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SENATE BILL DRS35204-MG-93A

Short Title: Certificate of Need Modifications. (Public)

Sponsors: Senators Krawiec, Burgin, and Craven (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT MODIFYING CERTIFICATE OF NEED LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. REFORMS EFFECTIVE JANUARY 1, 2022**

6 **SECTION 1.(a)** G.S. 131E-176 reads as rewritten:

7 **"§ 131E-176. Definitions.**

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

10 ...

11 (2) "Bed capacity" means space used exclusively for inpatient ~~care,~~ care at a
12 health service facility, including space designed or remodeled for licensed
13 inpatient beds even though temporarily not used for such purposes. The
14 number of beds to be counted in any patient room shall be the maximum
15 number for which adequate square footage is provided as established by rules
16 of the Department except that single beds in single rooms are counted even if
17 the room contains inadequate square footage. The term "bed capacity" also
18 refers to the number of dialysis stations in kidney disease treatment centers,
19 including freestanding dialysis units.

20 ...

21 (7a) Diagnostic center. – A freestanding facility, program, or provider, including
22 but not limited to, physicians' offices, clinical laboratories, radiology centers,
23 and mobile diagnostic programs, in which the total cost of all the medical
24 diagnostic equipment utilized by the facility which cost ten thousand dollars
25 (\$10,000) or more exceeds ~~five hundred thousand dollars (\$500,000).~~ one
26 million five hundred thousand dollars (\$1,500,000). In determining whether
27 the medical diagnostic equipment in a diagnostic center costs more than ~~five~~
28 ~~hundred thousand dollars (\$500,000),~~ one million five hundred thousand
29 dollars (\$1,500,000), the costs of the equipment, studies, surveys, designs,
30 plans, working drawings, specifications, construction, installation, and other
31 activities essential to acquiring and making operational the equipment shall be
32 included. The capital expenditure for the equipment shall be deemed to be the
33 fair market value of the equipment or the cost of the equipment, whichever is
34 greater. Beginning September 30, 2022, and on September 30 each year
35 thereafter, the cost threshold amount in this subdivision shall be adjusted using
36 the Medical Care Index component of the Consumer Price Index published by



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- 1 the U.S. Department of Labor for the 12-month period preceding the previous
2 September 1.
3 ...
4 (9a) "Health service" means an organized, interrelated medical, diagnostic,
5 therapeutic, ~~and/or rehabilitative activity~~ rehabilitative activity, or any
6 combination of these, that is integral to the prevention of disease or the clinical
7 management of a sick, injured, or disabled person. "Health service" does not
8 include administrative and other activities that are not integral to clinical
9 ~~management.~~ management, or any activities performed at a facility that does
10 not meet the definition of a health service facility.
11 (9b) "Health service facility" means a hospital; long-term care hospital; psychiatric
12 facility; rehabilitation facility; nursing home facility; adult care home; kidney
13 disease treatment center, including freestanding hemodialysis units;
14 intermediate care facility for the mentally retarded; home health agency
15 office; chemical dependency treatment facility; diagnostic center; or hospice
16 office, hospice inpatient facility, or hospice residential care facility; ~~and~~
17 ~~ambulatory surgical facility.~~
18 ...
19 (14o) Major medical equipment. – A single unit or single system of components
20 with related functions which is used to provide medical and other health
21 services and which costs more than ~~seven hundred fifty thousand dollars~~
22 ~~(\$750,000).~~ two million dollars (\$2,000,000). In determining whether the
23 major medical equipment costs more than ~~seven hundred fifty thousand~~
24 ~~dollars (\$750,000),~~ two million dollars (\$2,000,000), the costs of the
25 equipment, studies, surveys, designs, plans, working drawings, specifications,
26 construction, installation, and other activities essential to acquiring and
27 making operational the major medical equipment shall be included. The
28 capital expenditure for the equipment shall be deemed to be the fair market
29 value of the equipment or the cost of the equipment, whichever is greater.
30 Major medical equipment does not include replacement equipment as defined
31 in this section. Beginning September 30, 2022, and on September 30 each year
32 thereafter, the cost threshold amount in this subdivision shall be adjusted using
33 the Medical Care Index component of the Consumer Price Index published by
34 the U.S. Department of Labor for the 12-month period preceding the previous
35 September 1.
36 ...
37 (16) New institutional health services. – Any of the following:
38 ...
39 b. Except as otherwise provided in G.S. 131E-184(e), the obligation by
40 any person of a capital expenditure exceeding ~~two million dollars~~
41 ~~(\$2,000,000).~~ four million dollars (\$4,000,000) to develop or expand a
42 health service or a health service facility, or which relates to the
43 provision of a health service. The cost of any studies, surveys, designs,
44 plans, working drawings, specifications, and other activities, including
45 staff effort and consulting and other services, essential to the
46 acquisition, improvement, expansion, or replacement of any plant or
47 equipment with respect to which an expenditure is made shall be
48 included in determining if the expenditure exceeds ~~two million dollars~~
49 ~~(\$2,000,000).~~ four million dollars (\$4,000,000). Beginning September
50 30, 2022, and on September 30 each year thereafter, the amount in this
51 sub-subdivision shall be adjusted using the Medical Care Index

