



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

October 20, 2023

Kody Kinsley, Secretary
Department of Health and Human Services
Sent via email only: kody.kinsley@dhhs.nc.gov

Re: Objection to Rules 10A NCAC 14E .0104, .0106, .0107, .0109, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331.

Dear Secretary Kinsley:

At its meeting on October 19, 2023, the Rules Review Commission objected to the above-captioned temporary Rules in accordance with G.S. 150B-21.1(b). Specifically, the RRC adopted the opinions of counsel attached hereto and incorporated by reference.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Rule Review Commission's action, please let me know.

Sincerely,

Brian Liebman
Commission Counsel

cc: Taylor Corpening, Rulemaking Coordinator

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

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RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: N.C. Department of Health and Human Services/DHSR

RULE CITATION: 10A NCAC 14E .0106, .0107, and .0109.

DATE ISSUED: October 18, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority (all rules)
 - X Unclear or ambiguous (.0106 and .0109)
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff hereby incorporates by reference the staff opinion issued October 18, 2023 recommending objection to Rules 10A NCAC 14E .0104, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331.

Statutory Authority

Under Rule .0106, the Department sets out the contents of an application for licensure for new freestanding abortion clinics. Rule .0109 sets out the contents for an application to renew this license. In both Rules, the Department requires that the application set forth details related to the building's management, sanitation services, the clinic's medical director and medical staff, the director of nursing and nursing staff, and the consulting pathologist. Additionally, in Rule .0109(b), the Department requires that an agency seeking renewal of a license specify "the number of procedures performed during the reporting period" and "the number of patients that were transferred to a hospital during a reporting period."

Brian Liebman
Commission Counsel

As explained in the opinion incorporated by reference, it is staff's opinion that the Department of Health and Human Services lacks statutory authority to impose requirements on freestanding abortion clinics which are outside the explicit scope of the Abortion Clinic Licensure Act ("the Act"). While the Department is authorized by G.S. 131E-153.2 to specify the "necessary and reasonable information" to be contained in the application for licensure, it is staff's opinion that it would be neither necessary nor reasonable to require an agency to submit information to the Department for approval as part of the licensure process when the Department has no authority to otherwise regulate in those areas.

Thus, to the extent that the Department seeks to regulate topics such as the clinic's management, sanitation, recordkeeping, and staffing through the licensure process, when it is unable to do so directly through other rules, it is staff's opinion that the Department lacks statutory authority for Rules .0106 and .0109.

Similarly, in Rule .0107, the Department conditions licensure on a finding that the facility has a board-certified or board-eligible OB-GYN available in the event of complications from an abortion procedure. While other parts of Session Law 2023-14 appear to contain requirements that a physician perform any surgical abortion and address any complications arising from the procedure, those requirements do not appear in Part II of the Session Law generally or G.S. 131E-153.2 specifically. The Department cites no other authority for Rule .0107. Consequently, to the extent that the Department conditions licensure on a requirement that has no basis within the Act, it is staff's opinion that the Department lacks statutory authority for Rule .0107.

Lack of Clarity

Notwithstanding the Department's lack of statutory authority for these Rules, the language of both Rules fails to clearly state what information the Department would require as part of the licensure application and renewal application. In paragraph (c) of Rule .0106 and paragraph (b) of Rule .0109, the Department states that the application form shall set forth "ownership disclosure", "building owner", "building management", "sanitation services", "medical director", "other medical staff", "Director of nursing", "other nursing staff", and "Consulting pathologist."

Neither rule states what information a clinic must provide about each topic. For instance, it is entirely unclear what details an applicant must provide about "sanitation services," or what "other medical staff" might mean. While the Rule specifies that the "name" of the applicant must be provided, it makes no such requirement for "medical director" or "Director of nursing." Ostensibly a clinic could comply by providing the directors' names and addresses, or by simply certifying that they employ individuals in each role. Further, "building owner" is repeated twice, for reasons unclear to staff, and it is unclear what difference, if any, there is between the "ownership disclosure" and "building owner".

Additionally, in Rule .0109(b), the Department further requires that an agency seeking renewal of a license specify "the number of procedures performed during the reporting period" and "the number of patients that were transferred to a hospital during a reporting period." The Department does not define the term "procedure" nor the term "reporting period." As such, it is unclear what information the clinic is required to preserve and report to the Department.

