

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 651
SENATE BILL 416

AN ACT TO AMEND THE NORTH CAROLINA HEALTH PLANNING AND RESOURCE
DEVELOPMENT ACT OF 1978.

The General Assembly of North Carolina enacts:

Section 1. Article 18 of Chapter 131 is amended by deleting "P.L. 93-641" wherever it appears and each time substituting "Title XV of the Public Health Service Act."

Sec. 2. G.S. 131-176 is amended as follows:

(a) in subdivision (1) by deleting the period following the second sentence and by substituting the following:

", unless they elect to apply for licensure under Chapter 131B of the General Statutes."

(b) by inserting between subdivisions (2) and (3) a new subdivision (2a) to read:

"(2a) 'Capital expenditure' means an expenditure which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance."

(c) by deleting subdivision (5) and by substituting the following:

"(5) 'Change in bed capacity' means (i) an increase or decrease in the total number of beds, (ii) a redistribution of beds among different categories, or (iii) a relocation of beds from one physical facility or site to another; if the change exceeds ten beds or ten percent of bed capacity, whichever is less, in any two-year period."

(d) by deleting subdivision (6).

(e) by rewriting subdivision (9) to read as follows:

"(9) 'Final decision' means an approval, an approval with conditions, or denial of an application for a certificate of need."

(f) by rewriting subdivision (10) to read:

"(10) 'Health care facilities' means hospitals; skilled nursing facilities; kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities, including intermediate care facilities for the mentally retarded or persons with related conditions; rehabilitation facilities; home health agencies; and ambulatory surgical facilities."

(g) in subdivision (11) by inserting after the words "public or private organization which" and before the colon the words "has received its certificate of authority under Chapter 57B of the General Statutes and which either is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act or".

(h) in subdivision (11) by striking out the words "in paragraph a of this subdivision to enrolled participants on a predetermined periodic rate basis" and substituting the words "above to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided";

(i) in subdivision (14) by deleting the word "not" from the second sentence;

(j) by deleting subdivision (15).

(k) by adding a new sentence at the end of subdivision (16) which reads:

"This term includes intermediate care facilities for the mentally retarded or persons with related conditions such as epilepsy, cerebral palsy, or autism."

(l) by inserting after subdivision (16) and before subdivision (17) a new subdivision (16a) to read:

"(16a) 'Major medical equipment' means a single unit or a single system of components with related functions which is used to provide medical and other health services and which costs more than one hundred fifty thousand dollars (\$150,000). This does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of Section 1861(s) of that act. In determining whether medical equipment costs more than one hundred fifty thousand dollars (\$150,000), the costs of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the cost shall be deemed to be the fair market value."

(m) by rewriting subdivision (17) to read as follows:

"(17) 'New institutional health services' means:

- a. the construction, development, or other establishment of a new health care facility;
- b. the obligation by or on behalf of a health care facility or a local health department established under Article 3 of Chapter 130 of the General Statutes of any capital expenditure, other than one to acquire an existing health care facility, which exceeds the expenditure minimum. Further, increases in approved capital expenditures, if they exceed the expenditure minimum, are also new institutional health services. The expenditure minimum is one hundred fifty thousand dollars (\$150,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum;
- c. the obligation of any capital expenditure by or on behalf of any health care facility which is associated with a change in bed capacity;
- d. the obligation of any capital expenditure by or on behalf of a health care facility which is associated with the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months or with the termination of a health service which was offered in or through the facility;
- e. a change in a project which was subject to review under paragraphs a, b, c, or d of this subdivision and for which a certificate of need had been issued, if the change is proposed within one year after the project was completed. For the purposes of this paragraph, a change

