

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 126
PROPOSED SENATE COMMITTEE SUBSTITUTE H126-CSBC-57 [v.3]
06/25/2019 05:43:58 PM

Short Title: Amend Certificate of Need Laws.

(Public)

Sponsors:

Referred to:

February 21, 2019

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING CERTIFICATE OF NEED LAWS.
3 The General Assembly of North Carolina enacts:
4 **PART I. REFORMS EFFECTIVE OCTOBER 1, 2019**

5 **SECTION 1.1.** G.S. 131E-176 reads as rewritten:
6 **"§ 131E-176. Definitions.**

7 As used in this Article, unless the context clearly requires otherwise, the following terms
8 have the meanings specified:

9 ...

10 (2) "Bed capacity" means space used exclusively for inpatient ~~care,~~ care at a health
11 service facility, including space designed or remodeled for licensed inpatient
12 beds even though temporarily not used for such purposes. The number of beds
13 to be counted in any patient room shall be the maximum number for which
14 adequate square footage is provided as established by rules of the Department
15 except that single beds in single rooms are counted even if the room contains
16 inadequate square footage. ~~The term "bed capacity" also refers to the number~~
17 ~~of dialysis stations in kidney disease treatment centers, including freestanding~~
18 ~~dialysis units.~~

19 ...

20 (5) "Change in bed capacity" means (i) any relocation of health service facility
21 beds, or dialysis stations from one licensed facility or campus to another, or
22 (ii) any redistribution of health service facility bed capacity among the
23 categories of health service facility bed as defined in G.S. 131E-176(9c), or
24 (iii) any increase in the number of health service facility ~~beds, or dialysis~~
25 ~~stations in kidney disease treatment centers, including freestanding dialysis~~
26 ~~units.~~ beds.

27 ...

28 (7a) "Diagnostic center" means a freestanding facility, program, or provider,
29 including but not limited to, physicians' offices, clinical laboratories,
30 radiology centers, and mobile diagnostic programs, in which the total cost of
31 all the medical diagnostic equipment utilized by the facility which cost ten
32 thousand dollars (\$10,000) or more exceeds ~~five hundred thousand dollars~~
33 ~~(\$500,000).~~ one million five hundred thousand dollars (\$1,500,000). In
34 determining whether the medical diagnostic equipment in a diagnostic center
35 costs more than ~~five hundred thousand dollars (\$500,000),~~ one million five
36 hundred thousand dollars (\$1,500,000), the costs of the equipment, studies,



1 surveys, designs, plans, working drawings, specifications, construction,
 2 installation, and other activities essential to acquiring and making operational
 3 the equipment shall be included. The capital expenditure for the equipment
 4 shall be deemed to be the fair market value of the equipment or the cost of the
 5 equipment, whichever is greater. Beginning September 30, 2022, and on
 6 September 30 each year thereafter, the cost threshold amount in this sub-
 7 subdivision shall be adjusted using the Medical Care Index component of the
 8 Consumer Price Index published by the U.S. Department of Labor for the 12-
 9 month period preceding the previous September 1.

10 ...

11 (9a) "Health service" means an organized, interrelated medical, diagnostic,
 12 therapeutic, ~~and/or or~~ rehabilitative ~~activity-activity~~, or any combination of
 13 these, that is integral to the prevention of disease or the clinical management
 14 of a sick, injured, or disabled person. "Health service" does not include
 15 administrative and other activities that are not integral to clinical
 16 ~~management-management~~, or any activities performed at a facility that does
 17 not meet the definition of a health service facility.

18 (9b) "Health service facility" means a hospital; long-term care hospital; ~~psychiatric~~
 19 ~~facility~~; rehabilitation facility; nursing home facility; adult care home; ~~kidney~~
 20 ~~disease treatment center, including freestanding hemodialysis units;~~
 21 ~~intermediate care facility for the mentally retarded;~~ home health agency
 22 office; ~~chemical dependency treatment facility;~~ diagnostic center; hospice
 23 office, hospice inpatient facility, hospice residential care facility; and
 24 ambulatory surgical facility. The term "health service facility" does not
 25 include a licensable facility, as defined in G.S. 122C-3(14)b.

26 (9c) "Health service facility bed" means a bed licensed for use in a health service
 27 facility in the categories of (i) acute care beds; (ii) ~~psychiatric beds;~~ (iii)
 28 rehabilitation beds; ~~(iv)-(iii)~~ nursing home beds; ~~(v) intermediate care beds for~~
 29 ~~the mentally retarded;~~ ~~(vi) chemical dependency treatment beds;~~ ~~(vii) (iv)~~
 30 hospice inpatient facility beds; ~~(viii)-(v)~~ hospice residential care facility beds;
 31 ~~(ix)-(vi)~~ adult care home beds; and ~~(x) or (vii)~~ long-term care hospital beds.

32 ...

