

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 646

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

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

Referred to: Rules and Operations of the Senate

April 4, 2019

A BILL TO BE ENTITLED

AN ACT EXEMPTING FROM CERTIFICATE OF NEED REVIEW AMBULATORY SURGICAL FACILITIES, OPERATING ROOMS, GASTROINTESTINAL ENDOSCOPY ROOMS, DIAGNOSTIC CENTERS, KIDNEY DISEASE TREATMENT CENTERS, CERTAIN HOME HEALTH AGENCIES, CHEMICAL DEPENDENCY TREATMENT FACILITIES, INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES, PSYCHIATRIC HOSPITALS, AND OTHER LICENSABLE FACILITIES SUBJECT TO CHAPTER 122C OF THE GENERAL STATUTES; PROHIBITING THE STATE MEDICAL FACILITIES PLAN FROM LIMITING THE NUMBER OF OPERATING ROOMS AND GASTROINTESTINAL ENDOSCOPY ROOMS; INCREASING THE AMOUNT OF THE BOND REQUIRED TO CONTEST OR APPEAL APPROVED CERTIFICATE OF NEED APPLICATIONS; AND ENHANCING LICENSING REQUIREMENTS FOR THE DEVELOPMENT, ACQUISITION, OR REPLACEMENT OF AMBULATORY SURGICAL FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. 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:

...

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

...

(5) "Change in bed capacity" means (i) any relocation of health service facility ~~beds, or dialysis stations~~ beds from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacity among the categories of health service facility bed as defined in G.S. 131E-176(9c), or (iii) any increase in the number of health service facility ~~beds, or dialysis~~



- 1 ~~stations in kidney disease treatment centers, including freestanding dialysis~~
2 ~~units.beds.~~
3 ...
4 (9a) "Health service" means an organized, interrelated medical, diagnostic,
5 therapeutic, ~~and/or or~~ rehabilitative activity, or any combination of
6 these, that is integral to the prevention of disease or the clinical management
7 of a sick, injured, or disabled person. "Health service" does not include
8 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; hospice~~
16 office, hospice inpatient facility, and hospice residential care facility; ~~and~~
17 ~~ambulatory surgical facility.~~ The term "health service facility" does not
18 include a licensable facility, as defined in G.S. 122C-3(14)b.
19 (9c) "Health service facility bed" means a bed licensed for use in a health service
20 facility in the categories of (i) acute care beds; (ii) ~~psychiatric beds;~~ (iii)
21 rehabilitation beds; (iv) nursing home beds; (v) ~~intermediate care beds for the~~
22 ~~mentally retarded;~~ (vi) ~~chemical dependency treatment beds;~~ (vii) hospice
23 inpatient facility beds; ~~(viii)~~(vi) hospice residential care facility beds; ~~(ix)~~(vii)
24 adult care home beds; and ~~(x)~~or (viii) long-term care hospital beds.
25 ...
26 (14a) ~~"Intermediate care facility for the mentally retarded"~~Intermediate care facility
27 for individuals with intellectual disabilities" means facilities licensed pursuant
28 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~~
31 ~~retardation;~~intellectual disabilities, autism, cerebral palsy, epilepsy or related
32 conditions.
33 ...
34 (16) "New institutional health services" means any of the following:
35 ...
36 d. The offering of ~~dialysis services or~~ home health services by or on
37 behalf of a health service facility if those services were not offered
38 within the previous 12 months by or on behalf of the facility.
39 ...
40 ~~f. The conversion of a specialty ambulatory surgical program to a~~
41 ~~multispecialty ambulatory surgical program or the addition of a~~
42 ~~specialty to a specialty ambulatory surgical program.~~
43 ...
44 ~~u. The construction, development, establishment, increase in the number,~~
45 ~~or relocation of an operating room or gastrointestinal endoscopy room~~
46 ~~in a licensed health service facility, other than the relocation of an~~
47 ~~operating room or gastrointestinal endoscopy room within the same~~
48 ~~building or on the same grounds or to grounds not separated by more~~
49 ~~than a public right of way adjacent to the grounds where the operating~~
50 ~~room or gastrointestinal endoscopy room is currently located.~~

v. ~~The change in designation, in a licensed health service facility, of an operating room to a gastrointestinal endoscopy room or change in designation of a gastrointestinal endoscopy room to an operating room that results in a different number of each type of room than is reflected on the health service facility's license in effect as of January 1, 2005.~~

...."