- in a project is a change in bed capacity, the addition of a health service, or the termination of a health service, regardless of whether a capital expenditure is associated with the change;
- f. the offering of a health service by or on behalf of a health care facility if the service was not offered by or on behalf of the health care facility in the previous 12 months and if the annual operating costs of the service equal or exceed the expenditure minimum. The expenditure minimum for annual operating costs is seventy-five thousand dollars (\$75,000) for the 12-month period beginning October 1, 1979. For each 12-month period thereafter the expenditure minimum shall be the figure in effect for the preceding 12-month period, adjusted to reflect the change in the preceding 12-month period in the Department of Commerce Composite Construction Cost Index;
 - g. the acquisition by any person of major medical equipment that will be owned by or located in a health care facility;
 - h. the acquisition by any person of major medical equipment not owned by or located in a health care facility if notice of the acquisition is not filed with the department in accordance with rules promulgated by the department, or the department, within 30 days after receipt of the notice, finds that the equipment will be used to provide services to inpatients of a hospital, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure;
 - i. the use, excluding use on a temporary basis in the case of a natural disaster, a major accident, or equipment failure, of major medical equipment which was acquired without a certificate of need, to treat inpatients of a hospital;
 - j. the obligation of a capital expenditure by any person to acquire an existing health care facility, if a notice of intent is not filed with the department in accordance with rules promulgated by the department, or the department, within 30 days after receipt of the notice of intent, finds that there will be a change in bed capacity, the addition of a health service not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility;
 - k. a change in bed capacity, the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months, or the termination of a health service which was offered by or on behalf of the facility, in a health care facility which was acquired without a certificate of need, if such change occurs within one year of the acquisition;
 - l. notwithstanding the provisions of G.S. 131-176(15)h and j, the purchase, lease or acquisition of any of the following: any health care facility, or portion thereof; major medical equipment; a controlling interest in the health care facility, or portion thereof; or a controlling interest in major medical equipment. The aforesaid are new institutional health services if the asset was obtained under a certificate of need issued pursuant to G.S. 131-178.2."

(n) by inserting after subdivision (22) and before subdivision (23) a new subdivision (22a) to read as follows:

"(22a) 'Rehabilitation facility' means a public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent, professional supervision."

(o) by deleting subdivision (28).

Sec. 3. G.S. 131-178 is rewritten to read as follows:

"§ 131-178. Activities requiring certificates of need. — (a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the department.

(b) No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service the fair market value of the asset shall be deemed to be the purchase price.

(c) No person shall incur an obligation for a capital expenditure which is a new institutional health service without first obtaining a certificate of need from the department. An obligation for a capital expenditure is incurred by or on behalf of a health care facility when:

- (1) an enforceable contract, excepting contracts which are expressly contingent upon issuance of a certificate of need, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;
- (2) the governing body of a health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or
- (3) in the case of donated property, the date on which the gift is completed.

(d) Where the estimated cost of a proposed capital expenditure is certified by a licensed architect or engineer to be equal to or less than the expenditure minimum for capital expenditure, such expenditure shall be deemed not to exceed the expenditure minimum for capital expenditures regardless of the actual amount expended, provided that the following conditions are met:

- (1) The certified estimated cost is prepared in writing 60 days or more before the obligation for the capital expenditure is incurred. Certified cost estimates shall be available for inspection at the facility and sent to the department upon its request.
- (2) The facility on whose behalf the expenditure was made notifies the department in writing within 30 days of the date on which such expenditure is made if the expenditure exceeds the expenditure minimum for capital expenditures. The notice shall include a copy of the certified cost estimate.

(e) The department may grant certificates of need which permit capital expenditures only for predevelopment activities. Predevelopment activities include the preparation of architectural designs, plans, working drawings, or specifications, the preparation of studies and surveys, and the acquisition of a potential site."

Sec. 4. Article 18 of Chapter 131 of the General Statutes, is amended by adding the following new sections:

"§ 131-178.1. Research activities. — (a) Notwithstanding any other provisions of this Article, a health care facility may acquire major medical equipment to be used solely for research, offer institutional health services to be used solely for research, or incur the obligation of a capital expenditure solely for research, without a certificate of need, if the department grants an exemption. The department shall grant an exemption if the health care facility files a notice of intent with the department in accordance with rules promulgated by the department and if the department finds that the acquisition, offering or obligation will not:

- (1) affect the charges of the health care facility for the provision of medical or other patient care services other than services which are included in the research;
- (2) substantially change the bed capacity of the facility; or
- (3) substantially change the medical or other patient care services of the facility.

(b) After a health care facility has received an exemption pursuant to subsection (a) of this section, it shall not use the major medical equipment, offer the institutional health services, or use the equipment or facility acquired through the capital expenditure, in a manner which affects the charges of the facility for the provision of medical or other patient care services, other than the services which are included in the research, without first obtaining a certificate of need from the department.