33 (14a) ~~"Intermediate care facility for the mentally retarded"~~ "Intermediate care
 34 facility for individuals with intellectual disabilities" means facilities licensed
 35 pursuant to Article 2 of Chapter 122C of the General Statutes for the purpose
 36 of providing health and habilitative services based on the developmental
 37 model and principles of normalization for persons with ~~mental retardation,~~
 38 intellectual disabilities, autism, cerebral palsy, epilepsy or related conditions.

39 ...

40 (14o) "Major medical equipment" means a single unit or single system of
 41 components with related functions which is used to provide medical and other
 42 health services and which costs more than ~~seven hundred fifty thousand~~
 43 ~~dollars (\$750,000)~~ two million dollars (\$2,000,000). In determining whether
 44 the major medical equipment costs more than ~~seven hundred fifty thousand~~
 45 ~~dollars (\$750,000)~~ two million dollars (\$2,000,000), the costs of the
 46 equipment, studies, surveys, designs, plans, working drawings, specifications,
 47 construction, installation, and other activities essential to acquiring and
 48 making operational the major medical equipment shall be included. The
 49 capital expenditure for the equipment shall be deemed to be the fair market
 50 value of the equipment or the cost of the equipment, whichever is greater.
 51 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" means 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~~four million dollars ~~(\$2,000,000)~~(\$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~~four million dollars ~~(\$2,000,000)~~(\$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.

...

d. ~~The~~ Except as otherwise allowed 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.~~

...

~~tt. 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 1.2. 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;~~Article.

- 1 (2) Adopt, amend, and repeal such rules and regulations, consistent with the laws
- 2 of this State, as may be required by the federal government for grants-in-aid
- 3 for health service facilities and health planning which may be made available
- 4 by the federal government. This section shall be liberally construed in order
- 5 that the State and its citizens may benefit from such
- 6 ~~grants-in-aid;~~grants-in-aid.
- 7 (3) Define, by rule, procedures for submission of periodic reports by persons or
- 8 health service facilities subject to agency review under this ~~Article;~~Article.
- 9 (4) ~~Develop~~With respect to health service facilities planning, all of the following:
- 10 a. ~~Develop~~ policy, criteria, and standards for health service facilities
- 11 ~~planning; shall conduct planning.~~
- 12 b. ~~Conduct~~ statewide registration and inventories of and make
- 13 ~~determinations of need for health service facilities, health services as~~
- 14 ~~specified in G.S. 131E-176(16)f., and equipment as specified in~~
- 15 ~~G.S. 131E-176(16)f1., which shall include consideration of adequate~~
- 16 ~~geographic location of equipment and services; and develop services.~~
- 17 c. ~~Develop a State Medical Facilities Plan;~~Plan, provided, however, that
- 18 ~~the State Medical Facilities Plan shall not include policies or need~~
- 19 ~~determinations that limit the number of operating rooms or~~
- 20 ~~gastrointestinal endoscopy rooms.~~
- 21 (5) Implement, by rule, criteria for project ~~review;~~review.
- 22 (6) Have the power to grant, deny, or withdraw a certificate of need and to impose
- 23 such sanctions as are provided for by this ~~Article;~~Article.
- 24 (7) Solicit, accept, hold and administer on behalf of the State any grants or devises
- 25 of money, securities or property to the Department for use by the Department
- 26 in the administration of this ~~Article; and~~Article.
- 27 (8) Repealed by Session Laws 1987, c. 511, s. 1.
- 28 (9) Collect fees for submitting applications for certificates of need.
- 29 (10) The authority to review all records in any recording medium of any person or
- 30 health service facility subject to agency review under this Article which
- 31 pertain to construction and acquisition activities, staffing or costs and charges
- 32 for patient care, including but not limited to, construction contracts,
- 33 architectural contracts, consultant contracts, purchase orders, cancelled
- 34 checks, accounting and financial records, debt instruments, loan and security
- 35 agreements, staffing records, utilization statistics and any other records the
- 36 Department deems to be reasonably necessary to determine compliance with
- 37 this Article.

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

40 **SECTION 1.3.** G.S. 131E-183(a)(1) reads as rewritten:

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

46 **SECTION 1.4.** G.S. 131E-184(c) reads as rewritten:

47 "(c) The Department shall exempt from certificate of need review any conversion of
 48 existing acute care beds to psychiatric ~~beds provided;~~beds.

49 ~~(1) The hospital proposing the conversion has executed a contract with the~~
 50 ~~Department's Division of Mental Health, Developmental Disabilities, and~~
 51 ~~Substance Abuse Services and/or one or more of the Area Mental Health,~~

1 ~~Developmental Disabilities, and Substance Abuse Authorities to provide~~
2 ~~psychiatric beds to patients referred by the contracting agency or agencies;~~
3 ~~and~~

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

7 **SECTION 1.5.** G.S. 131E-184(e)(1) reads as rewritten:

8 "(1) The proposed capital expenditure would:

- 9 a. Be used solely for the purpose of renovating, replacing on the same
10 site, or expanding an existing:
11 1. Nursing home facility, or
12 2. Adult care home ~~facility, or facility.~~
13 3. ~~Intermediate care facility for the mentally retarded; and~~
14 b. Not result in a change in bed capacity, as defined in G.S. 131E-176(5),
15 or the addition of a health service facility or any other new institutional
16 health service other than that allowed in G.S. 131E-176(16)b."

