

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H.B. 177  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH60007-MG-11D (10/24)

Short Title: Amend Certificate of Need Laws. (Public)

Sponsors: Representatives Avila, Collins, and Burr (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO EXEMPT DIAGNOSTIC CENTERS FROM CERTIFICATE OF NEED  
3 REVIEW AND TO AMEND CERTIFICATE OF NEED LAWS PERTAINING TO  
4 SINGLE-SPECIALTY AMBULATORY SURGERY OPERATING ROOMS, AS  
5 RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CERTIFICATE OF  
6 NEED AND RELATED HOSPITAL ISSUES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 131E-175 is amended by adding new subdivisions to read:

9 "(13) That the relocation of a hospital's operating rooms to a location separate  
10 from the campus upon which the hospital's inpatient acute care beds and  
11 emergency department are located results in a costly and unnecessary  
12 economic burden to the public.

13 (14) That physicians who provide single-specialty ambulatory surgery services in  
14 unlicensed settings should be afforded an opportunity to obtain a license to  
15 provide these services in order to ensure patient safety and the provision of  
16 quality care.

17 (15) That the demand for ambulatory surgery is increasing due to advances in  
18 technology and anesthesia, and single-specialty ambulatory surgery  
19 operating rooms are recognized as a highly effective means of expanding  
20 access while achieving cost savings regardless of the availability and  
21 potential underutilization of hospital-based operating rooms."

22 **SECTION 2.** G.S. 131E-176(7a) is repealed.

23 **SECTION 3.** G.S. 131E-176(9b) reads as rewritten:

24 "(9b) 'Health service facility' means a hospital; long-term care hospital; psychiatric  
25 facility; rehabilitation facility; nursing home facility; adult care home;  
26 kidney disease treatment center, including freestanding hemodialysis units;  
27 intermediate care facility for the mentally retarded; home health agency  
28 office; chemical dependency treatment facility; ~~diagnostic center~~; hospice  
29 office, hospice inpatient facility, hospice residential care facility; and  
30 ambulatory surgical facility."

31 **SECTION 4.** G.S. 131E-176(16)u. reads as rewritten:

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

33 ...

34 u. The construction, development, establishment, increase in the  
35 number, or relocation of an operating ~~room~~ room, including a  
36 single-specialty ambulatory surgery operating room, or



1                   gastrointestinal endoscopy room in a licensed health service facility,  
2                   other than the relocation of an operating room or gastrointestinal  
3                   endoscopy room within the same building or on the same grounds or  
4                   to grounds not separated by more than a public right-of-way adjacent  
5                   to the grounds where the operating room or gastrointestinal  
6                   endoscopy room is currently located.

7                   ...."

8                   **SECTION 5.** G.S. 131E-176(24c) reads as rewritten:

9                   "~~(24c) Reserved for future codification.~~"Single-specialty ambulatory surgery  
10                  operating room" means a designated operating room located in a licensed  
11                  ambulatory surgical facility that is used to perform same-day surgical  
12                  procedures in one of the single-specialty areas identified by the American  
13                  College of Surgeons. For the purpose of this subdivision, 'same-day surgical  
14                  procedures' includes pain injections by orthopedists, physiatrists, and  
15                  anesthesiologists."

16                  **SECTION 6.** G.S. 131E-178 reads as rewritten:

17                  "**§ 131E-178. Activities requiring certificate of need.**

18                  (a) ~~No~~Except as otherwise provided in subsections (a1) and (a2) of this section, no  
19                  person shall offer or develop a new institutional health service without first obtaining a  
20                  certificate of need from the ~~Department; provided, however, no~~Department.

21                  (a1) Any person proposing to obtain a license to establish an ambulatory surgical facility  
22                  for the provision of gastrointestinal endoscopy procedures shall be required to obtain a  
23                  certificate of need to license that setting as an ambulatory surgical facility, with the existing  
24                  number of gastrointestinal endoscopy rooms, except for a person who (i) provides  
25                  gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located  
26                  in a nonlicensed setting, ~~shall be required to obtain a certificate of need to license that setting as~~  
27                  ~~an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms,~~  
28                  ~~provided that:~~setting and (ii) meets all of the following criteria:

- 29                  (1) The ~~person's~~ license application is postmarked for delivery to the Division of  
30                  Health Service Regulation by December 31, 2006;
- 31                  (2) The applicant verifies, by affidavit submitted to the Division of Health  
32                  Service Regulation within 60 days of the effective date of this act, that the  
33                  facility is in operation as of the effective date of this act or that the  
34                  completed application for the building permit for the facility was submitted  
35                  by the effective date of this act;
- 36                  (3) The facility has been accredited by The Accreditation Association for  
37                  Ambulatory Health Care, The Joint Commission on Accreditation of  
38                  Healthcare Organizations, or The American Association for Accreditation of  
39                  Ambulatory Surgical Facilities by the time the license application is  
40                  postmarked for delivery to the Division of Health Service Regulation of the  
41                  Department; and
- 42                  (4) The license application includes a commitment and plan for serving indigent  
43                  and medically underserved populations.

