

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 177
Feb 27, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH60007-MG-11D (10/24)

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

Sponsors: Representatives Avila, Collins, and Burr (Primary Sponsors).

Referred to:

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22 **SECTION 2.** G.S. 131E-176(7a) is repealed.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
36 single-specialty ambulatory surgery operating room, or



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

7 "

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

9 "~~(24c) Reserved for future codification.~~"Single-specialty ambulatory surgery
10 operating room" means a designated operating room located in a licensed
11 ambulatory surgical facility that is used to perform same-day surgical
12 procedures in one of the single-specialty areas identified by the American
13 College of Surgeons. For the purpose of this subdivision, 'same-day surgical
14 procedures' includes pain injections by orthopedists, physiatrists, and
15 anesthesiologists."

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

17 "**§ 131E-178. Activities requiring certificate of need.**

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

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

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

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

49 (a2) Any person proposing to obtain a license to establish single-specialty ambulatory
50 operating rooms in an ambulatory surgery facility shall be required to obtain a certificate of
51 need, except for a person who (i) provides single-specialty ambulatory surgery procedures in

1 one or more operating rooms located in a nonlicensed setting and (ii) meets all of the following
2 criteria:

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

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

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

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

- 49 (1) An enforceable contract, excepting contracts which are expressly contingent
50 upon issuance of a certificate of need, is entered into by a person for the
51 construction, acquisition, lease, or financing of a capital asset;

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

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

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

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

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

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

50 "(10) To develop, acquire, or replace an institutional health service that obtained
51 certificate of need approval prior to the effective date of this act as a

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

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

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