

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 177

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

Sponsors: Representatives Avila, Collins, and Burr (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Health and Human Services, if favorable, Appropriations.

February 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT DIAGNOSTIC CENTERS FROM CERTIFICATE OF NEED
3 REVIEW AND TO AMEND CERTIFICATE OF NEED LAWS PERTAINING TO
4 SINGLE-SPECIALTY AMBULATORY SURGERY OPERATING ROOMS, AS
5 RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CERTIFICATE OF
6 NEED AND RELATED HOSPITAL ISSUES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 131E-175 is amended by adding new subdivisions to read:

9 "(13) That the relocation of a hospital's operating rooms to a location separate
10 from the campus upon which the hospital's inpatient acute care beds and
11 emergency department are located results in a costly and unnecessary
12 economic burden to the public.

13 (14) That physicians who provide single-specialty ambulatory surgery services in
14 unlicensed settings should be afforded an opportunity to obtain a license to
15 provide these services in order to ensure patient safety and the provision of
16 quality care.

17 (15) That the demand for ambulatory surgery is increasing due to advances in
18 technology and anesthesia, and single-specialty ambulatory surgery
19 operating rooms are recognized as a highly effective means of expanding
20 access while achieving cost savings regardless of the availability and
21 potential underutilization of hospital-based operating rooms."

22 **SECTION 2.** G.S. 131E-176(7a) is repealed.

23 **SECTION 3.** G.S. 131E-176(9b) reads as rewritten:

24 "(9b) 'Health service facility' means a hospital; long-term care hospital; psychiatric
25 facility; rehabilitation facility; nursing home facility; adult care home;
26 kidney disease treatment center, including freestanding hemodialysis units;
27 intermediate care facility for the mentally retarded; home health agency
28 office; chemical dependency treatment facility; ~~diagnostic center~~; hospice
29 office, hospice inpatient facility, hospice residential care facility; and
30 ambulatory surgical facility."

31 **SECTION 4.** G.S. 131E-176(16)u. reads as rewritten:

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

33 ...

34 u. The construction, development, establishment, increase in the
35 number, or relocation of an operating ~~room~~ room, including a



1 single-specialty ambulatory surgery operating room, or
 2 gastrointestinal endoscopy room in a licensed health service facility,
 3 other than the relocation of an operating room or gastrointestinal
 4 endoscopy room within the same building or on the same grounds or
 5 to grounds not separated by more than a public right-of-way adjacent
 6 to the grounds where the operating room or gastrointestinal
 7 endoscopy room is currently located.

8 "

9 **SECTION 5.** G.S. 131E-176(24c) reads as rewritten:

10 "~~(24c) Reserved for future codification.~~"Single-specialty ambulatory surgery
 11 operating room" means a designated operating room located in a licensed
 12 ambulatory surgical facility that is used to perform same-day surgical
 13 procedures in one of the single-specialty areas identified by the American
 14 College of Surgeons. For the purpose of this subdivision, 'same-day surgical
 15 procedures' includes pain injections by orthopedists, physiatrists, and
 16 anesthesiologists."

17 **SECTION 6.** G.S. 131E-178 reads as rewritten:

18 "**§ 131E-178. Activities requiring certificate of need.**

19 (a) ~~No~~Except as otherwise provided in subsections (a1) and (a2) of this section, no
 20 person shall offer or develop a new institutional health service without first obtaining a
 21 certificate of need from the Department; provided, however, noDepartment.

22 (a1) Any person proposing to obtain a license to establish an ambulatory surgical facility
 23 for the provision of gastrointestinal endoscopy procedures shall be required to obtain a
 24 certificate of need to license that setting as an ambulatory surgical facility, with the existing
 25 number of gastrointestinal endoscopy rooms, except for a person who (i) provides
 26 gastrointestinal endoscopy procedures in one or more gastrointestinal endoscopy rooms located
 27 in a nonlicensed setting, shall be required to obtain a certificate of need to license that setting as
 28 an ambulatory surgical facility with the existing number of gastrointestinal endoscopy rooms,
 29 provided that setting and (ii) meets all of the following criteria:

