

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH20064-MG-19C (01/15)

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

Sponsors: Representatives Avila, Bishop, Collins, and Michaux (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT EXEMPTING DIAGNOSTIC CENTERS, AMBULATORY SURGICAL FACILITIES, GASTROINTESTINAL ENDOSCOPY ROOMS, AND PSYCHIATRIC HOSPITALS FROM CERTIFICATE OF NEED REVIEW; PROHIBITING THE STATE MEDICAL FACILITIES PLAN FROM LIMITING THE NUMBER OF OPERATING ROOMS AND GASTROINTESTINAL ENDOSCOPY ROOMS; AND ENHANCING LICENSING REQUIREMENTS FOR THE DEVELOPMENT, ACQUISITION, OR REPLACEMENT OF AMBULATORY SURGICAL FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-176(9b) reads as rewritten:

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

SECTION 2. G.S. 131E-176(16) reads as rewritten:

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

...

r. ~~The conversion of a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or the addition of a specialty to a specialty ambulatory surgical program.~~

...

u. ~~The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located.~~

v. ~~The change in designation, in a licensed health service facility, of an operating room to a gastrointestinal endoscopy room or change in designation of a gastrointestinal endoscopy room to an operating room that results in a different number of each type of room than is~~



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1 reflected on the health service facility's license in effect as of January
2 1, 2005."

3 **SECTION 3.** G.S. 131E-177 reads as rewritten:

4 **"§ 131E-177. Department of Health and Human Services is designated State Health**
5 **Planning and Development Agency; powers and duties.**

6 The Department of Health and Human Services is designated as the State Health Planning
7 and Development Agency for the State of North Carolina, and is empowered to exercise the
8 following powers and duties:

- 9 (1) To establish standards and criteria or plans required to carry out the
10 provisions and purposes of this Article and to adopt rules pursuant to
11 Chapter 150B of the General Statutes, to carry out the purposes and
12 provisions of this ~~Article;~~Article.
- 13 (2) Adopt, amend, and repeal such rules and regulations, consistent with the
14 laws of this State, as may be required by the federal government for
15 grants-in-aid for health service facilities and health planning which may be
16 made available by the federal government. This section shall be liberally
17 construed in order that the State and its citizens may benefit from such
18 ~~grants-in-aid;~~grants-in-aid.
- 19 (3) Define, by rule, procedures for submission of periodic reports by persons or
20 health service facilities subject to agency review under this ~~Article;~~Article.
- 21 (4) ~~Develop~~ With respect to health service facilities planning, all of the
22 following:
- 23 a. Develop policy, criteria, and standards for health service facilities
24 planning; shall conduct planning.
- 25 b. Conduct statewide registration and inventories of and make
26 determinations of need for health service facilities, health services as
27 specified in G.S. 131E-176(16)f., and equipment as specified in
28 G.S. 131E-176(16)f1., which shall include consideration of adequate
29 geographic location of equipment and ~~services;~~ and develop services.
- 30 c. Develop a State Medical Facilities ~~Plan;~~ Plan, provided however, that
31 the State Medical Facilities plan shall not include policies or need
32 determinations that limit the number of operating rooms or
33 gastrointestinal endoscopy rooms.
- 34 (5) Implement, by rule, criteria for project ~~review;~~review.
- 35 (6) Have the power to grant, deny, or withdraw a certificate of need and to
36 impose such sanctions as are provided for by this ~~Article;~~Article.
- 37 (7) Solicit, accept, hold and administer on behalf of the State any grants or
38 devises of money, securities or property to the Department for use by the
39 Department in the administration of this ~~Article;~~ and Article.
- 40 (8) Repealed by Session Laws 1987, c. 511, s. 1.
- 41 (9) Collect fees for submitting applications for certificates of need.
- 42 (10) The authority to review all records in any recording medium of any person
43 or health service facility subject to agency review under this Article which
44 pertain to construction and acquisition activities, staffing or costs and
45 charges for patient care, including but not limited to, construction contracts,
46 architectural contracts, consultant contracts, purchase orders, cancelled
47 checks, accounting and financial records, debt instruments, loan and security
48 agreements, staffing records, utilization statistics and any other records the
49 Department deems to be reasonably necessary to determine compliance with
50 this Article.

1 The Secretary of Health and Human Services shall have final decision-making authority
2 with regard to all functions described in this section."