Thus, it is staff's opinion that both Rules .0106 and .0109 lack clarity to the extent that they fail to specify what information must be provided on the application for licensure and renewal of licensure, respectively.

Based on the foregoing, staff recommends objection to the above-captioned rules for lack of statutory authority pursuant to G.S. 150B-21.9(a)(1) and for lack of clarity pursuant to G.S. 150B-21.9(a)(2).

Brian Liebman
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2023-14
SENATE BILL 20

AN ACT TO MAKE VARIOUS CHANGES TO HEALTH CARE LAWS AND TO APPROPRIATE FUNDS FOR HEALTH CARE PROGRAMS.

The General Assembly of North Carolina enacts:

PART I. ABORTION LAW REVISIONS

SECTION 1.1. G.S. 14-45.1 is repealed.

SECTION 1.2. Article 1I of Chapter 90 of the General Statutes reads as rewritten:
"Article 1I.

~~"Woman's Right to Know Act.~~Abortion Laws.

"§ 90-21.80. Short title.

This act may be cited as ~~the "Woman's Right to Know Act."~~"Abortion Laws."

"§ 90-21.81. Definitions.

The following definitions apply in this Article:

- (1) Abortion. – A surgical abortion or a medical abortion, as those terms are defined in this section, respectively.
- (1a) Abortion-inducing drug. – A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will, with reasonable likelihood, cause the death of the unborn child. This includes the off-label use of drugs such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate, approved by the United States Food and Drug Administration to induce abortions or known to have abortion-inducing properties, prescribed specifically with the intent of causing an abortion, whether or not there exists a diagnosed pregnancy at the time of prescription or dispensing, for the purposes of the woman taking the drugs at a later date to cause an abortion rather than contemporaneously with a clinically diagnosed pregnancy. This definition shall not include drugs that may be known to cause an abortion but are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.
- (1b) Adverse event. – Any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related.
- (1c) ~~Abortion.~~Surgical abortion. – The use or prescription of any instrument, medicine, drug, or other substance instrument or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:
 - a. Increase the probability of a live birth.
 - b. Preserve the life or health of the child.
 - c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.



- (3) The presence or presumed presence of Down syndrome.

...."

SECTION 1.4.(c) G.S. 90-21.6 reads as rewritten:

"§ 90-21.6. Definitions.

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

- (1) Abortion. – As defined in G.S. 90-21.81.
(1a) "Unemancipated minor" or "minor" means any Unemancipated minor or minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
(2) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child."

SECTION 1.5.(a) Section 1.3 of this Part becomes effective July 1, 2023, and applies to offenses committed on or after that date. The remainder of this Part becomes effective on July 1, 2023.

SECTION 1.5.(b) Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

PART II. SUITABLE FACILITIES FOR THE PERFORMANCE OF SURGICAL ABORTIONS

SECTION 2.1. Article 1I of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-21.82A. Suitable facilities for the performance of surgical abortions.

- (a) The following definitions apply in this section:
(1) Abortion clinic. – As defined in G.S. 131E-153.1.
(2) Ambulatory surgical facility. – As defined in G.S. 131E-176.
(3) Hospital. – As defined in G.S. 131E-176.
(b) During the first 12 weeks of pregnancy, a physician licensed to practice medicine under this Chapter may perform a surgical abortion in a hospital, an ambulatory surgical facility, or an abortion clinic; provided, however, that (i) the clinic has been licensed by the Department of Health and Human Services to be a suitable facility for the performance of abortions and (ii) the licensed physician performs the abortion in accordance with this Article and Article 1K of this Chapter.
(c) After the twelfth week of pregnancy, a physician licensed to practice medicine under this Chapter may not perform a surgical abortion as permitted under North Carolina law in any facility other than a hospital."

SECTION 2.2. Article 6 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 4A. Abortion Clinic Licensure.

"§ 131E-153. Title; purpose.

- (a) This Part shall be known as the "Abortion Clinic 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 abortion clinics; and
(2) For the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics.

"§ 131E-153.1. Definitions.

The following definitions apply in this Part, unless otherwise specified:

- (1) Abortion clinic. – A freestanding facility, that is neither physically attached nor operated by a hospital, for the performance of abortions during the first 12 weeks of pregnancy.
- (2) Commission. – The North Carolina Medical Care Commission.
- (3) Operating room. – A room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.

"§ 131E-153.2. Licensure requirement.

(a) No person shall operate an abortion clinic 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 adopted by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an abortion clinic 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-153.3. Fair billing and collections practices for abortion clinics.

