain a mailing list of persons who have requested
41 notice of public hearings regarding the Plan. Not less than 15 days
42 prior to a scheduled public hearing, the Department shall notify
43 persons on its mailing list of the date, time, and location of the hearing.
44 The Department shall hold at least one public hearing prior to the

1 adoption of the proposed Plan and at least six public hearings after the
2 adoption of the proposed Plan by the State Health Coordinating
3 Council. The Council shall accept oral and written comments from the
4 public concerning the Plan.

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

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

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

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

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

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

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

17 (1) Any person may file written comments and exhibits concerning a
18 proposal under review with the Department, not later than 30 days
19 after the date on which the application begins review. These written
20 comments may include:

- 21 a. Facts relating to the service area proposed in the application;
- 22 b. Facts relating to the representations made by the applicant in its
23 application, and its ability to perform or fulfill the
24 representations made;
- 25 c. Discussion and argument regarding whether, in light of the
26 material contained in the application and other relevant factual
27 material, the application complies with relevant review criteria,
28 plans, and standards.

29 (2) No more than 20 days from the conclusion of the written comment
30 period, the Department shall ensure that a public hearing is conducted
31 at a place within the appropriate ~~health~~-service area if one or more of
32 the following circumstances apply; the review to be conducted is
33 competitive; the proponent proposes to spend five million dollars
34 (\$5,000,000) or more; a written request for a public hearing is received
35 before the end of the written comment period from an affected party as
36 defined in G.S. 131E-188(c); or the agency determines that a hearing is
37 in the public interest. At such public hearing oral arguments may be
38 made regarding the application or applications under review; and this
39 public hearing shall include the following:

- 40 a. An opportunity for the proponent of each application under
41 review to respond to the written comments submitted to the
42 Department about its application;
- 43 b. An opportunity for any ~~affected person as defined in~~
44 G.S. 131E-188(e), person, except one of the proponents, to

1 ~~present comments regarding~~ comment on the applications under
2 review;

- 3 c. An opportunity for a representative of the Department, or such
4 other person or persons who are designated by the Department
5 to conduct the hearing, to question each proponent of
6 applications under review with regard to the contents of the
7 application;

8 The Department shall maintain a recording of any required public
9 hearing on an application until such time as the Department's final
10 decision is issued, or until a final agency decision is issued pursuant to
11 a contested case hearing, whichever is later; and any person may
12 submit a written synopsis or verbatim statement that contains the oral
13 presentation made at the hearing.

- 14 (3) The Department may contract or make arrangements with a person or
15 persons located within each ~~health~~-service area for the conduct of such
16 public hearings as may be necessary. The Department shall publish, in
17 each ~~health~~-service area, notice of the contracts that it executes for the
18 conduct of those hearings.

- 19 (4) Within 15 days from the beginning of the review of an application or
20 applications proposing the same service within the same service area,
21 the Department shall publish notice of the deadline for receipt of
22 written comments, of the time and place scheduled for the public
23 hearing regarding the application or applications under review, and of
24 the name and address of the person or agency that will preside.

- 25 (5) The Department shall maintain all written comments submitted to it
26 during the written comment stage and any written submissions
27 received at the public hearing as part of the Department's file
28 respecting each application or group of applications under review by it.
29 The application, written comments, and public hearing comments,
30 together with all documents that the Department used in arriving at its
31 decision, from whatever source, and any documents that reflect or set
32 out the Department's final analysis of the application or applications
33 under review, shall constitute the Department's record for the
34 application or applications under review."

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

36 "(c) The term "affected persons" includes: the applicant; any ~~person~~-individual
37 residing within the service area or the geographic area served or to be served by the
38 applicant; any ~~person~~-individual who regularly uses health service facilities within that
39 geographic area; area or the service area; health service facilities and health
40 maintenance organizations (HMOs) located in the health service area in which the
41 project is proposed to be located, which provide services similar to the services of the
42 facility under review; any person who provides services, similar to the services under
43 review, to individuals residing within the service area or the geographic area proposed
44 to be served by the applicant; ~~health service facilities and HMOs which, any person~~

1 who, prior to receipt by the agency of the proposal being reviewed, have formally
2 indicated has provided written notice to the agency of an intention to provide similar
3 services in the future; future to individuals residing within the service area or the
4 geographic area to be served by the applicant; third party payers who reimburse health
5 service facilities for services in the health-service area in which the project is proposed
6 to be located; and any agency which establishes rates for health service facilities or
7 HMOs located in the health-service area in which the project is proposed to be located."

8 **SECTION 6.** G.S. 131E-176(2f) and (2g), as enacted in this act, shall not
9 preclude the furnishing of cardiac catheterization equipment or the provision of cardiac
10 catheterization services by a person authorized to furnish this equipment or provide
11 these services pursuant to a settlement agreement between the person and the
12 Department of Health and Human Services prior to the effective date of this act.

13 **SECTION 7.** G.S. 131E-176, as amended by Section 1 of this act, becomes
14 effective for hospices and hospice offices December 31, 2005. The remainder of this act
15 is effective when it becomes law.