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 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
stations in kidney disease treatment centers, including freestanding dialysis units.

…

(9a) "Health service" means an organized, interrelated medical, diagnostic, therapeutic, and/or rehabilitative activity, or any combination of these, that is integral to the prevention of disease or the clinical management of a sick, injured, or disabled person. "Health service" does not include administrative and other activities that are not integral to clinical management, or any activities performed at a facility that does not meet the definition of a health service facility.

(9b) "Health service facility" means 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 for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; hospice office, hospice inpatient facility, and hospice residential care facility; and ambulatory surgical facility. The term "health service facility" does not include a licensable facility, as defined in G.S. 122C-3(14)b.

(9c) "Health service facility bed" means 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) nursing home beds; (v) intermediate care beds for the mentally retarded; (vi) chemical dependency treatment beds; (vii) 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.

…

(14a) "Intermediate care facility for the mentally retarded" means facilities licensed pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose of providing health and habilitative services based on the developmental model and principles of normalization for persons with mental retardation, intellectual disabilities, autism, cerebral palsy, epilepsy or related conditions.

…

(16) "New institutional health services" means any of the following:

…

d. 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.

…

r. 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.

…

u. The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right of way adjacent to the grounds where the operating 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.

(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.

(3) Define, by rule, procedures for submission of periodic reports by persons or health service facilities subject to agency review under this 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, 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.

(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.

(7) Solicit, accept, hold and administer on behalf of the State any grants or devises 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
Department deems to be reasonably necessary to determine compliance with this Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(1) The proposed capital expenditure would:
a. Be used solely for the purpose of renovating, replacing on the same site, or expanding an existing:
   1. Nursing home facility, or
   2. Adult care home facility, or facility; and
   3. Intermediate care facility for the mentally retarded; and
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)."

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

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

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

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

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

"(a) Within the prescribed time limits in G.S. 131E-185, the Department shall issue a decision to "approve," "approve with conditions," or "deny," an application for a new institutional health service. Approvals involving new or expanded nursing care or intermediate care for the mentally retarded bed capacity shall include a condition that specifies the earliest possible date the new institutional health service may be certified for participation in the Medicaid program. The date shall be set far enough in advance to allow the Department to identify funds to pay for care in the new or expanded facility in its existing Medicaid budget or to include these funds in its State Medicaid budget request for the year in which Medicaid certification is expected.""
Section 10. G.S. 131E-147 is amended by adding a new subsection to read:

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

(1) A commitment (i) that the Medicare allowable amount for self-pay and Medicaid surgical cases minus all revenue collected from self-pay and Medicaid surgical cases shall be at least four percent (4%) of the total revenue collected for all surgical cases performed in the facility or proposed facility or...
(ii) to allocate to the nearest hospital located in a Tier 1 or Tier 2 county an amount equivalent to four percent (4%) of the total revenue collected for all surgical cases performed in the facility or proposed facility.

(2) For each year of operation, a commitment to report to the Department the total number of cases by each of the following payer categories:

a. Self-pay surgical cases.

b. Medicaid surgical cases.

c. Medicare surgical cases.

d. Commercial insurance surgical cases.

e. Managed care surgical cases.

f. Other surgical cases.

(3) A commitment to report utilization and payment data for services provided by the ambulatory surgical facility to the statewide data processor, as required by G.S. 131E-214.2.

(4) For a license to operate in any county with a population of less than 150,000 as of the effective date of this act:

a. Written documentation of support from each hospital located within that county.

b. A written transfer agreement between the ambulatory surgical facility and each hospital located within that county.”

SECTION 11. G.S. 131E-175(11) and (12) are repealed.

SECTION 12. This act becomes effective October 1, 2019.