SECTION 2. G.S. 131E-177 reads as rewritten:

"§ 131E-177. Department of Health and Human Services is designated State Health Planning and Development Agency; powers and duties.

The Department of Health and Human Services is designated as the State Health Planning and Development Agency for the State of North Carolina, and is empowered to exercise the following powers and duties:

- (1) To establish standards and criteria or plans required to carry out the provisions and purposes of this Article and to adopt rules pursuant to Chapter 150B of the General Statutes, to carry out the purposes and provisions of this ~~Article;~~Article.
- (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws of this State, as may be required by the federal government for grants-in-aid for health service facilities and health planning which may be made available by the federal government. This section shall be liberally construed in order that the State and its citizens may benefit from such ~~grants-in-aid;~~grants-in-aid.
- (3) Define, by rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this ~~Article;~~Article.
- (4) ~~Develop~~ With respect to health service facilities planning, all of the following:
 - a. Develop policy, criteria, and standards for health service facilities ~~planning;~~ shall conduct planning.
 - b. Conduct statewide registration and inventories of and make determinations of need for health service facilities, health services as specified in G.S. 131E-176(16)f., and equipment as specified in G.S. 131E-176(16)f1., which shall include consideration of adequate geographic location of equipment and ~~services;~~ and develop services.
 - c. Develop a State Medical Facilities ~~Plan;~~ Plan, provided, however, that the State Medical Facilities Plan shall not include policies or need determinations that limit the number of operating rooms or gastrointestinal endoscopy rooms.
- (5) Implement, by rule, criteria for project ~~review;~~review.
- (6) Have the power to grant, deny, or withdraw a certificate of need and to impose such sanctions as are provided for by this ~~Article;~~Article.
- (7) Solicit, accept, hold and administer on behalf of the State any grants or devise of money, securities or property to the Department for use by the Department in the administration of this ~~Article;~~ and Article.
- (8) Repealed by Session Laws 1987, c. 511, s. 1.
- (9) Collect fees for submitting applications for certificates of need.
- (10) The authority to review all records in any recording medium of any person or health service facility subject to agency review under this Article which pertain to construction and acquisition activities, staffing or costs and charges for patient care, including but not limited to, construction contracts, architectural contracts, consultant contracts, purchase orders, cancelled checks, accounting and financial records, debt instruments, loan and security agreements, staffing records, utilization statistics and any other records the

1 Department deems to be reasonably necessary to determine compliance with
2 this Article.

3 The Secretary of Health and Human Services shall have final decision-making authority with
4 regard to all functions described in this section."

5 **SECTION 3.** G.S. 131E-178(a) reads as rewritten:

6 "(a) No person shall offer or develop a new institutional health service without first
7 obtaining a certificate of need from the Department; ~~provided, however, no person who provides~~
8 ~~gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located~~
9 ~~in a nonlicensed setting, shall be required to obtain a certificate of need to license that setting as~~
10 ~~an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms,~~
11 ~~provided that:~~

12 (1) ~~The license application is postmarked for delivery to the Division of Health~~
13 ~~Service Regulation by December 31, 2006;~~

14 (2) ~~The applicant verifies, by affidavit submitted to the Division of Health Service~~
15 ~~Regulation within 60 days of the effective date of this act, that the facility is~~
16 ~~in operation as of the effective date of this act or that the completed application~~
17 ~~for the building permit for the facility was submitted by the effective date of~~
18 ~~this act;~~

19 (3) ~~The facility has been accredited by The Accreditation Association for~~
20 ~~Ambulatory Health Care, The Joint Commission on Accreditation of~~
21 ~~Healthcare Organizations, or The American Association for Accreditation of~~
22 ~~Ambulatory Surgical Facilities by the time the license application is~~
23 ~~postmarked for delivery to the Division of Health Service Regulation of the~~
24 ~~Department; and~~

25 (4) ~~The license application includes a commitment and plan for serving indigent~~
26 ~~and medically underserved populations.~~

27 ~~All other persons proposing to obtain a license to establish an ambulatory surgical facility for~~
28 ~~the provision of gastrointestinal endoscopy procedures shall be required to obtain a certificate of~~
29 ~~need. The annual State Medical Facilities Plan shall not include policies or need determinations~~
30 ~~that limit the number of gastrointestinal endoscopy rooms that may be approved.~~Department."