1 component of the Consumer Price Index published by the U.S.
2 Department of Labor for the 12-month period preceding the previous
3 September 1.

4 ...

5 ~~†. The conversion of a specialty ambulatory surgical program to a~~
6 ~~multispecialty ambulatory surgical program or the addition of a~~
7 ~~specialty to a specialty ambulatory surgical program.~~

8"

9 **SECTION 1.(b)** G.S. 131E-184 reads as rewritten:

10 **"§ 131E-184. Exemptions from review.**

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

15 ...

16 (10) To develop, acquire, construct, expand, or replace a health service facility or
17 service that obtained certificate of need approval prior to October 1, 2019, as
18 an ambulatory surgical facility.

19 ...

20 (e) The Department shall exempt from certificate of need review a capital expenditure
21 that exceeds the ~~two million dollar (\$2,000,000)~~ four million dollar (\$4,000,000) threshold set
22 forth in G.S. 131E-176(16)b. if all of the following conditions are met:

23 ...

24 (g) The Department shall exempt from certificate of need review any capital expenditure
25 that exceeds the ~~two million dollar (\$2,000,000)~~ four million dollar (\$4,000,000) threshold set
26 forth in G.S. 131E-176(16)b. if all of the following conditions are met:

27 ...

28 (i) Notwithstanding any other provision of law to the contrary, the Department shall
29 exempt from certificate of need review services or facilities for which a certificate of need has
30 already been issued when those services or facilities are replaced, renovated, or relocated to
31 another site in the same county where need was originally determined.

32 (j) The Department shall exempt from certificate of need review the construction,
33 development, acquisition, or establishment of an ambulatory surgical facility in a county with a
34 population of 100,000 or more, provided all of the following criteria are met:

35 (1) If the entity seeking this exemption is a physician or group of physicians
36 licensed to practice in this State under Chapter 90 of the General Statutes, the
37 entity shall make every effort to enter into a joint venture for the construction,
38 development, acquisition, or establishment of the ambulatory surgical facility
39 with a licensed hospital in the same geographic service area as the proposed
40 ambulatory surgical facility. The terms of the joint venture must provide for
41 at least fifty-five percent (55%) ownership by the physician or group of
42 physicians. If the physician or group of physicians and a licensed hospital in
43 the same geographic service area are unable to reach a signed agreement on
44 the joint venture within a six-month period, then the physician or group of
45 physicians shall provide written notification of this inability to reach a signed
46 agreement to the Department. The Department shall adopt rules developing
47 forms and procedures for submitting this notification. Upon receipt of written
48 confirmation from the Department that the exemption authorized by this
49 section applies, the entity may proceed with constructing, developing,
50 acquiring, or establishing the ambulatory surgical facility.