17 **SECTION 1.6.(a)** G.S. 131E-184 is amended by adding new subsections to read:

18 "(i) The Department shall exempt from certificate of need review the development,
19 acquisition, construction, expansion, or replacement of a health service or health service facility
20 that obtained certificate of need approval prior to October 1, 2019, as a kidney dialysis treatment
21 center, including freestanding hemodialysis units; intermediate care facility for individuals with
22 intellectual disabilities; psychiatric facility; chemical dependency treatment facility; or any other
23 licensable facility, as defined in G.S. 122C-3(14)b.

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

39 **SECTION 1.6.(b)** G.S. 131E-184(j), as enacted by this section, applies to continuing
40 care retirement communities engaged in the direct provision of home health services on or after
41 October 1, 2019.

42 **SECTION 1.7.** G.S. 131E-186(a) reads as rewritten:

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

51 **SECTION 1.8.** G.S. 131E-189 is amended by adding a new subsection to read:

1 "(d) Notwithstanding any other provision of this section, a certificate of need for the
2 construction of a health service facility expires if the holder of the certificate of need fails to
3 initiate construction of the project authorized by the certificate of need within the following time
4 frames:

- 5 (1) For a project that costs over fifty million dollars (\$50,000,000), the holder of
6 the certificate of need shall initiate construction of the project authorized by
7 the certificate of need within four years after the date the Department's
8 decision to approve the certificate of need for that project becomes final.
9 (2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder
10 of the certificate of need shall initiate construction of the project authorized
11 by the certificate of need within two years after the date the Department's
12 decision to approve the certificate of need for that project becomes final."

13 **SECTION 1.9.** G.S. 131E-175(11) and (12) are repealed.

14 **SECTION 1.10.** This Part becomes effective October 1, 2019.

15
16 **PART II. REFORMS EFFECTIVE JANUARY 1, 2020**

17 **SECTION 2.1.** G.S. 131E-147 reads as rewritten:

18 **"§ 131E-147. Licensure requirement.**

19 ...

20 (c1) All initial applications and renewal applications shall require the applicant to state the
21 number of procedure rooms on the premises named in the application.

22 ...

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

- 26 (1) A commitment that the Medicare allowable amount for self-pay and Medicaid
27 surgical cases minus all revenue collected from self-pay and Medicaid
28 surgical cases shall be at least four percent (4%) of the total revenue collected
29 for all surgical cases performed in the facility or proposed facility.
30 (2) For each year of operation, a commitment to report to the Department the total
31 number of cases by each of the following payer categories:
32 a. Self-pay surgical cases.
33 b. Medicaid surgical cases.
34 c. Medicare surgical cases.
35 d. Commercial insurance surgical cases.
36 e. Managed care surgical cases.
37 f. Other surgical cases.
38 (3) A commitment to report utilization and payment data for services provided by
39 the ambulatory surgical facility to the statewide data processor, as required by
40 G.S. 131E-214.2."

41 **SECTION 2.2.** G.S. 131E-176(16), as amended by this act, reads as rewritten:

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

43 ...

- 44 ~~f. The conversion of a specialty ambulatory surgical program to a~~
45 ~~multispecialty ambulatory surgical program or the addition of a~~
46 ~~specialty to a specialty ambulatory surgical program.~~

47 "

48 **SECTION 2.3.** This Part becomes effective January 1, 2020.

49
50 **PART III. REFORMS EFFECTIVE JANUARY 1, 2022**

51 **SECTION 3.1.** G.S. 131E-176(9b), as amended by this act, reads as rewritten:

"(9b) "Health service facility" means a hospital; long-term care hospital; rehabilitation facility; nursing home facility; adult care home; home health agency office; diagnostic center; and a hospice office, hospice inpatient facility, 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."

SECTION 3.2. 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 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 3.3. G.S. 131E-184, as amended by this act, reads as rewritten:

"(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 in number, or replace an operating room or gastrointestinal endoscopy room for which a certificate of need was issued to an ambulatory surgical facility prior to January 1, 2022.
- ...

(k) The Department shall exempt from certificate of need review the development, acquisition, construction, expansion, or replacement of a health service or health service facility that obtained certificate of need approval prior to January 1, 2022, as an ambulatory surgical facility, including an ambulatory surgical facility with one or more operating rooms or gastrointestinal endoscopy procedure rooms."

SECTION 3.4. This Part becomes effective January 1, 2022.

PART IV. SEVERABILITY

1 **SECTION 4.1.** If any part of this section is declared unconstitutional or invalid by
2 the courts, it does not affect the validity of this section as a whole or any part other than the part
3 declared to be unconstitutional or invalid.

4 **SECTION 4.2.** This Part is effective when it becomes law.