- 30 (1) The person's license application is postmarked for delivery to the Division of
 31 Health Service Regulation by December 31, 2006;
- 32 (2) The applicant verifies, by affidavit submitted to the Division of Health
 33 Service Regulation within 60 days of the effective date of this act, that the
 34 facility is in operation as of the effective date of this act or that the
 35 completed application for the building permit for the facility was submitted
 36 by the effective date of this act;
- 37 (3) The facility has been accredited by The Accreditation Association for
 38 Ambulatory Health Care, The Joint Commission on Accreditation of
 39 Healthcare Organizations, or The American Association for Accreditation of
 40 Ambulatory Surgical Facilities by the time the license application is
 41 postmarked for delivery to the Division of Health Service Regulation of the
 42 Department; and
- 43 (4) The license application includes a commitment and plan for serving indigent
 44 and medically underserved populations.

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

50 (a2) Any person proposing to obtain a license to establish single-specialty ambulatory
 51 operating rooms in an ambulatory surgery facility shall be required to obtain a certificate of

1 need, except for a person who (i) provides single-specialty ambulatory surgery procedures in
2 one or more operating rooms located in a nonlicensed setting and (ii) meets all of the following
3 criteria:

- 4 (1) The person's license application is postmarked for delivery to the Division of
5 Health Service Regulation by December 31, 2013.
- 6 (2) The applicant verifies, by affidavit submitted to the Division of Health
7 Service Regulation within 60 days of the effective date of this act, that the
8 facility is in operation as of the effective date of this act or that the
9 completed application for the building permit for the facility was submitted
10 by the effective date of this act;
- 11 (3) The facility has been accredited by The Accreditation Association for
12 Ambulatory Health Care, The Joint Commission on Accreditation of
13 Healthcare Organizations, or The American Association for Accreditation of
14 Ambulatory Surgical Facilities by the time the license application is
15 postmarked for delivery to the Division of Health Service Regulation of the
16 Department; and
- 17 (4) The license application includes at least all of the following:
- 18 a. A commitment, plan, and policies and procedures for serving
19 indigent and medically underserved populations.
- 20 b. Projected charges for the 20 most common surgical procedures to be
21 performed in the proposed single-specialty ambulatory surgery
22 operating rooms.

23 All other persons proposing to obtain a license to establish
24 single-specialty ambulatory operating rooms within an ambulatory surgical
25 facility shall be required to obtain a certificate of need. The annual State
26 Medical Facilities Plan shall not include policies or need determinations that
27 limit the number of single-specialty ambulatory surgery operating rooms that
28 may be approved. However, the Department shall not approve an application
29 for a single-specialty ambulatory surgery operating room in any ambulatory
30 surgical facility within a county in which a licensed critical access hospital,
31 as defined in 42 CFR § 400.202, is located. The annual State Medical
32 Facilities Plan also shall not include policies or need determinations that
33 limit the relocation and replacement of existing operating rooms, including
34 single-specialty ambulatory operating rooms. However, the Department shall
35 not approve an application for the relocation of a hospital's operating rooms
36 to a location separate from the campus upon which the hospital's inpatient
37 acute care beds and emergency department are located if approval would
38 result in the hospital obtaining reimbursement for surgery procedures at a
39 rate higher than the rate paid to ambulatory surgery centers under a
40 government-sponsored health insurance or medical assistance program.

41 (b) No person shall make an acquisition by donation, lease, transfer, or comparable
42 arrangement without first obtaining a certificate of need from the Department, if the acquisition
43 would have been a new institutional health service if it had been made by purchase. In
44 determining whether an acquisition would have been a new institutional health service, the
45 capital expenditure for the asset shall be deemed to be the fair market value of the asset or the
46 cost of the asset, whichever is greater.

47 (c) No person shall incur an obligation for a capital expenditure which is a new
48 institutional health service without first obtaining a certificate of need from the Department. An
49 obligation for a capital expenditure is incurred when:

