§ 131E-184. Exemptions from review.

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

(1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations.

(1a) To comply with State licensure standards.

(1b) 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.

(2) Repealed by Session Laws 1987, c. 511, s. 1.

(3) To provide data processing equipment.

(4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review.

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

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

(7) To provide replacement equipment.

(8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition. A facility not currently licensed as an adult care home that was licensed as an adult care home within the preceding 12 months is considered an existing health service facility for the purposes of this subdivision.

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

(10) To allow a licensed home care agency, as defined in G.S. 131E-136, to provide Early and Periodic Screening, Diagnosis, and Treatment services to children up to 21 years of age, in compliance with federal Medicaid requirements under 42 U.S.C. § 1396d. This exemption applies to all home care agencies licensed under Article 6 of this Chapter, whether or not they are Medicare-certified.

(b) Those portions of a proposed project which are not proposed for one or more of the purposes under subsection (a) of this section are subject to certificate of need review, if these non-exempt portions of the project are new institutional health services under G.S. 131E-176(16).

(c) Repealed by Session Laws 2023-7, s. 3.1(b), effective March 27, 2023, and applicable to activities occurring on or after that date.

(d) Repealed by Session Laws 2023-7, s. 3.1(b), effective March 27, 2023, and applicable to activities occurring on or after that date.

(e) The Department shall exempt from certificate of need review a capital expenditure that exceeds the monetary threshold set forth in G.S. 131E-176(16)b. if all of the following conditions are met:

(1) The proposed capital expenditure would meet all of the following requirements:

a. Be used solely for the purpose of renovating, replacing on the same site, or expanding any of the following existing facilities:

1. Nursing home facility.
2. Adult care home facility.
3. Intermediate care facility for individuals with intellectual disabilities.

b. Not result in a change in bed capacity, as defined in G.S. 131E-176(5), or the addition of a health service facility or any other new institutional health service other than that allowed in G.S. 131E-176(16)b.

(2) The entity proposing to incur the capital expenditure provides prior written notice to the Department, which notice includes documentation that demonstrates that the proposed capital expenditure would be used for one or more of the following purposes:

a. Conversion of semiprivate resident rooms to private rooms.

b. Providing innovative, homelike residential dining spaces, such as cafes, kitchenettes, or private dining areas to accommodate residents and their families or visitors.

c. Renovating, replacing, or expanding residential living or common areas to improve the quality of life of residents.

(f) The Department shall exempt from certificate of need review the purchase of any replacement equipment that exceeds the monetary threshold set forth in G.S. 131E-176(22a) if all of the following conditions are met:

(1) The equipment being replaced is located on the main campus.

(2) The Department has previously issued a certificate of need for the equipment being replaced. This subdivision does not apply if a certificate of need was not required at the time the equipment being replaced was initially purchased by the licensed health service facility.

(3) The licensed health service facility proposing to purchase the replacement equipment shall provide prior written notice to the Department, along with supporting documentation to demonstrate that it meets the exemption criteria of this subsection.

(g) The Department shall exempt from certificate of need review any capital expenditure that exceeds the monetary threshold set forth in G.S. 131E-176(16)b. if all of the following conditions are met:

(1) The sole purpose of the capital expenditure is to renovate, replace on the same site, or expand the entirety or a portion of an existing health service facility that is located on the main campus.

(2) The capital expenditure does not result in (i) a change in bed capacity as defined in G.S. 131E-176(5) or (ii) the addition of a health service facility or any other new institutional health service other than that allowed in G.S. 131E-176(16)b.

(3) The licensed health service facility proposing to incur the capital expenditure shall provide prior written notice to the Department, along with supporting documentation to demonstrate that it meets the exemption criteria of this subsection.

(h) The Department must exempt from certificate of need review the acquisition or reopening of a Legacy Medical Care Facility. The person seeking to operate a Legacy Medical Care Facility shall give the Department written notice of all of the following:

(1) Its intention to acquire or reopen a Legacy Medical Care Facility within the same county and the same service area as the facility that ceased continuous operations. If the Legacy Medical Care Facility will become operational in a new location within the same county and the same service area as the facility

that ceased continuous operations, then the person responsible for giving the written notice required by this section shall notify the Department, as soon as reasonably practicable and prior to becoming operational, of the new location of the Legacy Medical Care Facility. For purposes of this subdivision, "service area" means the service area identified in the North Carolina State Medical Facilities Plan in effect at the time the written notice required by this section is given to the Department.

(2) That the facility will be operational within 36 months of the notice.

The Department shall extend the time by which a facility must be operational in order to be exempt from certificate of need review under this subsection by one additional 36-month period if the person seeking to reopen or acquire the Legacy Medical Care Facility gives the Department written notice of extension within 36 months of the original notice of intent to acquire or reopen the Legacy Medical Care Facility. The written notice of extension must notify the Department (i) that the person has undertaken all reasonable efforts to make the facility operational within 36 months of the notice of intent, (ii) that, despite these reasonable efforts, the person does not anticipate the facility will be operational within that time, and (iii) of its intention that the facility will be operational within 36 months of the notice of extension.

A person seeking to operate a Legacy Medical Care Facility located in a development tier one or tier two area, as defined in G.S. 143B-437.08, may request an additional extension of time by which the facility must be operational in order to be exempt from certificate of need review under this subsection by providing an additional written notice of extension to the Department, delivered prior to the conclusion of the original 36-month extension period, affirming that the person has entered into a contract for the acquisition or reopening of the Legacy Medical Care Facility and that, pursuant to the terms of the contract, the facility will commence operations within 36 months of the conclusion of the original notice of extension. Upon receipt of this notice, the Department shall grant an extension of the time by which the facility must be operational that is sufficient to permit the acquisition or reopening of the Legacy Medical Care Facility as provided in the contract. (1983, c. 775, s. 1; 1987, c. 511, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 37; 1993, c. 7, s. 7; 2001-424, s. 25.19(c); 2002-159, s. 41; 2009-145, s. 1; 2009-487, s. 3; 2011-145, s. 19.1(h); 2013-360, s. 12G.3(b); 2013-363, s. 4.6; 2014-100, s. 12G.1(a); 2015-288, s. 2; 2017-184, s. 7(a); 2017-186, s. 2(xxxxx); 2018-81, s. 3(b); 2018-145, s. 15; 2019-76, s. 20; 2021-180, ss. 9E.4, 19C.9(sss); 2023-7, s. 3.1(b).)