All abortion clinics licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91.

"§ 131E-153.4. Adverse action on a license.

(a) Subject to subsection (b) of this section, 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 adopted under this Part.

(b) Chapter 150B 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) of this section.

"§ 131E-153.5. 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 Ambulatory Surgical Facility Licensure Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to abortion clinics.

"§ 131E-153.6. Inspections.

(a) The Department shall make or cause to be made inspections of abortion clinics 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 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 that 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 or any other rule of law; provided, however, that 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 is not 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. 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-153.7. Penalties.

A person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only 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-153.8. 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 abortion clinic 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."

SECTION 2.3. G.S. 131E-272 reads as rewritten:

"§ 131E-272. Initial licensure fees for new facilities.

The following fees are initial licensure fees for new facilities and are applicable as follows:

Facility Type	Number of Beds	Initial License Fee	Initial Bed Fee
Adult Care Licensure	More than 6	\$400.00	\$19.00
	6 or Fewer	\$350.00	\$ -
Acute and Home Care General Acute Hospitals	1-49	\$550.00	\$19.00
	50-99	\$750.00	\$19.00
	100-199	\$950.00	\$19.00

	200-399	\$1150.00	\$19.00
	400-699	\$1550.00	\$19.00
	700+	\$1950.00	\$19.00
Other Hospitals		\$1050.00	\$19.00
Home Care	-	\$560.00	\$ -
Ambulatory Surgical Ctrs.	-	\$900.00	\$85.00
Hospice (Free Standing)	-	\$450.00	\$ -
Abortion Clinics	-	\$750.00 \$850.00	\$ -
Cardiac Rehab. Centers	-	\$425.00	\$ -
Nursing Home & L&C			
Nursing Homes		\$470.00	\$19.00
All Others		\$ -	\$19.00
Mental Health Facilities			
Nonresidential		\$265.00	\$ -
Non ICF/IID	6 or fewer	\$350.00	\$ -
ICF/IID only	6 or fewer	\$900.00	\$ -
Non ICF/IID	More than 6	\$525.00	\$19.00
ICF/IID only	More than 6	\$850.00	\$19.00."

SECTION 2.4. No later than October 1, 2023, the Department of Health and Human Services shall adopt the rules necessary to administer this Part.

SECTION 2.5. Section 2.4 of this Part becomes effective July 1, 2023. The remainder of this Part becomes effective on October 1, 2023.

PART III. BORN-ALIVE ABORTION SURVIVORS PROTECTION

SECTION 3.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1M.

"Born-Alive Abortion Survivors Protection Act.

"§ 90-21.140. Definitions.

As used in this Article, the following definitions apply:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
- (3) Born alive. – With respect to a member of the species *Homo sapiens*, this term means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

"§ 90-21.141. Findings.

The General Assembly makes the following findings:

- (1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws.
- (2) Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: N.C. Department of Health and Human Services/DHSR

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DATE ISSUED: October 18, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority (All rules)
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

In May 2023, Session Law 2023-14 (“the Session Law”) went into effect. In relevant part, Part I of the Session Law repealed G.S. 14-45.1, which had previously been propounded as the basis for the Department of Health and Human Services’ (“the Department”) rules governing abortion clinics. In its place, Section 2.2 of Part II codified the Abortion Clinic Licensure Act (“the Act”) requiring freestanding abortion clinics—those which are neither physically attached to a hospital nor operated by a hospital—to be licensed by the Department. Section 2.4 of Part II provided that the Department was required to adopt rules “necessary to administer” the Act no later than October 1, 2023.

In so doing, the legislature seems to have carefully circumscribed the Department’s rulemaking authority. Section 2.4 states that the rules adopted “shall be necessary to administer the provisions of [Part II].” Looking at Part II, only Section

Brian Liebman
Commission Counsel

2.2, which adds the Abortion Clinic Licensure Act to Article 6 of Chapter 131E of the General Statutes, is pertinent, and again, the Department's authority under the Act is limited in scope. Under the Act, freestanding abortion clinics must obtain a license available from the Department after submission of an application and payment of a fee. The Department is authorized to set the "necessary and reasonable" contents of the application and charge the application fee (G.S. 131E-153.2), take adverse action against a license for "substantial failure to comply" with the Act or rules adopted under its authority (G.S. 131-153.4), inspect clinics (G.S. 131E-153.6), and either penalize (G.S. 131E-153.7) or seek injunctions (G.S. 131E-153.8) against those clinics operating without a license. A grant of rulemaking authority to the Medical Care Commission—which is housed within the Department but is a separate agency for rulemaking purposes—is included (G.S. 131E-153.5).

