

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 843

Short Title: Certificate of Need Modifications. (Public)

Sponsors: Representatives Warren, Kidwell, Richardson, and Sasser (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 5, 2021

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

4
5 **PART I. REFORMS EFFECTIVE JANUARY 1, 2022**

6 **SECTION 1.(a)** G.S. 131E-176 reads as rewritten:

7 **"§ 131E-176. Definitions.**

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

10 ...

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

20 ...

21 (7a) Diagnostic center. – A freestanding facility, program, or provider, including
22 but not limited to, physicians' offices, clinical laboratories, radiology centers,
23 and mobile diagnostic programs, in which the total cost of all the medical
24 diagnostic equipment utilized by the facility which cost ten thousand dollars
25 (\$10,000) or more exceeds ~~five hundred thousand dollars (\$500,000).~~ one
26 million five hundred thousand dollars (\$1,500,000). In determining whether
27 the medical diagnostic equipment in a diagnostic center costs more than ~~five~~
28 ~~hundred thousand dollars (\$500,000),~~ one million five hundred thousand
29 dollars (\$1,500,000), the costs of the equipment, studies, surveys, designs,
30 plans, working drawings, specifications, construction, installation, and other
31 activities essential to acquiring and making operational the equipment shall be
32 included. The capital expenditure for the equipment shall be deemed to be the
33 fair market value of the equipment or the cost of the equipment, whichever is
34 greater. Beginning September 30, 2022, and on September 30 each year
35 thereafter, the cost threshold amount in this subdivision shall be adjusted using



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1 the Medical Care Index component of the Consumer Price Index published by
2 the U.S. Department of Labor for the 12-month period preceding the previous
3 September 1.

4 ...

5 (9a) "Health service" means an organized, interrelated medical, diagnostic,
6 therapeutic, ~~and/or rehabilitative activity~~ rehabilitative activity, or any
7 combination of these, that is integral to the prevention of disease or the clinical
8 management of a sick, injured, or disabled person. "Health service" does not
9 include administrative and other activities that are not integral to clinical
10 management, management, or any activities performed at a facility that does
11 not meet the definition of a health service facility.

12 (9b) "Health service facility" means a hospital; long-term care hospital; psychiatric
13 facility; rehabilitation facility; nursing home facility; adult care home; kidney
14 disease treatment center, including freestanding hemodialysis units;
15 intermediate care facility for the mentally retarded; home health agency
16 office; chemical dependency treatment facility; diagnostic center; or hospice
17 office, hospice inpatient facility, or hospice residential care facility; and
18 ambulatory surgical facility.

19 ...

20 (14o) Major medical equipment. – A single unit or single system of components
21 with related functions which is used to provide medical and other health
22 services and which costs more than ~~seven hundred fifty thousand dollars~~
23 ~~(\$750,000).~~ two million dollars (\$2,000,000). In determining whether the
24 major medical equipment costs more than ~~seven hundred fifty thousand~~
25 ~~dollars (\$750,000),~~ two million dollars (\$2,000,000), the costs of the
26 equipment, studies, surveys, designs, plans, working drawings, specifications,
27 construction, installation, and other activities essential to acquiring and
28 making operational the major medical equipment shall be included. The
29 capital expenditure for the equipment shall be deemed to be the fair market
30 value of the equipment or the cost of the equipment, whichever is greater.
31 Major medical equipment does not include replacement equipment as defined
32 in this section. Beginning September 30, 2022, and on September 30 each year
33 thereafter, the cost threshold amount in this subdivision shall be adjusted using
34 the Medical Care Index component of the Consumer Price Index published by
35 the U.S. Department of Labor for the 12-month period preceding the previous
36 September 1.

37 ...

38 (16) New institutional health services. – Any of the following:

39 ...

40 b. Except as otherwise provided in G.S. 131E-184(e), the obligation by
41 any person of a capital expenditure exceeding ~~two million dollars~~
42 ~~(\$2,000,000)~~ four million dollars (\$4,000,000) to develop or expand a
43 health service or a health service facility, or which relates to the
44 provision of a health service. The cost of any studies, surveys, designs,
45 plans, working drawings, specifications, and other activities, including
46 staff effort and consulting and other services, essential to the
47 acquisition, improvement, expansion, or replacement of any plant or
48 equipment with respect to which an expenditure is made shall be
49 included in determining if the expenditure exceeds ~~two million dollars~~
50 ~~(\$2,000,000)~~ four million dollars (\$4,000,000). Beginning September
51 30, 2022, and on September 30 each year thereafter, the amount in this

1 sub-subdivision shall be adjusted using the Medical Care Index
2 component of the Consumer Price Index published by the U.S.
3 Department of Labor for the 12-month period preceding the previous
4 September 1.