- 1 (1) An enforceable contract, excepting contracts which are expressly contingent
2 upon issuance of a certificate of need, is entered into by a person for the
3 construction, acquisition, lease, or financing of a capital asset;
- 4 (2) A person takes formal action to commit funds for a construction project
5 undertaken as his own contractor; or
- 6 (3) In the case of donated property, the date on which the gift is completed.
- 7 (d) Where the estimated cost of a proposed capital expenditure, including the fair
8 market value of equipment acquired by purchase, lease, transfer, or other comparable
9 arrangement, is certified by a licensed architect or engineer to be equal to or less than the
10 expenditure minimum for capital expenditure for new institutional health services, such
11 expenditure shall be deemed not to exceed the amount for new institutional health services
12 regardless of the actual amount expended, provided that the following conditions are met:
- 13 (1) The certified estimated cost is prepared in writing 60 days or more before
14 the obligation for the capital expenditure is incurred. Certified cost estimates
15 shall be available for inspection at the facility and sent to the Department
16 upon its request.
- 17 (2) The facility on whose behalf the expenditure was made notifies the
18 Department in writing within 30 days of the date on which such expenditure
19 is made if the expenditure exceeds the expenditure minimum for capital
20 expenditures. The notice shall include a copy of the certified cost estimate.
- 21 (e) The Department may grant certificates of need which permit capital expenditures
22 only for predevelopment activities. Predevelopment activities include the preparation of
23 architectural designs, plans, working drawings, or specifications, the preparation of studies and
24 surveys, and the acquisition of a potential site."

25 **SECTION 7.** G.S. 131E-182 reads as rewritten:

26 "(a) The Department in its rules shall establish schedules for submission and review of
27 completed applications. The schedules shall provide that applications for similar proposals in
28 the same service area will be reviewed together. However, the Department is prohibited from
29 scheduling a review prior to February 1, 2013, for certificate of need applications that propose
30 to establish a licensed single-specialty ambulatory operating room within an ambulatory
31 surgery facility.

32 (b) An application for a certificate of need shall be made on forms provided by the
33 Department. The application forms, which may vary according to the type of proposal, shall
34 require such information as the Department, by its rules deems necessary to conduct the review.
35 An applicant shall be required to furnish only that information necessary to determine whether
36 the proposed new institutional health service is consistent with the review criteria implemented
37 under G.S. 131E-183 and with duly adopted standards, plans and criteria. The application form
38 for a certificate of need to establish a single-specialty ambulatory surgery operating room
39 within an ambulatory surgery facility shall require the applicant to (i) include a written
40 commitment, plan, and policies and procedures for serving indigent and medically underserved
41 populations, (ii) furnish the projected charges for the 20 most common surgical procedures to
42 be performed in the proposed operating room, and (iii) demonstrate that it is performing or
43 reasonably expects to perform at least 800 single-specialty ambulatory procedures per licensed
44 single-specialty ambulatory operating room per year.

45 (c) An application fee is imposed on an applicant for a certificate of need. An applicant
46 must submit the fee with the application. The fee is not refundable, regardless of whether a
47 certificate of need is issued. Fees collected under this section shall be credited to the General
48 Fund as nontax revenue. The application fee is five thousand dollars (\$5,000) plus an amount
49 equal to three-tenths of one percent (.3%) of the amount of the capital expenditure proposed in
50 the application that exceeds one million dollars (\$1,000,000). In no event may the fee exceed
51 fifty thousand dollars (\$50,000)."

1 **SECTION 8.** G.S. 131E-184(a) is amended by adding a new subdivision to read:

2 "(10) To develop, acquire, or replace an institutional health service that obtained
3 certificate of need approval prior to the effective date of this act as a
4 diagnostic center. For the purpose of this subdivision, 'diagnostic center'
5 means a freestanding facility, program, or provider, including but not limited
6 to, physicians' offices, clinical laboratories, radiology centers, and mobile
7 diagnostic programs, in which the total cost of all the medical diagnostic
8 equipment utilized by the facility that cost ten thousand dollars (\$10,000) or
9 more exceeds five hundred thousand dollars (\$500,000), unless a new
10 institutional health service other than those defined in G.S. 131E-176(16)b.
11 is offered or developed in the building."

12 **SECTION 9.** Nothing in this act shall be construed to reflect any legislative intent
13 as to the circumstances under which Medicare or Medicaid certification may be obtained for a
14 provider of ambulatory surgery services.

15 **SECTION 10.** This act is effective when it becomes law. Section 7 of this act
16 expires on the effective date of administrative rules adopted consistent with the provisions of
17 this act regarding the number of single-specialty surgery procedures performed or projected to
18 be performed by applicants seeking to establish a licensed single-specialty ambulatory surgery
19 operating room.