31 **SECTION 4.** G.S. 131E-183(a)(1) reads as rewritten:

32 "(1) The proposed project shall be consistent with applicable policies and need
33 determinations in the State Medical Facilities Plan, the need determination of
34 which constitutes a determinative limitation on the provision of any health
35 service, health service facility, health service facility beds, ~~dialysis stations,~~
36 ~~operating rooms,~~ or home health offices that may be approved."

37 **SECTION 5.** G.S. 131E-184(c) reads as rewritten:

38 "(c) The Department shall exempt from certificate of need review any conversion of
39 existing acute care beds to psychiatric ~~beds~~ beds.

40 (1) ~~The hospital proposing the conversion has executed a contract with the~~
41 ~~Department's Division of Mental Health, Developmental Disabilities, and~~
42 ~~Substance Abuse Services and/or one or more of the Area Mental Health,~~
43 ~~Developmental Disabilities, and Substance Abuse Authorities to provide~~
44 ~~psychiatric beds to patients referred by the contracting agency or agencies;~~
45 ~~and~~

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

49 **SECTION 6.** G.S. 131E-184(e)(1) reads as rewritten:

50 "(1) The proposed capital expenditure would:

- 1 a. Be used solely for the purpose of renovating, replacing on the same
 2 site, or expanding an existing:
 3 1. Nursing home facility, ~~or~~
 4 2. Adult care home ~~facility, or~~ facility; and
 5 3. ~~Intermediate care facility for the mentally retarded; and~~
 6 b. Not result in a change in bed capacity, as defined in G.S. 131E-176(5),
 7 or the addition of a health service facility or any other new institutional
 8 health service other than that allowed in G.S. 131E-176(16)b."

9 **SECTION 7.(a)** G.S. 131E-184 is amended by adding new subsections to read:

10 "(i) The Department shall exempt from certificate of need review the development,
 11 acquisition, construction, expansion, or replacement of a health service facility or health service
 12 that obtained certificate of need approval prior to October 1, 2019, as an ambulatory surgical
 13 facility, including an ambulatory surgical facility with one or more operating rooms or
 14 gastrointestinal endoscopy procedure rooms; a diagnostic center; kidney disease treatment center,
 15 including freestanding dialysis units; chemical dependency treatment facility; intermediate care
 16 facility for individuals with intellectual disabilities; psychiatric hospital; or any other licensable
 17 facility, as defined in G.S. 122C-3(14)b."

18 (j) 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 7.(b)** G.S. 131E-184(j), as enacted by this section, applies to continuing
 34 care retirement communities engaged in the direct provision of home health services on or after
 35 October 1, 2019.

36 **SECTION 8.** G.S. 131E-186(a) reads as rewritten:

37 "(a) Within the prescribed time limits in G.S. 131E-185, the Department shall issue a
 38 decision to "approve," "approve with conditions," or "deny," an application for a new institutional
 39 health service. ~~Approvals involving new or expanded nursing care or intermediate care for the~~
 40 ~~mentally retarded bed capacity shall include a condition that specifies the earliest possible date~~
 41 ~~the new institutional health service may be certified for participation in the Medicaid program.~~
 42 ~~The date shall be set far enough in advance to allow the Department to identify funds to pay for~~
 43 ~~care in the new or expanded facility in its existing Medicaid budget or to include these funds in~~
 44 ~~its State Medicaid budget request for the year in which Medicaid certification is expected."~~

45 **SECTION 9.** G.S. 131E-188 reads as rewritten:

46 **"§ 131E-188. Administrative and judicial review.**

47 ...

48 (a1) On or before the date of filing a petition for a contested case hearing on the approval
 49 of an applicant for a certificate of need, the petitioner shall deposit a bond with the clerk of
 50 superior court where the new institutional health service that is the subject of the petition is
 51 proposed to be located. The bond shall be secured by cash or its equivalent in an amount equal

1 to five percent (5%) of the cost of the proposed new institutional health service that is the subject
2 of the petition, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty
3 thousand dollars (\$50,000). three hundred thousand dollars (\$300,000) for each application that
4 was reviewed with the application for a certificate of need that is the subject of the petition. A
5 petitioner who received approval for a certificate of need and is contesting only a condition in
6 the certificate is not required to file a bond under this subsection.

