

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 126

Senate Health Care Committee Substitute Adopted 6/27/19

Senate Health Care Committee Substitute Adopted 7/15/19

Short Title: Amend Certificate of Need Laws.

(Public)

Sponsors:

Referred to:

February 21, 2019

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

4
5 **PART I. REFORMS EFFECTIVE JANUARY 1, 2020**

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 (7a) Diagnostic center. – A freestanding facility, program, or provider, including
12 but not limited to, physicians' offices, clinical laboratories, radiology centers,
13 and mobile diagnostic programs, in which the total cost of all the medical
14 diagnostic equipment utilized by the facility which cost ten thousand dollars
15 (\$10,000) or more exceeds ~~five hundred thousand dollars (\$500,000).~~ one
16 million five hundred thousand dollars (\$1,500,000). In determining whether
17 the medical diagnostic equipment in a diagnostic center costs more than ~~five~~
18 ~~hundred thousand dollars (\$500,000),~~ one million five hundred thousand
19 dollars (\$1,500,000) the costs of the equipment, studies, surveys, designs,
20 plans, working drawings, specifications, construction, installation, and other
21 activities essential to acquiring and making operational the equipment shall be
22 included. The capital expenditure for the equipment shall be deemed to be the
23 fair market value of the equipment or the cost of the equipment, whichever is
24 greater. Beginning September 30, 2022, and on September 30 each year
25 thereafter, the cost threshold amount in this subdivision shall be adjusted using
26 the Medical Care Index component of the Consumer Price Index published by
27 the U.S. Department of Labor for the 12-month period preceding the previous
28 September 1.

29 ...

30 (14o) Major medical equipment. – A single unit or single system of components
31 with related functions which is used to provide medical and other health
32 services and which costs more than ~~seven hundred fifty thousand dollars~~
33 ~~(\$750,000).~~ two million dollars (\$2,000,000). In determining whether the
34 major medical equipment costs more than ~~seven hundred fifty thousand~~
35 ~~dollars (\$750,000),~~ two million dollars (\$2,000,000), the costs of the



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equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the major medical equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater. Major medical equipment does not include replacement equipment as defined in this section. Beginning September 30, 2022, and on September 30 each year thereafter, the cost threshold amount in this subdivision shall be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the 12-month period preceding the previous September 1.

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

...
 b. Except as otherwise provided in G.S. 131E-184(e), the obligation by any person of a capital expenditure exceeding ~~two million dollars (\$2,000,000)~~ four million dollars (\$4,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. 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 ~~two million dollars (\$2,000,000)~~ four million dollars (\$4,000,000). Beginning September 30, 2022, and on September 30 each year thereafter, the amount in this sub-subdivision shall be adjusted using the Medical Care Index component of the Consumer Price Index published by the U.S. Department of Labor for the 12-month period preceding the previous September 1.

...."

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

"§ 131E-184. Exemptions from review.

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

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

...
 (i) Notwithstanding any other provision of law to the contrary, the Department shall exempt from certificate of need review the replacement, renovation, or relocation of services or facilities that already have a certificate of need."

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

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

(1) For a project that costs over fifty million dollars (\$50,000,000), the holder of the certificate of need shall initiate construction of the project authorized by the certificate of need within four years after the date the Department's decision to approve the certificate of need for that project becomes final.

(2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder of the certificate of need shall initiate construction of the project authorized by the certificate of need within two years after the date the Department's decision to approve the certificate of need for that project becomes final.

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

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

"§ 131E-147. Licensure requirement.

...

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

...."

SECTION 1.(e) This part becomes effective January 1, 2020.

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

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

"§ 131E-176. Definitions.

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

...

(9b) Health service facility. – 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 individuals with intellectual disabilities; home health agency office; ~~chemical dependency treatment facility;~~ diagnostic center; hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.

(9c) Health service facility bed. – A bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) ~~psychiatric beds;~~ (iii) rehabilitation beds; ~~(iv)~~ (iii) nursing home beds; ~~(v)~~ (iv) intermediate care beds for the mentally retarded; ~~(vi) chemical dependency treatment beds;~~ (vii) (v) hospice inpatient facility beds; ~~(viii)~~ (vi) hospice residential care facility beds; ~~(ix)~~ (vii) adult care home beds; and ~~(x)~~ (viii) long-term care hospital beds.

...

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

...

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

...

f. ~~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.~~

...."

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

1 "(c) The Department shall exempt from certificate of need review any conversion of
2 existing acute care beds to psychiatric ~~beds provided:~~beds.