5"

6 **SECTION 1.(b)** G.S. 131E-184 reads as rewritten:

7 **"§ 131E-184. Exemptions from review.**

8 (a) Except as provided in subsection (b), the Department shall exempt from certificate of
9 need review a new institutional health service if it receives prior written notice from the entity
10 proposing the new institutional health service, which notice includes an explanation of why the
11 new institutional health service is required, for any of the following:

12 ...

13 (10) To develop, acquire, construct, expand, or replace a health service facility or
14 service that obtained certificate of need approval prior to January 1, 2022, as
15 an ambulatory surgical facility.

16 ...

17 (e) The Department shall exempt from certificate of need review a capital expenditure
18 that exceeds the ~~two million dollar (\$2,000,000)~~ four million dollar (\$4,000,000) threshold set
19 forth in G.S. 131E-176(16)b. if all of the following conditions are met:

20 ...

21 (g) The Department shall exempt from certificate of need review any capital expenditure
22 that exceeds the ~~two million dollar (\$2,000,000)~~ four million dollar (\$4,000,000) threshold set
23 forth in G.S. 131E-176(16)b. if all of the following conditions are met:

24 ...

25 (i) Notwithstanding any other provision of law to the contrary, the Department shall
26 exempt from certificate of need review services or facilities for which a certificate of need has
27 already been issued when those services or facilities are replaced, renovated, or relocated to
28 another site in the same county where need was originally determined.

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

32 (1) If the entity seeking this exemption is a physician or group of physicians
33 licensed to practice in this State under Chapter 90 of the General Statutes, the
34 entity shall make every effort to enter into a joint venture for the construction,
35 development, acquisition, or establishment of the ambulatory surgical facility
36 with a licensed hospital in the same geographic service area as the proposed
37 ambulatory surgical facility. The terms of the joint venture must provide for
38 at least fifty-five percent (55%) ownership by the physician or group of
39 physicians. If the physician or group of physicians and a licensed hospital in
40 the same geographic service area are unable to reach a signed agreement on
41 the joint venture within a six-month period, then the physician or group of
42 physicians shall provide written notification of this inability to reach a signed
43 agreement to the Department. The Department shall adopt rules developing
44 forms and procedures for submitting this notification. Upon receipt of written
45 confirmation from the Department that the exemption authorized by this
46 section applies, the entity may proceed with constructing, developing,
47 acquiring, or establishing the ambulatory surgical facility.

48 (2) The ambulatory surgical facility must have an agreement with a licensed
49 hospital within the same geographic service area, or the licensed medical staff
50 at the ambulatory surgical facility must have hospital privileges or other
51 documented arrangements with a licensed hospital in the same geographic

1 service area as the proposed ambulatory surgical facility that are deemed
2 sufficient by the Department to ensure that inpatient hospital services will be
3 available to address any medical complications that require a patient of the
4 ambulatory surgical facility to be admitted to a hospital for inpatient care.

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

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

12 **SECTION 1.(c)** G.S. 131E-189 is amended by adding two new subsections to read:

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

17 (1) For a project that costs over fifty million dollars (\$50,000,000), the holder of
18 the certificate of need shall initiate construction of the project authorized by
19 the certificate of need within four years after the date the Department's
20 decision to approve the certificate of need for that project becomes final.

21 (2) For a project that costs fifty million dollars (\$50,000,000) or less, the holder
22 of the certificate of need shall initiate construction of the project authorized
23 by the certificate of need within two years after the date the Department's
24 decision to approve the certificate of need for that project becomes final.

25 (e) Notwithstanding any other provision of this Article, a certificate of need that has not
26 been used at any point in the immediately previous 12 months is expired."

27 **SECTION 1.(d)** G.S. 131E-147 reads as rewritten:

28 "**§ 131E-147. Licensure requirement.**

29 ...

30 (c1) All initial applications and renewal applications shall require the applicant to state the
31 number of procedure rooms on, and the number and type of procedures performed at, the
32 premises named in the application.

33 ...

34 (f) The Department shall not issue or renew a license to operate an ambulatory surgical
35 facility developed, acquired, or replaced on or after January 1, 2022, unless the license
36 application includes all of the following:

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

43 (2) For each year of operation, a commitment to report to the Department the total
44 number of cases by each of the following payer categories:

45 a. Self-pay surgical cases.

46 b. Medicaid surgical cases.

47 c. Medicare surgical cases.

48 d. Commercial insurance surgical cases.

49 e. Managed care surgical cases.

50 f. Other surgical cases.

1 (3) A commitment to report utilization and payment data for services provided by
2 the ambulatory surgical facility to the statewide data processor, as required by
3 G.S. 131E-214.2."

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

5
6 **PART II. SEVERABILITY**

7 **SECTION 2.** If any part of this act is declared unconstitutional or invalid by the
8 courts, it does not affect the validity of this act as a whole or any part other than the part declared
9 to be unconstitutional or invalid.

10
11 **PART III. EFFECTIVE DATE**

12 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
13 law.