(c) Any of the activities described in subsection (a) of this section shall be deemed to be solely for research even if they include patient care provided on an occasional and irregular basis and not as a part of the research program.

"§ 131-178.2. Health Maintenance Organization. — (a) Subject to the provisions of subsection (b) of this section, no inpatient health care facility controlled, directly or indirectly by a Health Maintenance Organization, hereinafter referred to as HMOs, or combination of HMOs shall offer or develop new institutional health services without first obtaining a certificate of need from the department. Further, subject to the provisions of subsection (b) of this section, no health care facility of an HMO shall offer or develop any of the new institutional health services specified in G.S. 131-176(15) g., h., and i. without first obtaining a certificate of need from the department. This section shall not be construed as requiring that a certificate of need be obtained before an HMO is established.

(b) The requirements of subsection (a) of this section shall not apply to any person who receives an exemption under this subsection. In order to receive an exemption an application must be submitted to the department and the appropriate health systems agency or agencies. The application shall be on forms prescribed by the department and contain the information required by the department. The application shall be submitted at a time and in a manner prescribed by the rules and regulations of the department. The department shall grant an exemption if it finds that the applicant is qualified or will be qualified on the date the activity is undertaken. Any of the following are qualified applicants:

- (1) An HMO or combination of HMOs if (i) the HMO or combination of HMOs has an enrollment of at least 50,000 individuals in its service area, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled in the HMO or HMOs in combination; or
- (2) A health care facility, or portion thereof, if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iv) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combinations; or
- (3) A health care facility, or portion thereof, if (i) the facility is or will be leased by an HMO or combination of HMOs with an enrollment of at least 50,000 individuals in its service area and on the date the application for exemption is submitted at least 15 years remain on the lease, (ii) the facility is or will be

geographically located so that the service will be reasonably accessible to the enrolled individuals, and (iii) at least seventy-five percent (75%) of the patients who can be reasonably expected to receive the health service will be individuals enrolled with the HMO or HMOs in combination.

(c) If a fee-for-service component of an HMO or combination of HMOs qualifies for an exemption under subsection (b) of this section then it must be granted an exemption.

(d) In reviewing certificate of need applications submitted pursuant to this section, the department shall not deny the application solely because the proposal is not addressed in the applicable health systems plan, annual implementation plan or State health plan.

(e) Notwithstanding the review criteria of G.S. 131-181(a), if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the department shall grant the certificate if it finds, in accordance with G.S. 131-181(a)(10), that (1) granting the certificate is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (2) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it."

Sec. 5. G.S. 131-179, is rewritten to read:

"§ **131-179. Nature of certificates of need.** — A certificate of need shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned."

Sec. 6. G.S. 131-180, is rewritten to read:

"§ **131-180. Application.** — (a) The department in its rules and regulations shall establish schedules for submission and review of completed applications. The schedules, which shall be consistent with federal law and regulations, shall provide that applications for similar proposals in the same health service area will be reviewed together.

(b) An application for a certificate of need shall be made on forms provided by the department. The application forms, which may vary according to the type of proposal, shall require such information as the department, by its rules and regulations, deem necessary to conduct the review. An applicant shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131-181 and with duly adopted standards, plans, and criteria."

Sec. 7. G.S. 131-181(a), is amended as follows:

(a) in subdivision (2) by inserting after the words "long-range development plan" the phrase ", if any,".

(b) in subdivision (3) by deleting the period at the end of the sentence and substituting the following:

", and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups, and the elderly, are likely to have access to those services."

(c) by adding a subdivision (3a) to read as follows:

"(3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met, adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care."

(d) in subdivision (4) by deleting the phrase "such services." and substituting the phrase "the services to be offered, expanded, reduced, relocated or eliminated."

(e) in subdivision (5) by inserting after the words "providing health services" and before the period the words "by the person proposing the service".

(f) in subdivision (7) by deleting the words "the availability of alternative uses of such resources for the provision of other health services" and by substituting in lieu thereof the words "the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan".

(g) by rewriting subdivision (10) to read:

"(10) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

- a. The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and
- b. The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the department shall consider only whether the services from these providers:
 - (i) would be available under a contract of at least 5 years' duration;
 - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 - (iii) would cost no more than if the services were provided by the HMO; and
 - (iv) would be available in a manner which is administratively feasible to the HMO."