3 ~~(1) The hospital proposing the conversion has executed a contract with the~~
4 ~~Department's Division of Mental Health, Developmental Disabilities, and~~
5 ~~Substance Abuse Services and/or one or more of the Area Mental Health,~~
6 ~~Developmental Disabilities, and Substance Abuse Authorities to provide~~
7 ~~psychiatric beds to patients referred by the contracting agency or agencies;~~
8 ~~and~~

9 ~~(2) The total number of beds to be converted shall not be more than twice the~~
10 ~~number of beds for which the contract pursuant to subdivision (1) of this~~
11 ~~subsection shall provide."~~

12 **SECTION 2.(c)** G.S. 131E-184, as amended by Section 1(b) of this act, is amended
13 by adding new subsections to read:

14 "(j) The Department shall exempt from certificate of need review the development,
15 acquisition, construction, expansion, or replacement of a health service or health service facility
16 that obtained certificate of need approval prior to October 1, 2019, as a psychiatric facility or
17 chemical dependency treatment facility.

18 (k) The Department shall exempt from certificate of need review the establishment of a
19 home health agency by a continuing care retirement community licensed under Article 64 of
20 Chapter 58 of the General Statutes to provide home health services to one or more residents of a
21 continuing care retirement community who have entered into a contract with the continuing care
22 retirement community to receive continuing care services with lodging. A continuing care
23 retirement community that seeks to provide home health services to individuals who do not reside
24 at the continuing care retirement community pursuant to a contract to receive continuing care
25 services with lodging shall be required to obtain a certificate of need as a home health agency
26 prior to developing or offering home health services to any individual not a resident of the
27 continuing care retirement community under a contract to receive continuing care services with
28 lodging. As used in this subsection, the terms "continuing care" and "lodging" are as defined in
29 G.S. 58-64-1. Nothing in this subsection shall be construed to exempt from the State's home
30 health agency licensure and certification requirements a continuing care retirement community
31 that has been exempted from certificate of need review for the provision of home health services
32 to one or more residents pursuant to this subsection."

33 **SECTION 2.(d)** G.S. 131E-184(k), as enacted by this section, applies to continuing
34 care retirement communities engaged in the direct provision of home health services 18 months
35 after this act becomes law.

36 **SECTION 2.(e)** Section 12F.4(b) of Session Law 2016-94 reads as rewritten:

37 "**SECTION 12F.4.(b)** The Secretary shall select hospitals in the three State regions for
38 institutional services (Eastern Region, Central Region, and Western Region) to receive funds
39 allocated under subsection (a) of this section for the construction, conversion, or both of
40 short-term, inpatient behavioral health beds in rural areas of the State. Notwithstanding the State
41 Medical Facilities Plan, Article 9 of Chapter 131E of the General Statutes, or any other provision
42 of law to the contrary, each selected rural hospital that receives funds allocated under subsection
43 (a) of this section shall be allowed to construct new or convert unused acute care beds into
44 licensed, inpatient behavioral health beds without undergoing certificate of need review by the
45 Division of Health Service Regulation. All newly constructed or converted beds shall be subject
46 to existing licensure laws and requirements. As a condition of receiving these funds, each selected
47 rural hospital shall reserve at least ~~fifty percent (50%)~~ twenty-five percent (25%) of the
48 constructed or converted beds for (i) purchase by the Department under the State-administered,
49 three-way contract and (ii) referrals by local management entities/managed care organizations
50 (LME/MCOs) of individuals who are indigent or Medicaid recipients. Any hospital unit or other

1 location with short-term, inpatient behavioral health beds constructed or converted with funds
2 allocated under subsection (a) of this section shall be named in honor of Dorothea Dix."
3

4 **PART III. REFORMS EFFECTIVE THREE YEARS AFTER THE BILL BECOMES**
5 **LAW**

6 **SECTION 3.** G.S. 131E-184, as amended by Sections 1(b) and 2(c) of this act, is
7 amended by adding a new subsection to read:

8 "*(l)* The Department shall exempt from certificate of need review the development,
9 acquisition, construction, expansion, or replacement of a health service or health service facility
10 that obtained certificate of need approval prior to October 1, 2019, as a kidney dialysis treatment
11 center, including freestanding hemodialysis units, provided that the health service or health
12 service facility is located in a county with a population greater than 300,000."
13

14 **PART IV. SEVERABILITY**

15 **SECTION 4.** If any part of this act is declared unconstitutional or invalid by the
16 courts, it does not affect the validity of this act as a whole or any part other than the part declared
17 to be unconstitutional or invalid.
18

19 **PART V. EFFECTIVE DATE**

20 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
21 law. Part II is effective 18 months after this act becomes law. Part III is effective three years after
22 this act becomes law.