The above-captioned rules delve into issues that are not specifically governed by any law contained within the Act or any other provision in Part II of Session Law 2023-14. Rules .0104, .0112 and .0114 require clinic owners to receive the Department's review and approval of their building plans prior to licensure (.0104), construction (.0112), and alteration (.0114). The rules in Section .0200 cover "Minimum Standards for Construction and Equipment," and would impose physical plant and sanitation requirements on all freestanding clinics. Section .0300 goes further, and would impose requirements on the "governing authority" of each clinic. Within this Section, the Department attempts to regulate—in granular detail—everything from housekeeping (Rule .0315) and meal service (.0331) to internal management and staffing (Rules .0318, .0323, and .0324), recordkeeping (Rules .0319, .0321, .0322), and provision of care (Rules .0325 to .0329). None of these topics are specifically mentioned in the Act. As such, it is staff's opinion that these rules cannot be "necessary to administer" the statutes contained in the Act, and are thus outside the scope of the Department's rulemaking authority under Section 2.4 of the Session Law.

In response to staff's requests for changes, the agency argues that "the content of all the rules is directly supported by the purpose of the Act," and that "each of the proposed rules are necessary to implement the purpose as stated in G.S. 131E-153(b)." G.S. 131E-153(b) directs that the purpose of the Act "is to provide for the development, establishment, and enforcement of basic standards (1) for the care and treatment of individuals in abortion clinics; and (2) for the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics."

While the agency is correct that G.S. 131E-153(b) enunciates the *purpose* of the Act, this language cannot be read as an open-ended grant of *authority* for the Department to promulgate any rule that could conceivably concern the "basic standards for the care and treatment of individuals in abortion clinics" outside of the boundaries of the statutory scheme. As noted above, these rules impose deep, granular requirements upon clinics with respect to issues that are not mentioned within any

statute contained in the Act. Thus, it is staff's opinion that G.S. 131E-153(b) is not an adequate statutory basis for the above-captioned rules.

Further, staff would draw the Commission's attention to its consideration of the Medical Care Commission's hospital licensure rules in 10A NCAC 13B at the August 2022 meeting. There, the MCC advanced the identical argument that rules covering broad topics not specifically mentioned in the Hospital Licensure Act were authorized by the Act's "purpose" statute, which contains almost identical language to G.S. 131E-153(b). The Commission rejected the MCC's argument and objected to the rules. While the Commission's previous decisions are not binding, it is staff's belief that the nearly identical characteristics of the MCC's hospital licensure rules and the Department's abortion clinic licensure rules, along with their nearly identical statutory language, should be persuasive to the Commission in this instance.

Based on the foregoing, staff recommends objection to the above-captioned rules for lack of statutory authority pursuant to G.S. 150B-21.9(a)(1).

Brian Liebman
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2023-14
SENATE BILL 20

AN ACT TO MAKE VARIOUS CHANGES TO HEALTH CARE LAWS AND TO APPROPRIATE FUNDS FOR HEALTH CARE PROGRAMS.

The General Assembly of North Carolina enacts:

PART I. ABORTION LAW REVISIONS

SECTION 1.1. G.S. 14-45.1 is repealed.

SECTION 1.2. Article 1I of Chapter 90 of the General Statutes reads as rewritten:
"Article 1I.

~~"Woman's Right to Know Act.~~Abortion Laws.

"§ 90-21.80. Short title.

This act may be cited as ~~the "Woman's Right to Know Act."~~"Abortion Laws."

"§ 90-21.81. Definitions.

The following definitions apply in this Article:

- (1) Abortion. – A surgical abortion or a medical abortion, as those terms are defined in this section, respectively.
- (1a) Abortion-inducing drug. – A medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will, with reasonable likelihood, cause the death of the unborn child. This includes the off-label use of drugs such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate, approved by the United States Food and Drug Administration to induce abortions or known to have abortion-inducing properties, prescribed specifically with the intent of causing an abortion, whether or not there exists a diagnosed pregnancy at the time of prescription or dispensing, for the purposes of the woman taking the drugs at a later date to cause an abortion rather than contemporaneously with a clinically diagnosed pregnancy. This definition shall not include drugs that may be known to cause an abortion but are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs.
- (1b) Adverse event. – Any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related.
- (1c) ~~Abortion.~~Surgical abortion. – The use or prescription of any instrument, medicine, drug, or other substance instrument or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to do any of the following:
 - a. Increase the probability of a live birth.
 - b. Preserve the life or health of the child.
 - c. Remove a dead, unborn child who died as the result of (i) natural causes in utero, (ii) accidental trauma, or (iii) a criminal assault on the pregnant woman or her unborn child which causes the premature termination of the pregnancy.