3 **SECTION 4.** G.S. 131E-178(a) reads as rewritten:

4 "(a) No person shall offer or develop a new institutional health service without first
5 obtaining a certificate of need from the Department; ~~provided, however, no person who~~
6 ~~provides gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy~~
7 ~~rooms located in a nonlicensed setting, shall be required to obtain a certificate of need to~~
8 ~~license that setting as an ambulatory surgical facility with the existing number of~~
9 ~~gastrointestinal endoscopy rooms, provided that:~~

- 10 (1) ~~The license application is postmarked for delivery to the Division of Health~~
11 ~~Service Regulation by December 31, 2006;~~
- 12 (2) ~~The applicant verifies, by affidavit submitted to the Division of Health~~
13 ~~Service Regulation within 60 days of the effective date of this act, that the~~
14 ~~facility is in operation as of the effective date of this act or that the~~
15 ~~completed application for the building permit for the facility was submitted~~
16 ~~by the effective date of this act;~~
- 17 (3) ~~The facility has been accredited by The Accreditation Association for~~
18 ~~Ambulatory Health Care, The Joint Commission on Accreditation of~~
19 ~~Healthcare Organizations, or The American Association for Accreditation of~~
20 ~~Ambulatory Surgical Facilities by the time the license application is~~
21 ~~postmarked for delivery to the Division of Health Service Regulation of the~~
22 ~~Department; and~~
- 23 (4) ~~The license application includes a commitment and plan for serving indigent~~
24 ~~and medically underserved populations.~~

25 ~~All other persons proposing to obtain a license to establish an ambulatory surgical facility~~
26 ~~for the provision of gastrointestinal endoscopy procedures shall be required to obtain a~~
27 ~~certificate of need. The annual State Medical Facilities Plan shall not include policies or need~~
28 ~~determinations that limit the number of gastrointestinal endoscopy rooms that may be~~
29 ~~approved.~~Department."

30 **SECTION 5.** G.S. 131E-183(a)(1) reads as rewritten:

- 31 "(1) The proposed project shall be consistent with applicable policies and need
32 determinations in the State Medical Facilities Plan, the need determination
33 of which constitutes a determinative limitation on the provision of any health
34 service, health service facility, health service facility beds, dialysis stations,
35 ~~operating rooms,~~ or home health offices that may be approved."

36 **SECTION 6.** G.S. 131E-184(a) reads as rewritten:

37 "(a) Except as provided in subsection (b), the Department shall exempt from certificate
38 of need review a new institutional health service if it receives prior written notice from the
39 entity proposing the new institutional health service, which notice includes an explanation of
40 why the new institutional health service is required, for any of the following:

- 41 (1) To eliminate or prevent imminent safety hazards as defined in federal, State,
42 or local fire, building, or life safety codes or regulations.
 - 43 (1a) To comply with State licensure standards.
 - 44 (1b) To comply with accreditation or certification standards which must be met to
45 receive reimbursement under Title XVIII of the Social Security Act or
46 payments under a State plan for medical assistance approved under Title
47 XIX of that act.
- 48 (2) Repealed by Session Laws 1987, c. 511, s. 1.
- 49 (3) To provide data processing equipment.
- 50 (4) To provide parking, heating or cooling systems, elevators, or other basic
51 plant or mechanical improvements, unless these activities are integral

1 portions of a project that involves the construction of a new health service
2 facility or portion thereof and that is subject to certificate of need review.

3 (5) To replace or repair facilities destroyed or damaged by accident or natural
4 disaster.

5 (6) To provide any nonhealth service facility or service.

6 (7) To provide replacement equipment.

7 (8) To acquire an existing health service facility, including equipment owned by
8 the health service facility at the time of acquisition.

9 (9) To develop or acquire a physician office building regardless of cost, unless a
10 new institutional health service other than defined in G.S. 131E-176(16)b. is
11 offered or developed in the building.

12 (10) To develop, acquire, construct, expand, or replace a health service facility or
13 service that obtained certificate of need approval prior to the effective date
14 of this act as a diagnostic center; ambulatory surgical facility, including an
15 ambulatory surgical facility with one or more gastrointestinal endoscopy
16 procedure rooms; or psychiatric hospital."

17 **SECTION 7.** G.S. 131E-147 is amended by adding new subsections to read:

18 "(f) The Department shall not issue or renew a license to operate an ambulatory surgical
19 facility developed, acquired, or replaced on or after the effective date of this act, unless the
20 application includes all of the following:

21 (1) A commitment that the Medicare allowable amount for self-pay and
22 Medicaid surgical cases minus all revenue collected from self-pay and
23 Medicaid surgical cases shall be at least seven percent (7%) of the total
24 revenue collected for all surgical cases performed in the facility or proposed
25 facility.

26 (2) For each year of operation, a commitment to report to the Department the
27 total number of cases by each of the following payer categories:

28 a. Self-pay surgical cases.

29 b. Medicaid surgical cases.

30 c. Medicare surgical cases.

31 d. Commercial insurance surgical cases.

32 e. Managed care surgical cases.

33 f. Other surgical cases.

34 (3) A commitment to report utilization and payment data for services provided
35 by the ambulatory surgical facility to the statewide data processor, as
36 required by G.S. 131E-214.2.

37 (4) For a license to operate in any county with a population of less than 100,000
38 as of the effective date of this act:

39 a. Written documentation of support from each hospital located within
40 that county.

41 b. A written transfer agreement between the ambulatory surgical facility
42 and each hospital located within that county."

43 **SECTION 8.** G.S. 131E-175(11) and (12) are repealed.

44 **SECTION 9.** This act is effective when it becomes law.