

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL 1040
Health Care Committee Substitute Adopted 5/13/26

Short Title: Repeal CON for ASCs and Inpatient Rehab.

(Public)

Sponsors:

Referred to:

May 4, 2026

A BILL TO BE ENTITLED

AN ACT REPEALING CERTIFICATE OF NEED LAWS FOR AMBULATORY SURGICAL FACILITIES AND FOR INPATIENT REHABILITATION SERVICES, FACILITIES, AND BEDS; APPROPRIATING FUNDS TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO IMPLEMENT THESE CHANGES AND DEVELOP A PLAN FOR THE PHASED ELIMINATION OF THE STATE'S REMAINING CERTIFICATE OF NEED LAWS; AND DELETING OBSOLETE DEFINITIONS FOR BEHAVIORAL HEALTH FACILITIES THAT ARE NO LONGER SUBJECT TO CERTIFICATE OF NEED REVIEW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-176 reads as rewritten:

"§ 131E-176. **Definitions.**

The following definitions apply in this Article:

...

(1b) ~~Ambulatory surgical facility.—A facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional, or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and shall provide at least one designated operating room or gastrointestinal endoscopy room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician's or dentist's office so long as the facility is licensed under Part 4 of Article 6 of this Chapter, but the performance of incidental, limited ambulatory surgical procedures that do not constitute an ambulatory surgical program and that are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.~~

(1c) ~~Ambulatory surgical program.—A formal program for providing on a same day basis those surgical procedures that require local, regional, or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery or gastrointestinal endoscopy, to be medically unnecessary.~~

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- 1 (7d) Gastrointestinal endoscopy room. – A room in a licensed health service
2 facility used for the performance of procedures that require the insertion of a
3 flexible endoscope into a gastrointestinal orifice to visualize the
4 gastrointestinal lining and adjacent organs for diagnostic or therapeutic
5 purposes.
6 ...
- 7 (9b) Health service facility. – A hospital; long-term care hospital; ~~rehabilitation~~
8 ~~facility~~; nursing home facility; adult care home; kidney disease treatment
9 center, including freestanding hemodialysis units; intermediate care facility
10 for individuals with intellectual disabilities; home health agency office;
11 diagnostic center; or hospice office, hospice inpatient facility, or hospice
12 residential care ~~facility~~; ~~or ambulatory surgical facility~~. ~~This term does not~~
13 ~~include a qualified urban ambulatory surgical facility~~.
- 14 (9c) Health service facility bed. – A bed licensed for use in a health service facility
15 in the categories of (i) acute care beds; (ii) ~~rehabilitation beds~~; (iii) nursing
16 home beds; ~~(iv)-(iii)~~ intermediate care beds for individuals with intellectual
17 disabilities; ~~(v)-(iv)~~ hospice inpatient facility beds; ~~(vi)-(v)~~ hospice residential
18 care facility beds; ~~(vii)-(vi)~~ adult care home beds; and ~~(viii)-(vii)~~ long-term
19 care hospital beds.
20 ...
- 21 (13d) Hospital. – A public or private institution that is primarily engaged in
22 providing to inpatients, by or under supervision of physicians, diagnostic
23 services and therapeutic services for medical diagnosis, treatment, and care of
24 injured, disabled, or sick persons, ~~or rehabilitation services for the~~
25 ~~rehabilitation of injured, disabled, or sick persons~~. The term includes all
26 facilities licensed pursuant to G.S. 131E-77, except rehabilitation facilities
27 and long-term care hospitals.
28 ...
- 29 ~~(15a) Multispecialty ambulatory surgical program. – A formal program for~~
30 ~~providing on a same-day basis surgical procedures for at least three of the~~
31 ~~following specialty areas: gynecology, otolaryngology, plastic surgery,~~
32 ~~general surgery, ophthalmology, orthopedic, or oral surgery.~~
33 ...
- 34 (16) New institutional health services. – Any of the following:
35 ...
- 36 b. ~~Except with respect to qualified urban ambulatory surgical facilities~~
37 ~~and except as~~ otherwise provided in G.S. 131E-184(e), the obligation
38 by any person of a capital expenditure exceeding four million dollars
39 (\$4,000,000) to develop or expand a health service or a health service
40 facility, or which relates to the provision of a health service. The cost
41 of any studies, surveys, designs, plans, working drawings,
42 specifications, and other activities, including staff effort and
43 consulting and other services, essential to the acquisition,
44 improvement, expansion, or replacement of any plant or equipment
45 with respect to which an expenditure is made shall be included in
46 determining if the expenditure exceeds four million dollars
47 (\$4,000,000). Beginning September 30, 2022, and on September 30
48 each year thereafter, the amount in this sub-subdivision shall be
49 adjusted using the Medical Care Index component of the Consumer
50 Price Index published by the U.S. Department of Labor for the
51 12-month period preceding the previous September 1.