44                  All other persons proposing to obtain a license to establish an  
45                  ambulatory surgical facility for the provision of gastrointestinal endoscopy  
46                  procedures shall be required to obtain a certificate of need. The annual State  
47                  Medical Facilities Plan shall not include policies or need determinations that  
48                  limit the number of gastrointestinal endoscopy rooms that may be approved.

49                  (a2) Any person proposing to obtain a license to establish single-specialty ambulatory  
50                  operating rooms in an ambulatory surgery facility shall be required to obtain a certificate of  
51                  need, except for a person who (i) provides single-specialty ambulatory surgery procedures in

1 one or more operating rooms located in a nonlicensed setting and (ii) meets all of the following  
2 criteria:

- 3 (1) The person's license application is postmarked for delivery to the Division of  
4 Health Service Regulation by December 31, 2013.
- 5 (2) The applicant verifies, by affidavit submitted to the Division of Health  
6 Service Regulation within 60 days of the effective date of this act, that the  
7 facility is in operation as of the effective date of this act or that the  
8 completed application for the building permit for the facility was submitted  
9 by the effective date of this act;
- 10 (3) The facility has been accredited by The Accreditation Association for  
11 Ambulatory Health Care, The Joint Commission on Accreditation of  
12 Healthcare Organizations, or The American Association for Accreditation of  
13 Ambulatory Surgical Facilities by the time the license application is  
14 postmarked for delivery to the Division of Health Service Regulation of the  
15 Department; and
- 16 (4) The license application includes at least all of the following:
- 17 a. A commitment, plan, and policies and procedures for serving  
18 indigent and medically underserved populations.
- 19 b. Projected charges for the 20 most common surgical procedures to be  
20 performed in the proposed single-specialty ambulatory surgery  
21 operating rooms.

22 All other persons proposing to obtain a license to establish  
23 single-specialty ambulatory operating rooms within an ambulatory surgical  
24 facility shall be required to obtain a certificate of need. The annual State  
25 Medical Facilities Plan shall not include policies or need determinations that  
26 limit the number of single-specialty ambulatory surgery operating rooms that  
27 may be approved. However, the Department shall not approve an application  
28 for a single-specialty ambulatory surgery operating room in any ambulatory  
29 surgical facility within a county in which a licensed critical access hospital,  
30 as defined in 42 CFR § 400.202, is located. The annual State Medical  
31 Facilities Plan also shall not include policies or need determinations that  
32 limit the relocation and replacement of existing operating rooms, including  
33 single-specialty ambulatory operating rooms. However, the Department shall  
34 not approve an application for the relocation of a hospital's operating rooms  
35 to a location separate from the campus upon which the hospital's inpatient  
36 acute care beds and emergency department are located if approval would  
37 result in the hospital obtaining reimbursement for surgery procedures at a  
38 rate higher than the rate paid to ambulatory surgery centers under a  
39 government-sponsored health insurance or medical assistance program.

40 (b) No person shall make an acquisition by donation, lease, transfer, or comparable  
41 arrangement without first obtaining a certificate of need from the Department, if the acquisition  
42 would have been a new institutional health service if it had been made by purchase. In  
43 determining whether an acquisition would have been a new institutional health service, the  
44 capital expenditure for the asset shall be deemed to be the fair market value of the asset or the  
45 cost of the asset, whichever is greater.

