

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 702

Short Title: Repeal CON and COPA Laws. (Public)

Sponsors: Senators Apodaca (Primary Sponsor); Cook, Hartsell, Hise, and Tarte.

Referred to: Rules and Operations of the Senate.

March 30, 2015

1 A BILL TO BE ENTITLED
2 AN ACT REPEALING NORTH CAROLINA'S CERTIFICATE OF NEED AND
3 CERTIFICATE OF PUBLIC ADVANTAGE LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 6-19.1(a) reads as rewritten:

6 "(a) In any civil action, other than an adjudication for the purpose of establishing or
7 fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a
8 party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate
9 provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow
10 the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to
11 the administrative review portion of the case, in contested cases arising under Article 3 of
12 Chapter 150B, to be taxed as court costs against the appropriate agency if:

13 (1) The court finds that the agency acted without substantial justification in
14 pressing its claim against the party; and

15 (2) The court finds that there are no special circumstances that would make the
16 award of attorney's fees unjust. The party shall petition for the attorney's fees
17 within 30 days following final disposition of the case. The petition shall be
18 supported by an affidavit setting forth the basis for the request.

19 ~~Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the~~
20 ~~administrative review portion of the case in contested cases arising under Article 9 of Chapter~~
21 ~~131E of the General Statutes.~~

22 Nothing in this section grants permission to bring an action against an agency otherwise
23 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
24 bring the action.

25 Any attorney's fees assessed against an agency under this section shall be charged against
26 the operating expenses of the agency and shall not be reimbursed from any other source."

27 **SECTION 1.(b)** Subsection (a) of this section applies to contested cases arising on
28 or after January 1, 2017.

29 **SECTION 2.** G.S. 58-50-61 reads as rewritten:

30 **"§ 58-50-61. Utilization review.**

31 (a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article,
32 the term:

33 ...

34 (7a) "Health service facility" means a hospital; long-term care hospital;
35 psychiatric facility; rehabilitation facility; nursing home facility; adult care
36 home; kidney disease treatment center, including freestanding hemodialysis



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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.

- (8) "Health care provider" means any person who is licensed, registered, or certified under Chapter 90 of the General Statutes or the laws of another state to provide health care services in the ordinary care of business or practice or a profession or in an approved education or training program; a health care facility as defined in ~~G.S. 131E-176(9b)~~ this section or the laws of another state to operate as a health care facility; or a pharmacy.

...."

SECTION 3. G.S. 58-55-35 reads as rewritten:

"§ 58-55-35. Facilities, services, and conditions defined.

(a) Whenever long-term care insurance provides coverage for the facilities, services, or physical or mental conditions listed below, unless otherwise defined in the policy and certificate, and approved by the Commissioner, such facilities, services, or conditions are defined as follows:

...

- (10) "~~Hospice shall be defined in accordance with the terms of G.S. 131E-176(13a).~~ means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

- (11) "~~Intermediate care facility for the mentally retarded shall be defined in accordance with the terms of G.S. 131E-176(14a).~~ 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, autism, cerebral palsy, epilepsym, or related conditions.

...."

SECTION 4. G.S. 90-21.36(b) reads as rewritten:

"(b) Nothing in this Article shall exempt physicians or others from compliance with ~~State or~~ federal laws governing certificate of need, licensure, or other regulatory requirements."

SECTION 5. G.S. 122C-23.1(e) reads as rewritten:

"(e) As used in this section, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, ~~but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes.~~ Chapter."

SECTION 6. G.S. 131E-13(a)(1) reads as rewritten:

- "(1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only ~~as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable,~~ by review

1 procedure designed to guarantee public participation pursuant to rules
2 adopted by the Secretary of the Department of Health and Human Services."

3 **SECTION 7.** G.S. 131E-136(4) reads as rewritten:

4 "(4) "Home health agency" means a home care agency which is certified to
5 receive Medicare and Medicaid reimbursement for providing nursing care,
6 therapy, medical social services, and home health aide services on a
7 part-time, intermittent ~~basis as set out in G.S. 131E-176(12), and is thereby~~
8 ~~also subject to Article 9 of Chapter 131E.~~basis."

9 **SECTION 8.** G.S. 148-19.1 reads as rewritten:

10 **"§ 148-19.1. Exemption from licensure and certificate of need.**licensure.

11 (a) Inpatient chemical dependency or substance abuse facilities that provide services
12 exclusively to inmates of the Division of Adult Correction of the Department of Public Safety
13 shall be exempt from licensure by the Department of Health and Human Services under
14 Chapter 122C of the General Statutes. If an inpatient chemical dependency or substance abuse
15 facility provides services both to inmates of the Division of Adult Correction of the Department
16 of Public Safety and to members of the general public, the portion of the facility that serves
17 inmates shall be exempt from licensure.

18 (b) ~~Any person who contracts to provide inpatient chemical dependency or substance~~
19 ~~abuse services to inmates of the Division of Adult Correction of the Department of Public~~
20 ~~Safety may construct and operate a new chemical dependency or substance abuse facility for~~
21 ~~that purpose without first obtaining a certificate of need from the Department of Health and~~
22 ~~Human Services pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new~~
23 ~~facility or addition developed for that purpose without a certificate of need shall not be licensed~~
24 ~~pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates~~
25 ~~unless the owner or operator first obtains a certificate of need."~~

26 **SECTION 9.** Article 1E of Chapter 90 of the General Statutes, Article 9 and
27 Article 9A of Chapter 131E of the General Statutes, G.S. 130A-45.02(i), 150B-2(8a)k.,
28 150B-21.1(6), and 165-47 are repealed.

29 **SECTION 10.** This act becomes effective January 1, 2017.