(h) in subdivision (12) by inserting after the words "the person proposing the construction project" and before the period the words "and on the costs and charges to the public of providing health services by other persons".

(i) by rewriting subdivision (13) to read:

"(13) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups, such as low income persons, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the department shall consider:

- a. The extent to which medically underserved populations currently use the applicant's proposed services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;
- b. The performance of the applicant in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance,

- including the existence of any civil rights access complaints against the applicant;
- c. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and
 - d. The extent to which the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians."
- (j) by adding the new subdivisions to read:
- "(14) The effect of the means proposed for delivery of the health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
 - (15) If the proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.
 - (16) The special circumstances of health care facilities with respect to the need for conserving energy.
 - (17) In accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), the factors which influence the effect of competition on the supply of the health services being reviewed.
 - (18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with Section 1502(b) of the Public Health Service Act, 42 U.S.C. 300k-2(b), and serve to promote quality assurance and cost effectiveness.
 - (19) In the case of proposed health services or facilities, the efficiency and appropriateness of the use of existing, similar services and facilities.
 - (20) In the case of existing services or facilities, the quality of care provided in the past.
 - (21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the bases of the need for and availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels."

Sec. 8. Article 18 of Chapter 131 of the General Statutes, is amended by inserting after G.S. 131-181 the following:

"§ 131-181.1. Required approvals. — (a) Except as provided in subsection (b), the department shall issue a certificate of need for a proposed capital expenditure if:

- (1) The capital expenditure is required (i) to eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act; and
- (2) The department determines that (i) the facility or services for which the capital expenditure is proposed is needed, and (ii) the obligation of the

capital expenditure is consistent with the State Health Plan. Even though the proposal is inconsistent with the State Health Plan, the department may issue a certificate of need if emergency circumstances pose an imminent threat to public health.

(b) Those portions of a proposed project which are not to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review under the criteria developed under G.S. 131-181."

Sec. 9. G.S. 131-182(a), is amended by deleting the first sentence following "(1)" and substituting the following:

"The appropriate health systems agency or agencies shall have 60 days to review each application as to consistency with duly adopted plans, standards, and criteria. Following the review the health systems agency shall submit to the department its comments and recommendations."

Sec. 10. G.S. 131-182(b), is amended by deleting the second sentence.

Sec. 11. G.S. 131-185, is rewritten to read:

"§ 131-185. Administrative and judicial review. — (a) After a decision of the department to issue, deny or withdraw a certificate of need or exemption, any affected person shall be entitled to a contested case hearing under Article 3 of Chapter 150A of the General Statutes, if the department receives a request therefor within 30 days after its decision.

(b) Any affected person who was a party in a contested case hearing shall be entitled to judicial review pursuant to Article 4 of Chapter 150A of the General Statutes of the final agency decision.

(c) The term 'affected persons' includes the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; health care facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located, which provide services similar to the services of the facility under review; health care facilities and HMOs which, prior to receipt by the agency of the proposed being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located."

Sec. 12. G.S. 131-186, is rewritten to read:

"§ 131-186. Withdrawal of a certificate of need. — (a) The department shall specify in each certificate of need the time the holder has to make the service or equipment available or to complete the project and the timetable to be followed. The timetable shall be the one proposed by the holder of the certificate of need unless at the time the certificate of need is issued the Department determines by a preponderance of the evidence that the timetable proposed by the holder is unreasonable and that a different timetable should be followed by the holder. The holder of the certificate shall submit such periodic reports on his progress in meeting the timetable as may be required by the department. If, after reviewing the progress, the department determines that the holder of the certificate is not meeting the timetable and not making a good faith effort to meet it, the department may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate.

(b) The department may withdraw any certificate of need which was issued subject to a condition or conditions, if the holder of the certificate fails to satisfy such condition or conditions.

(c) The department may withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility. Transfers resulting from personal illness or other good cause, as determined by the department, shall not result in withdrawal if the department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal."

Sec. 13. G.S. 131-187 is amended by deleting subsection (b).

Sec. 14. This act shall become effective October 1, 1981, but shall not apply to the reviews of any certificate of need applications completed before October 1, 1981.

In the General Assembly read three times and ratified, this the 22nd day of June, 1981.