- 1 (2) The ambulatory surgical facility must have an agreement with a licensed
2 hospital within the same geographic service area, or the licensed medical staff
3 at the ambulatory surgical facility must have hospital privileges or other
4 documented arrangements with a licensed hospital in the same geographic
5 service area as the proposed ambulatory surgical facility that are deemed
6 sufficient by the Department to ensure that inpatient hospital services will be
7 available to address any medical complications that require a patient of the
8 ambulatory surgical facility to be admitted to a hospital for inpatient care.
9 (3) The ambulatory surgical facility must have the capability to immediately
10 transfer a patient to a licensed hospital with adequate emergency room
11 services and that is within the same geographic service area.
12 (4) The ambulatory surgical facility must comply with all requirements of the
13 Ambulatory Surgical Facility Licensure Act set forth in Part 4 of Article 6 of
14 Chapter 131E of the General Statutes, including the licensure requirements
15 specified in G.S. 131E-147."

16 **SECTION 1.(c)** G.S. 131E-189 is amended by adding two new subsections to read:

17 "(d) Notwithstanding any other provision of this section, a certificate of need for the
18 construction of a health service facility expires if the holder of the certificate of need fails to
19 initiate construction of the project authorized by the certificate of need within the following time
20 frames:

- 21 (1) For a project that costs over fifty million dollars (\$50,000,000), the holder of
22 the certificate of need shall initiate construction of the project authorized by
23 the certificate of need within four years after the date the Department's
24 decision to approve the certificate of need for that project becomes final.
25 (2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder
26 of the certificate of need shall initiate construction of the project authorized
27 by the certificate of need within two years after the date the Department's
28 decision to approve the certificate of need for that project becomes final.

29 (e) Notwithstanding any other provision of this Article, a certificate of need that has not
30 been used at any point in the immediately previous 12 months is expired."

31 **SECTION 1.(d)** G.S. 131E-147 reads as rewritten:

32 "**§ 131E-147. Licensure requirement.**

33 ...

34 (c1) All initial applications and renewal applications shall require the applicant to state the
35 number of procedure rooms on, and the number and type of procedures performed at, the
36 premises named in the application.

37 ...

38 (f) The Department shall not issue or renew a license to operate an ambulatory surgical
39 facility developed, acquired, or replaced on or after October 1, 2019, unless the license
40 application includes all of the following:

- 41 (1) A commitment that the Medicare allowable amount for self-pay and Medicaid
42 surgical cases minus all revenue collected from self-pay and Medicaid
43 surgical cases will be equal to (i) four percent (4%) of the total revenue
44 collected for all surgical cases performed in the facility or proposed facility,
45 or (ii) the percentage of charity care ambulatory surgery services provided by
46 the affiliated hospital, whichever is greater.
47 (2) For each year of operation, a commitment to report to the Department the total
48 number of cases by each of the following payer categories:
49 a. Self-pay surgical cases.
50 b. Medicaid surgical cases.
51 c. Medicare surgical cases.

- 1 d. Commercial insurance surgical cases.
 2 e. Managed care surgical cases.
 3 f. Other surgical cases.
 4 (3) A commitment to report utilization and payment data for services provided by
 5 the ambulatory surgical facility to the statewide data processor, as required by
 6 G.S. 131E-214.2."

7 **SECTION 1.(e)** This Part becomes effective January 1, 2022.

8
 9 **PART II. REFORMS EFFECTIVE 18 MONTHS AFTER THE BILL BECOMES LAW**

10 **SECTION 2.(a)** G.S. 131E-176 reads as rewritten:

