SENATE BILL 506

Short Title: Certificate of Need Modifications.  (Public)

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

Referred to: Rules and Operations of the Senate

April 6, 2021

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

PART I. REFORMS EFFECTIVE JANUARY 1, 2022

SECTION 1.(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:

(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.

(7a) Diagnostic center. – A freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars ($10,000) or more exceeds five hundred thousand dollars ($500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars ($500,000), one million five hundred thousand dollars ($1,500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the 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. 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.

…

(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; or hospice office, hospice inpatient facility, or hospice residential care facility; and ambulatory surgical facility.

…

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

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

§ 131E-184. Exemptions from review.

(a) Except as provided in subsection (b), 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:

... (10) To develop, acquire, construct, expand, or replace a health service facility or service that obtained certificate of need approval prior to October 1, 2019, as an ambulatory surgical facility.

... (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 services or facilities for which a certificate of need has already been issued when those services or facilities are replaced, renovated, or relocated to another site in the same county where need was originally determined.

... (j) The Department shall exempt from certificate of need review the construction, development, acquisition, or establishment of an ambulatory surgical facility in a county with a population of 100,000 or more, provided all of the following criteria are met:

(1) If the entity seeking this exemption is a physician or group of physicians licensed to practice in this State under Chapter 90 of the General Statutes, the entity shall make every effort to enter into a joint venture for the construction, development, acquisition, or establishment of the ambulatory surgical facility with a licensed hospital in the same geographic service area as the proposed ambulatory surgical facility. The terms of the joint venture must provide for at least fifty-five percent (55%) ownership by the physician or group of physicians. If the physician or group of physicians and a licensed hospital in the same geographic service area are unable to reach a signed agreement on the joint venture within a six-month period, then the physician or group of physicians shall provide written notification of this inability to reach a signed agreement to the Department. The Department shall adopt rules developing forms and procedures for submitting this notification. Upon receipt of written confirmation from the Department that the exemption authorized by this section applies, the entity may proceed with constructing, developing, acquiring, or establishing the ambulatory surgical facility.
(2) The ambulatory surgical facility must have an agreement with a licensed hospital within the same geographic service area, or the licensed medical staff at the ambulatory surgical facility must have hospital privileges or other documented arrangements with a licensed hospital in the same geographic service area as the proposed ambulatory surgical facility that are deemed sufficient by the Department to ensure that inpatient hospital services will be available to address any medical complications that require a patient of the ambulatory surgical facility to be admitted to a hospital for inpatient care.

(3) The ambulatory surgical facility must have the capability to immediately transfer a patient to a licensed hospital with adequate emergency room services and that is within the same geographic service area.

(4) The ambulatory surgical facility must comply with all requirements of the Ambulatory Surgical Facility Licensure Act set forth in Part 4 of Article 6 of Chapter 131E of the General Statutes, including the licensure requirements specified in G.S. 131E-147."

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 is expired."

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.

(f) 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 license application includes all of the following:

(1) A commitment that the Medicare allowable amount for self-pay and Medicaid surgical cases minus all revenue collected from self-pay and Medicaid surgical cases will be equal to (i) four percent (4%) of the total revenue collected for all surgical cases performed in the facility or proposed facility, or (ii) the percentage of charity care ambulatory surgery services provided by the affiliated hospital, whichever is greater.

(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.
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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.”

SECTION 1.(e) This Part becomes effective January 1, 2022.

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) (vi) 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.

…

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.

…”

SECTION 2.(b) 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 all of the following are true:

(1) The hospital proposing the conversion has executed a contract with the Department’s Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, one or more of the area mental health, developmental disabilities, and substance abuse authorities, or a combination thereof to provide psychiatric beds to patients referred by the contracting agency or agencies.

(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 2.(c) Section 12F.4(b) of Session Law 2016-94 reads as rewritten:

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

SECTION 2.(d) This Part is effective 18 months after the bill becomes law.

PART III. SEVERABILITY

SECTION 3. If any part of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.