- (3) The presence or presumed presence of Down syndrome.

...."

SECTION 1.4.(c) G.S. 90-21.6 reads as rewritten:

"§ 90-21.6. Definitions.

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

- (1) Abortion. – As defined in G.S. 90-21.81.
(1a) "Unemancipated minor" or "minor" means any Unemancipated minor or minor. – Any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
(2) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child."

SECTION 1.5.(a) Section 1.3 of this Part becomes effective July 1, 2023, and applies to offenses committed on or after that date. The remainder of this Part becomes effective on July 1, 2023.

SECTION 1.5.(b) Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions.

PART II. SUITABLE FACILITIES FOR THE PERFORMANCE OF SURGICAL ABORTIONS

SECTION 2.1. Article 1I of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-21.82A. Suitable facilities for the performance of surgical abortions.

- (a) The following definitions apply in this section:
(1) Abortion clinic. – As defined in G.S. 131E-153.1.
(2) Ambulatory surgical facility. – As defined in G.S. 131E-176.
(3) Hospital. – As defined in G.S. 131E-176.
(b) During the first 12 weeks of pregnancy, a physician licensed to practice medicine under this Chapter may perform a surgical abortion in a hospital, an ambulatory surgical facility, or an abortion clinic; provided, however, that (i) the clinic has been licensed by the Department of Health and Human Services to be a suitable facility for the performance of abortions and (ii) the licensed physician performs the abortion in accordance with this Article and Article 1K of this Chapter.
(c) After the twelfth week of pregnancy, a physician licensed to practice medicine under this Chapter may not perform a surgical abortion as permitted under North Carolina law in any facility other than a hospital."

SECTION 2.2. Article 6 of Chapter 131E of the General Statutes is amended by adding a new Part to read:

"Part 4A. Abortion Clinic Licensure.

"§ 131E-153. Title; purpose.

- (a) This Part shall be known as the "Abortion Clinic 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 abortion clinics; and
(2) For the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics.

"§ 131E-153.1. Definitions.

The following definitions apply in this Part, unless otherwise specified:

- (1) Abortion clinic. – A freestanding facility, that is neither physically attached nor operated by a hospital, for the performance of abortions during the first 12 weeks of pregnancy.
- (2) Commission. – The North Carolina Medical Care Commission.
- (3) Operating room. – A room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.

"§ 131E-153.2. Licensure requirement.

(a) No person shall operate an abortion clinic 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 adopted by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an abortion clinic 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-153.3. Fair billing and collections practices for abortion clinics.

All abortion clinics licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91.

"§ 131E-153.4. Adverse action on a license.

(a) Subject to subsection (b) of this section, 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 adopted under this Part.

(b) Chapter 150B 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) of this section.

"§ 131E-153.5. 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 Ambulatory Surgical Facility Licensure Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to abortion clinics.

"§ 131E-153.6. Inspections.

(a) The Department shall make or cause to be made inspections of abortion clinics 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 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 that 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 or any other rule of law; provided, however, that 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 is not 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. 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-153.7. Penalties.

A person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only 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-153.8. 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 abortion clinic 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."

SECTION 2.3. G.S. 131E-272 reads as rewritten:

"§ 131E-272. Initial licensure fees for new facilities.