11 "**§ 131E-176. Definitions.**

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

- 14 ...
- 15 (9b) Health service facility. – A hospital; long-term care hospital; ~~psychiatric~~
 16 ~~facility~~; rehabilitation facility; nursing home facility; adult care home; kidney
 17 disease treatment center, including freestanding hemodialysis units;
 18 intermediate care facility individuals with intellectual disabilities; home
 19 health agency office; ~~chemical dependency treatment facility~~; diagnostic
 20 center; hospice office, hospice inpatient facility, hospice residential care
 21 facility; and ambulatory surgical facility.
- 22 (9c) Health service facility bed. – A bed licensed for use in a health service facility
 23 in the categories of (i) acute care beds; (ii) ~~psychiatric beds~~; (iii) ~~rehabilitation~~
 24 beds; ~~(iv)~~ (iii) nursing home beds; ~~(v)~~ (iv) intermediate care beds for the
 25 mentally retarded; ~~(vi)~~ (v) ~~chemical dependency treatment beds~~; ~~(vii)~~ (v) hospice
 26 inpatient facility beds; ~~(viii)~~ (vi) hospice residential care facility beds; ~~(ix)~~
 27 (vii) adult care home beds; and ~~(x)~~ (viii) long-term care hospital beds.

- 28 ...
- 29 (16) New institutional health services. – Any of the following:

30 ...

31 d. ~~The~~ Except as otherwise provided in G.S. 131E-184(j), the offering of
 32 dialysis services or home health services by or on behalf of a health
 33 service facility if those services were not offered within the previous
 34 12 months by or on behalf of the facility.

35 ...

36 e. ~~The conversion of a specialty ambulatory surgical program to a~~
 37 ~~multispecialty ambulatory surgical program or the addition of a~~
 38 ~~specialty to a specialty ambulatory surgical program.~~

39 "

40 **SECTION 2.(b)** G.S. 131E-184(c) reads as rewritten:

41 "(c) The Department shall exempt from certificate of need review any conversion of
 42 existing acute care beds to psychiatric beds ~~provided all of the following are true:~~ beds.

- 43 (1) ~~The hospital proposing the conversion has executed a contract with the~~
 44 ~~Department's Division of Mental Health, Developmental Disabilities, and~~
 45 ~~Substance Abuse Services, one or more of the area mental health,~~
 46 ~~developmental disabilities, and substance abuse authorities, or a combination~~
 47 ~~thereof to provide psychiatric beds to patients referred by the contracting~~
 48 ~~agency or agencies.~~
- 49 (2) ~~The total number of beds to be converted shall not be more than twice the~~
 50 ~~number of beds for which the contract pursuant to subdivision (1) of this~~
 51 ~~subsection shall provide."~~

1 **SECTION 2.(c)** Section 12F.4(b) of Session Law 2016-94 reads as rewritten:
2 **"SECTION 12F.4.(b)** The Secretary shall select hospitals in the three State regions for
3 institutional services (Eastern Region, Central Region, and Western Region) to receive funds
4 allocated under subsection (a) of this section for the construction, conversion, or both of
5 short-term, inpatient behavioral health beds in rural areas of the State. Notwithstanding the State
6 Medical Facilities Plan, Article 9 of Chapter 131E of the General Statutes, or any other provision
7 of law to the contrary, each selected rural hospital that receives funds allocated under subsection
8 (a) of this section shall be allowed to construct new or convert unused acute care beds into
9 licensed, inpatient behavioral health beds without undergoing certificate of need review by the
10 Division of Health Service Regulation. All newly constructed or converted beds shall be subject
11 to existing licensure laws and requirements. As a condition of receiving these funds, each selected
12 rural hospital shall reserve at least ~~fifty percent (50%)~~ twenty-five percent (25%) of the
13 constructed or converted beds for (i) purchase by the Department under the State-administered,
14 three-way contract and (ii) referrals by local management entities/managed care organizations
15 (LME/MCOs) of individuals who are indigent or Medicaid recipients. Any hospital unit or other
16 location with short-term, inpatient behavioral health beds constructed or converted with funds
17 allocated under subsection (a) of this section shall be named in honor of Dorothea Dix."

18 **SECTION 2.(d)** This Part is effective 18 months after the bill becomes law.
19

20 **PART III. SEVERABILITY**

21 **SECTION 3.** If any part of this act is declared unconstitutional or invalid by the
22 courts, it does not affect the validity of this act as a whole or any part other than the part declared
23 to be unconstitutional or invalid.
24

25 **PART IV. EFFECTIVE DATE**

26 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
27 law.