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SENATE BILL DRS45083-MG-9 (02/09)

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

Sponsors: Senators Hise and Wade (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REPEALING NORTH CAROLINA'S CERTIFICATE OF NEED LAWS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** G.S. 6-19.1(a) reads as rewritten:

5 "(a) In any civil action, other than an adjudication for the purpose of establishing or fixing a
6 rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who
7 is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law,
8 unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party
9 to recover reasonable attorney's fees, including attorney's fees applicable to the administrative
10 review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed
11 as court costs against the appropriate agency if:

- 12 (1) The court finds that the agency acted without substantial justification in
13 pressing its claim against the party; and
14 (2) The court finds that there are no special circumstances that would make the
15 award of attorney's fees unjust. The party shall petition for the attorney's fees
16 within 30 days following final disposition of the case. The petition shall be
17 supported by an affidavit setting forth the basis for the request.

18 ~~Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the~~
19 ~~administrative review portion of the case in contested cases arising under Article 9 of Chapter~~
20 ~~131E of the General Statutes.~~

21 Nothing in this section grants permission to bring an action against an agency otherwise
22 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
23 bring the action.

24 Any attorney's fees assessed against an agency under this section shall be charged against the
25 operating expenses of the agency and shall not be reimbursed from any other source."

26 **SECTION 1.(b)** Subsection (a) of this section applies to contested cases arising on or
27 after January 1, 2021.

28 **SECTION 2.** G.S. 58-50-61(a) reads as rewritten:

29 "(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article, the
30 term:

- 31 ...
32 (8) "Health care provider" means any person who is licensed, registered, or
33 certified under Chapter 90 of the General Statutes or the laws of another state to
34 provide health care services in the ordinary care of business or practice or a
35 profession or in an approved education or training program; a health care



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1 facility as defined in ~~G.S. 131E-176(9b)~~ this section or the laws of another state
 2 to operate as a health care facility; or a pharmacy.

3 ...
 4 (9a) "Health service facility" means a hospital; long-term care hospital; psychiatric
 5 facility; rehabilitation facility; nursing home facility; adult care home; kidney
 6 disease treatment center, including freestanding hemodialysis units;
 7 intermediate care facility for the mentally retarded; home health agency office;
 8 chemical dependency treatment facility; diagnostic center; hospice office,
 9 hospice inpatient facility, and hospice residential care facility; and ambulatory
 10 surgical facility.

11"

12 **SECTION 3.** G.S. 58-55-35(a) reads as rewritten:

13 "(a) Whenever long-term care insurance provides coverage for the facilities, services, or
 14 physical or mental conditions listed below, unless otherwise defined in the policy and certificate,
 15 and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

16 ...
 17 (10) ~~"Hospice" shall be defined in accordance with the terms of G.S.~~
 18 ~~131E-176(13a).~~ means any coordinated program of home care with provision
 19 for inpatient care for terminally ill patients and their families. This care is
 20 provided by a medically directed interdisciplinary team directly or through an
 21 agreement under the direction of an identifiable hospice administration. A
 22 hospice program of care provides palliative and supportive medical and other
 23 health services to meet the physical, psychological, social, spiritual, and special
 24 needs of patients and their families, which are experienced during the final
 25 stages of terminal illness and during dying and bereavement.

26 (11) ~~"Intermediate care facility for the mentally retarded" shall be defined in~~
 27 ~~accordance with the terms of G.S. 131E-176(14a).~~ means facilities licensed
 28 pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of
 29 providing health and habilitative services based on the developmental model
 30 and principles of normalization for persons with mental retardation, autism,
 31 cerebral palsy, epilepsy, or related conditions.

32"

33 **SECTION 4.** G.S. 113A-12(3)e. reads as rewritten:

34 "e. A health care facility financed pursuant to Chapter 131A of the General
 35 ~~Statutes or receiving a certificate of need under Article 9 of Chapter~~
 36 ~~131E of the General Statutes."~~

37 **SECTION 5.** G.S. 122C-23.1(e) reads as rewritten:

38 "(e) As used in this section, "residential treatment facility" means a "residential facility" as
 39 defined in and licensed under this Chapter, ~~but not subject to Certificate of Need requirements~~
 40 ~~under Article 9 of Chapter 131E of the General Statutes.~~ Chapter."

41 **SECTION 6.** G.S. 131E-13(a)(1) reads as rewritten:

42 "(1) The corporation shall continue to provide the same or similar clinical hospital
 43 services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and
 44 emergency treatment, including emergency services for the indigent, that the
 45 hospital facility provided prior to the lease, sale, or conveyance. These services
 46 may be terminated only as prescribed by ~~Certificate of Need Law prescribed in~~
 47 ~~Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need~~
 48 ~~Law is inapplicable,~~ by review procedure designed to guarantee public
 49 participation pursuant to rules adopted by the Secretary of the Department of
 50 Health and Human Services."

51 **SECTION 7.** G.S. 131E-136(4) reads as rewritten:

1 "(4) "Home health agency" means a home care agency which is certified to receive
2 Medicare and Medicaid reimbursement for providing nursing care, therapy,
3 medical social services, and home health aide services on a part-time,
4 intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to
5 Article 9 of Chapter 131E.basis."

6 **SECTION 8.** G.S. 148-19.1 reads as rewritten:

7 "**§ 148-19.1. Exemption from licensure and certificate of need.licensure.**

8 (a) Inpatient chemical dependency or substance abuse facilities that provide services
9 exclusively to inmates of the Division of Adult Correction of the Department of Public Safety
10 shall be exempt from licensure by the Department of Health and Human Services under Chapter
11 122C of the General Statutes. If an inpatient chemical dependency or substance abuse facility
12 provides services both to inmates of the Division of Adult Correction of the Department of Public
13 Safety and to members of the general public, the portion of the facility that serves inmates shall be
14 exempt from licensure.

15 (b) ~~Any person who contracts to provide inpatient chemical dependency or substance~~
16 ~~abuse services to inmates of the Division of Adult Correction of the Department of Public Safety~~
17 ~~may construct and operate a new chemical dependency or substance abuse facility for that purpose~~
18 ~~without first obtaining a certificate of need from the Department of Health and Human Services~~
19 ~~pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new facility or addition~~
20 ~~developed for that purpose without a certificate of need shall not be licensed pursuant to Chapter~~
21 ~~122C of the General Statutes and shall not admit anyone other than inmates unless the owner or~~
22 ~~operator first obtains a certificate of need."~~

23 **SECTION 9.** Article 9 of Chapter 131E of the General Statutes, G.S. 130A-45.02(i),
24 143B-1292, 150B-2(8a)k., and 150B-21.1(6) are repealed.

25 **SECTION 10.** This act becomes effective January 1, 2018.