The following fees are initial licensure fees for new facilities and are applicable as follows:

Facility Type	Number of Beds	Initial License Fee	Initial Bed Fee
Adult Care Licensure	More than 6	\$400.00	\$19.00
	6 or Fewer	\$350.00	\$ -
Acute and Home Care General Acute Hospitals	1-49	\$550.00	\$19.00
	50-99	\$750.00	\$19.00
	100-199	\$950.00	\$19.00

	200-399	\$1150.00	\$19.00
	400-699	\$1550.00	\$19.00
	700+	\$1950.00	\$19.00
Other Hospitals		\$1050.00	\$19.00
Home Care	-	\$560.00	\$ -
Ambulatory Surgical Ctrs.	-	\$900.00	\$85.00
Hospice (Free Standing)	-	\$450.00	\$ -
Abortion Clinics	-	\$750.00 \$850.00	\$ -
Cardiac Rehab. Centers	-	\$425.00	\$ -
Nursing Home & L&C			
Nursing Homes		\$470.00	\$19.00
All Others		\$ -	\$19.00
Mental Health Facilities			
Nonresidential		\$265.00	\$ -
Non ICF/IID	6 or fewer	\$350.00	\$ -
ICF/IID only	6 or fewer	\$900.00	\$ -
Non ICF/IID	More than 6	\$525.00	\$19.00
ICF/IID only	More than 6	\$850.00	\$19.00."

SECTION 2.4. No later than October 1, 2023, the Department of Health and Human Services shall adopt the rules necessary to administer this Part.

SECTION 2.5. Section 2.4 of this Part becomes effective July 1, 2023. The remainder of this Part becomes effective on October 1, 2023.

PART III. BORN-ALIVE ABORTION SURVIVORS PROTECTION

SECTION 3.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1M.

"Born-Alive Abortion Survivors Protection Act.

"§ 90-21.140. Definitions.

As used in this Article, the following definitions apply:

- (1) Abortion. – As defined in G.S. 90-21.81.
- (2) Attempt to perform an abortion. – As defined in G.S. 90-21.81.
- (3) Born alive. – With respect to a member of the species *Homo sapiens*, this term means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

"§ 90-21.141. Findings.

The General Assembly makes the following findings:

- (1) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of North Carolina and entitled to all the protections of such laws.
- (2) Any infant born alive after an abortion or within a hospital, clinic, or other facility has the same claim to the protection of the law that would arise for any newborn, or for any person who comes to a hospital, clinic, or other facility for screening and treatment or otherwise becomes a patient within its care.

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: **Medical Care Commission**

RULE CITATION: 10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, .5411

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority (All Rules)
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

These rules set standards for the licensing of hospitals, and are before RRC as part of the agency's scheduled readoption. The rules cover a broad array of aspects including hospital staffing, administration, and the provision of medical care. Among other things, these rules include detailed requirements that hospitals hire and maintain certain personnel, job responsibilities and required credentials for such personnel, requirements and policy statements relating to the preservation of medical records, standards for the provision of emergency services, standards for organization of neonatal care, requirements for the establishment and review of safety standards for imaging services, requirements for the establishment and review of written infection control policies and procedures, and staffing and discharge requirements for inpatient rehabilitation facilities.

Brian Liebman
Commission Counsel
Issued August 5, 2022

It is staff's opinion that the set of rules before you exceeds the grasp of the agency's statutory authority. The Medical Care Commission ("MCC" or the "Commission") draws its rulemaking authority from G.S. 131E-79(a), which states: "The Commission shall promulgate rules **necessary to implement this Article**[" referring to Article 5 of Chapter 131E, titled the "Hospital Licensure Act."

Review of the Hospital Licensure Act reveals that while certain provisions of Article 5 go on to discuss *inter alia*, aspects of license enforcement, requirements for granting or denying hospital privileges, discharge from facilities, and confidentiality of medical records, the statute generally directs *the hospital*, rather than MCC, to develop the policies, procedures, and requirements that are a condition of licensure. Hospitals must submit any plans and specifications for their facilities to MCC upon application for a license, and MCC may request information related to hospital operations during the application process, but MCC is not empowered to specifically set those requirements, policies, and procedures by rule.

Moreover, the rules before you delve into issues that are not specifically governed by the Hospital Licensure Act, and as such cannot be "necessary to implement" those statutes. *Inter alia*, there is no statutory requirement that a hospital maintain the position of nurse executive (Rule .3801) or medical director (Rule .4104), or maintain certain levels of inpatient rehabilitation staffing (Rule .5408). There are no statutory requirements related to preservation of medical records, other than that they are confidential and are not public records under Chapter 132 (Rule .3903). There are no statutory requirements related to establishment of emergency services procedures (Rule .4103). The word "neonatal" does not appear within Article 5 (Rule .4305), nor does any reference to radiological services (Rules .4801 and .4805). Part 4 of Article 5 deals with discharge from hospitals, yet only makes requirements related to a patient's refusal to leave, and fair billing practices. There are no discharge criteria required by Article 5 (Rule .5406).