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- ...
 - ~~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.~~
- ...
 - (17a) Nursing care. – Any of the following:
 - a. Skilled nursing care and related services for residents who require medical or nursing care.
 - b. Rehabilitation services—services, other than those provided at an inpatient rehabilitation facility, for the rehabilitation of individuals who are injured or sick or who have disabilities.
 - c. Health-related care and services provided on a regular basis to individuals who, because of their mental or physical condition, require care and services above the level of room and board that can be made available to them only through institutional facilities.

These are services that are not primarily for the care and treatment of mental diseases.
 - ...
 - (21a) ~~Qualified urban ambulatory surgical facility.— An ambulatory surgical facility that meets all of the following criteria:~~
 - ~~a. Is licensed by the Department to operate as an ambulatory surgical facility.~~
 - ~~b. Has a single specialty or multispecialty ambulatory surgical program.~~
 - ~~e. Is located in a county with a population greater than 125,000 according to the 2020 federal decennial census or any subsequent federal decennial census.~~
 - (22) ~~Rehabilitation facility. – A public or private inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of individuals with disabilities through an integrated program of medical and other services which are provided under competent, professional supervision.~~A facility that has been classified and designated as an inpatient rehabilitation facility by the Centers for Medicare and Medicaid Services pursuant to Part 412 of Subchapter B of Chapter IV of Title 42 of the Code of Federal Regulations.
 - ...
 - (24f) ~~Specialty ambulatory surgical program.— A formal program for providing on a same day basis surgical procedures of the same surgical specialty and authorized by its certificate of need, if a certificate of need is required.~~

...."
SECTION 2. 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:~~Department.
 - (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~~

1 for the building permit for the facility was submitted by the effective date of
2 this act;

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

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

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

15 **SECTION 3.** G.S. 90-21.82A(a)(2) reads as rewritten:

16 "(2) Ambulatory surgical facility. – As defined in ~~G.S. 131E-176~~. G.S. 131E-146."

17 **SECTION 4.** G.S. 131E-146(3), 131E-147.5, 131E-176(5b), 131E-176(5c), and
18 131E-176(21) are repealed.

19 **SECTION 5.** There is appropriated from the General Fund to the Department of
20 Health and Human Services, Division of Health Service Regulation, the sum of fifty thousand
21 dollars (\$50,000) in nonrecurring funds for the 2026-2027 fiscal year. These funds shall be used
22 to do both of the following:

23 (1) To implement the repeal of certificate of need laws for ambulatory surgical
24 facilities and for inpatient rehabilitation services, facilities, and beds, as
25 provided by Sections 1 and 2 of this act.

26 (2) To develop a comprehensive plan for the phased elimination of the State's
27 remaining certificate of need laws. The plan shall include (i) a proposed
28 phaseout to be completed within a three-year period following adoption of the
29 plan by an act of the General Assembly and (ii) a recommended time line for
30 phasing out specific health services and health service facilities. The
31 Department of Health and Human Services, Division of Health Service
32 Regulation, shall develop and submit the plan required by this subdivision to
33 the Joint Legislative Oversight Committee on Health and Human Services, the
34 chairs of the House Appropriations Committee on Health and Human
35 Services, the chairs of the Senate Appropriations Committee on Health and
36 Human Services, the Speaker of the House of Representatives, the President
37 Pro Tempore of the Senate, and the Fiscal Research Division by July 1, 2027.

38 **SECTION 6.** If any provision of this act or its application is held invalid, the
39 invalidity does not affect other provisions or applications of this act that can be given effect
40 without the invalid provisions or application and, to this end, the provisions of this act are
41 severable.

42 **SECTION 7.** This act becomes effective July 1, 2026.