7 The applicant who received approval for the new institutional health service that is the subject
8 of the petition may bring an action against a bond filed under this subsection in the superior court
9 of the county where the bond was filed. Upon finding that the petition for a contested case was
10 frivolous or filed to delay the applicant, the court may award the applicant part or all of the bond
11 filed under this subsection. At the conclusion of the contested case, if the court does not find that
12 the petition for a contested case was frivolous or filed to delay the applicant, the petitioner shall
13 be entitled to the return of the bond deposited with the superior court upon demonstrating to the
14 clerk of superior court where the bond was filed that the contested case hearing is concluded.

15 ...

16 (b1) Before filing an appeal of a final decision granting a certificate of need, the affected
17 person shall deposit a bond with the Clerk of the Court of Appeals. The bond requirements of
18 this subsection shall not apply to any appeal filed by the Department.

19 (1) The bond shall be secured by cash or its equivalent in an amount equal to five
20 percent (5%) of the cost of the proposed new institutional health service that
21 is the subject of the appeal, but may not be less than five thousand dollars
22 (\$5,000) and may not exceed fifty thousand dollars (\$50,000); three hundred
23 thousand dollars (\$300,000) for each application that was reviewed with the
24 application for a certificate of need that is the subject of the appeal; provided
25 that the applicant who received approval of the certificate of need may petition
26 the Court of Appeals for a higher bond amount for the payment of such costs
27 and damages as may be awarded pursuant to subdivision (2) of this subsection.
28 This amount shall be determined by the Court in its discretion, not to exceed
29 three hundred thousand dollars (\$300,000). five hundred thousand dollars
30 (\$500,000). A holder of a certificate of need who is appealing only a condition
31 in the certificate is not required to file a bond under this subsection.

32 (2) If the Court of Appeals finds that the appeal was frivolous or filed to delay the
33 applicant, the court shall remand the case to the superior court of the county
34 where a bond was filed for the contested case hearing on the certificate of
35 need. The superior court may award the holder of the certificate of need part
36 or all of the bond. The court shall award the holder of the certificate of need
37 reasonable attorney fees and costs incurred in the appeal to the Court of
38 Appeals. If the Court of Appeals does not find that the appeal was frivolous
39 or filed to delay the applicant and does not remand the case to superior court
40 for a possible award of all or part of the bond to the holder of the certificate
41 of need, the person originally filing the bond shall be entitled to a return of the
42 bond.

43"

44 **SECTION 10.** G.S. 131E-147 is amended by adding a new subsection to read:

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

48 (1) A commitment (i) that the Medicare allowable amount for self-pay and
49 Medicaid surgical cases minus all revenue collected from self-pay and
50 Medicaid surgical cases shall be at least four percent (4%) of the total revenue
51 collected for all surgical cases performed in the facility or proposed facility or

- 1 (ii) to allocate to the nearest hospital located in a Tier 1 or Tier 2 county an
2 amount equivalent to four percent (4%) of the total revenue collected for all
3 surgical cases performed in the facility or proposed facility.
4 (2) For each year of operation, a commitment to report to the Department the total
5 number of cases by each of the following payer categories:
6 a. Self-pay surgical cases.
7 b. Medicaid surgical cases.
8 c. Medicare surgical cases.
9 d. Commercial insurance surgical cases.
10 e. Managed care surgical cases.
11 f. Other surgical cases.
12 (3) A commitment to report utilization and payment data for services provided by
13 the ambulatory surgical facility to the statewide data processor, as required by
14 G.S. 131E-214.2.
15 (4) For a license to operate in any county with a population of less than 150,000
16 as of the effective date of this act:
17 a. Written documentation of support from each hospital located within
18 that county.
19 b. A written transfer agreement between the ambulatory surgical facility
20 and each hospital located within that county."
21 **SECTION 11.** G.S. 131E-175(11) and (12) are repealed.
22 **SECTION 12.** This act becomes effective October 1, 2019.