To this, the agency makes two principal responses. MCC argues that its authority to adopt the rules before you stems from G.S. 131E-75, which is the title and purpose section of the Hospital Licensure Act. Therein, the legislature directed that Article 5's purpose was 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." G.S. 131E-75(b) (2021). Thus, the agency contends that in determining whether to issue, deny, or take any other action with respect to a hospital's

license, it is “required to assess if a hospital is meeting the ‘requirements which promote public health, safety, and welfare....’” and is consequently *required* to establish “operational minimum standards”—a phrase that does not appear within Article 5 of Chapter 131E—for hospitals through rulemaking. The agency goes on to argue that there is no requirement for the General Assembly to specifically enumerate “every area of rule promulgation with any of the agencies creating rules for licensing,” bolstering its point by referring to several allegedly equivalent statutory provisions.

As an initial matter, with respect to the agency’s reference to other rules not currently before RRC, staff cannot and does not opine as to whether those agencies have authority under their respective statutes to adopt the cited rules. The scope of this opinion is limited to the Rules submitted for review by MCC. Here, the agency is authorized only to “promulgate rules necessary to implement” Article 5 of Chapter 131E. G.S. 131E-79(b) (2021). While the agency is correct that G.S. 131E-75 enunciates the *purpose* of the other provisions of Article 5, this language cannot be read as an open-ended grant of *authority* for MCC to promulgate any rule that could conceivably “promote public health, safety and welfare” or concern the “basic standards for the care and treatment of patients in hospitals” outside of the boundaries of the statutory scheme. As noted above, the rules impose deep, granular requirements upon hospitals with respect to issues that are at best tangentially referenced within the bounds of Article 5, and at worst mentioned nowhere within these statutes. Thus, it is staff’s opinion that G.S. 131E-75(b) is not an adequate statutory basis for the rules before you.

Finally, MCC appears to argue that it has additional rulemaking authority for these rules under G.S. 143B-165(6), which states:

- (6) The Commission [MCC] has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of **Article 13A of Chapter 131** of the General Statutes of North Carolina (emphasis added).

The General Assembly repealed Chapter 131 and replaced it with Chapter 131E in 1983. Specifically, the pre-existing Hospital Licensing Act (Article 13A, Chapter 131) was replaced with the Hospital Licensure Act (Article 5, Chapter 131E), which contained the current text of G.S. 131E-79(a) providing MCC with rulemaking authority. While the current iteration of the statutory scheme replaces Article 13A of Chapter 131, there is no evidence that the legislature intended, by citing to the repealed statutes, to refer to Article 5, Chapter 131E. *See Lundsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014) (in ascertaining legislative intent, one

should “give effect to the words actually used in a statute and not . . . delete words used or . . . insert words not used.”). Contrarily, the legislature refers explicitly to Chapter 131E elsewhere within G.S. 143B-165. *See, e.g.*, G.S. 131E-165(11) (2021) (“The Commission is authorized to adopt such rules as may be necessary to carry out the provisions of Part C of Article 6, and Article 10, of Chapter 131E of the General Statutes of North Carolina.”). If the legislature wished for G.S. 143B-165 to refer to Article 5 of Chapter 131E, it could have amended the statutory text. As it chose not to, but rather included a new, independent grant of rulemaking authority within Article 5, it is staff’s opinion that G.S. 143B-165(6) does not provide MCC with an additional source of rulemaking authority with respect to hospital licensure.

Consequently, staff recommends RRC object for lack of statutory authority.

Brian Liebman
Commission Counsel
Issued August 5, 2022

(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. (1945, c. 1096; 1947, c. 933, ss. 3, 5; 1949, c. 592; 1951, c. 1183, s. 1; 1971, c. 134; 1973, c. 476, s. 152; c. 1090, s. 1; 1979, c. 504, ss. 8, 14; 1983, c. 775, s. 1.)

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

Article 5.

Hospital Licensure Act.

Part 1. Article Title and Definitions.

§ 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. (1947, c. 933, s. 6; 1983, c. 775, s. 1.)

§ 131E-76. Definitions.

As used in this article, unless otherwise specified:

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

(1a) "Critical access hospital" means a hospital which has been designated as a critical access hospital by the North Carolina Department of Health and Human Services, Office of Research, Demonstrations and Rural Health Development. To be designated as a critical access hospital under this subdivision, the hospital must be certified as a critical access hospital pursuant to 42 CFR Part 485