46 (c) No person shall incur an obligation for a capital expenditure which is a new  
47 institutional health service without first obtaining a certificate of need from the Department. An  
48 obligation for a capital expenditure is incurred when:

- 49 (1) An enforceable contract, excepting contracts which are expressly contingent  
50 upon issuance of a certificate of need, is entered into by a person for the  
51 construction, acquisition, lease, or financing of a capital asset;

- 1 (2) A person takes formal action to commit funds for a construction project  
2 undertaken as his own contractor; or
- 3 (3) In the case of donated property, the date on which the gift is completed.
- 4 (d) Where the estimated cost of a proposed capital expenditure, including the fair  
5 market value of equipment acquired by purchase, lease, transfer, or other comparable  
6 arrangement, is certified by a licensed architect or engineer to be equal to or less than the  
7 expenditure minimum for capital expenditure for new institutional health services, such  
8 expenditure shall be deemed not to exceed the amount for new institutional health services  
9 regardless of the actual amount expended, provided that the following conditions are met:
- 10 (1) The certified estimated cost is prepared in writing 60 days or more before  
11 the obligation for the capital expenditure is incurred. Certified cost estimates  
12 shall be available for inspection at the facility and sent to the Department  
13 upon its request.
- 14 (2) The facility on whose behalf the expenditure was made notifies the  
15 Department in writing within 30 days of the date on which such expenditure  
16 is made if the expenditure exceeds the expenditure minimum for capital  
17 expenditures. The notice shall include a copy of the certified cost estimate.
- 18 (e) The Department may grant certificates of need which permit capital expenditures  
19 only for predevelopment activities. Predevelopment activities include the preparation of  
20 architectural designs, plans, working drawings, or specifications, the preparation of studies and  
21 surveys, and the acquisition of a potential site."

22 **SECTION 7.** G.S. 131E-182 reads as rewritten:

23 "(a) The Department in its rules shall establish schedules for submission and review of  
24 completed applications. The schedules shall provide that applications for similar proposals in  
25 the same service area will be reviewed together. However, the Department is prohibited from  
26 scheduling a review prior to February 1, 2013, for certificate of need applications that propose  
27 to establish a licensed single-specialty ambulatory operating room within an ambulatory  
28 surgery facility.

29 (b) An application for a certificate of need shall be made on forms provided by the  
30 Department. The application forms, which may vary according to the type of proposal, shall  
31 require such information as the Department, by its rules deems necessary to conduct the review.  
32 An applicant shall be required to furnish only that information necessary to determine whether  
33 the proposed new institutional health service is consistent with the review criteria implemented  
34 under G.S. 131E-183 and with duly adopted standards, plans and criteria. The application form  
35 for a certificate of need to establish a single-specialty ambulatory surgery operating room  
36 within an ambulatory surgery facility shall require the applicant to (i) include a written  
37 commitment, plan, and policies and procedures for serving indigent and medically underserved  
38 populations, (ii) furnish the projected charges for the 20 most common surgical procedures to  
39 be performed in the proposed operating room, and (iii) demonstrate that it is performing or  
40 reasonably expects to perform at least 800 single-specialty ambulatory procedures per licensed  
41 single-specialty ambulatory operating room per year.

42 (c) An application fee is imposed on an applicant for a certificate of need. An applicant  
43 must submit the fee with the application. The fee is not refundable, regardless of whether a  
44 certificate of need is issued. Fees collected under this section shall be credited to the General  
45 Fund as nontax revenue. The application fee is five thousand dollars (\$5,000) plus an amount  
46 equal to three-tenths of one percent (.3%) of the amount of the capital expenditure proposed in  
47 the application that exceeds one million dollars (\$1,000,000). In no event may the fee exceed  
48 fifty thousand dollars (\$50,000)."

49 **SECTION 8.** G.S. 131E-184(a) is amended by adding a new subdivision to read:

50 "(10) To develop, acquire, or replace an institutional health service that obtained  
51 certificate of need approval prior to the effective date of this act as a

1 diagnostic center. For the purpose of this subdivision, 'diagnostic center'  
2 means a freestanding facility, program, or provider, including but not limited  
3 to, physicians' offices, clinical laboratories, radiology centers, and mobile  
4 diagnostic programs, in which the total cost of all the medical diagnostic  
5 equipment utilized by the facility that cost ten thousand dollars (\$10,000) or  
6 more exceeds five hundred thousand dollars (\$500,000), unless a new  
7 institutional health service other than those defined in G.S. 131E-176(16)b.  
8 is offered or developed in the building."

9 **SECTION 9.** Nothing in this act shall be construed to reflect any legislative intent  
10 as to the circumstances under which Medicare or Medicaid certification may be obtained for a  
11 provider of ambulatory surgery services.

12 **SECTION 10.** This act is effective when it becomes law. Section 7 of this act  
13 expires on the effective date of administrative rules adopted consistent with the provisions of  
14 this act regarding the number of single-specialty surgery procedures performed or projected to  
15 be performed by applicants seeking to establish a licensed single-specialty ambulatory surgery  
16 operating room.