

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1055

Short Title: C.O.N. Modifications With Fee.

(Public)

Sponsors: Senator Horton.

Referred to: Health Care.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CERTIFICATE OF NEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-175 is repealed.

SECTION 2. G.S. 131E-176 reads as rewritten:

"§ 131E-176. Definitions.

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

...

(7a.1) "Established practice" means an entity (i) that delivers a health service through a physician or physicians that are licensed by the North Carolina Medical Board and (ii) which is solely owned by a physician or physicians that are licensed by the North Carolina Medical Board.

(7a.2) "Exempt" means a project, health service, or health service facility that is exempt from certificate of need review pursuant to G.S. 131E-184.

...

(15a) "Multispecialty ambulatory surgical program" means a formal program for providing on a same-day basis surgical procedures for at least three of the following specialty areas: urology, gastroenterology, pulmonology, podiatry, physiatry, pain management, gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopedic, orthopedic surgery, or oral surgery.

...

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

- a. The construction, development, or other establishment of a new health service facility.
- b. The obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health

- 1 service or a health service facility, or which relates to the
2 provision of a health service. The cost of any studies, surveys,
3 designs, plans, working drawings, specifications, and other
4 activities, including staff effort and consulting and other
5 services, essential to the acquisition, improvement, expansion,
6 or replacement of any plant or equipment with respect to which
7 an expenditure is made shall be included in determining if the
8 expenditure exceeds two million dollars (\$2,000,000).
- 9 c. Any change in bed capacity as defined in G.S. 131E-176(5).
- 10 d. The offering of dialysis services or home health services by or
11 on behalf of a health service facility if those services were not
12 offered within the previous 12 months by or on behalf of the
13 facility.
- 14 e. A change in a project that was subject to certificate of need
15 review and for which a certificate of need was issued, if the
16 change is proposed during the development of the project or
17 within one year after the project was ~~completed~~completed,
18 unless the proposed change would qualify as an exempt project,
19 health service, or health service facility pursuant to G.S. 131E-
20 184. For purposes of this subdivision, a change in a project is a
21 change of more than fifteen percent (15%) of the approved
22 capital expenditure amount or the addition of a health service
23 that is to be located in the facility, or portion thereof, that was
24 constructed or developed in the project.
- 25 f. The development or offering of a health service as listed in this
26 subdivision by or on behalf of any person:
- 27 1. Bone marrow transplantation services.
 - 28 2. Burn intensive care services.
 - 29 3. Neonatal intensive care services.
 - 30 4. Open-heart surgery services.
 - 31 5. Solid organ transplantation services.
- 32 fl. The acquisition by purchase, donation, lease, transfer, or
33 comparable arrangement of any of the following equipment by
34 or on behalf of any person:
- 35 1. Air ambulance.
 - 36 2. Cardiac angioplasty equipment.
 - 37 3. Cardiac catheterization equipment.
 - 38 4. Gamma knife.
 - 39 5. Heart-lung bypass machine.
 - 40 6. Lithotripter.
 - 41 7. Magnetic resonance imaging scanner.
 - 42 8. Positron emission tomography scanner.
- 43 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.

- 1 l. The purchase, lease, or acquisition of any health service facility,
2 or portion thereof, or a controlling interest in the health service
3 facility or portion thereof, if the health service facility was
4 developed under a certificate of need issued pursuant to G.S.
5 131E-180.
- 6 m. Any conversion of nonhealth service facility beds to health
7 service facility beds.
- 8 n. The construction, development or other establishment of a
9 hospice, hospice inpatient facility, or hospice residential care
10 facility;
- 11 o. The opening of an additional office by an existing home health
12 agency within its service area as defined by rules adopted by the
13 Department; or the opening of any office by an existing home
14 health agency outside its service area as defined by rules
15 adopted by the Department.
- 16 p. The acquisition by purchase, donation, lease, transfer, or
17 comparable arrangement by any person of major medical
18 equipment.
- 19 q. The relocation of a health service facility from one service area
20 to another.
- 21 r. The conversion of a specialty ambulatory surgical program to a
22 multispecialty ambulatory surgical program or the addition of a
23 specialty to a specialty ambulatory surgical program.
- 24 s. The furnishing of mobile medical equipment to any person to
25 provide health services in North Carolina, which was not in use
26 in North Carolina prior to the adoption of this provision, if such
27 equipment would otherwise be subject to review in accordance
28 with G.S. 131E-176(16)(f1.) or G.S. 131E-176(16)(p) if it had
29 been acquired in North Carolina.
- 30 t. The relocation or expansion of part or all of an ambulatory
31 surgical facility which requires a new license under Part D of
32 Article 6 of this Chapter, or the relocation and addition of part
33 or all of a hospital operating room to a building other than one
34 within which it is currently located.

35 ...

36 (24c) "Specialty ambulatory surgical program" means a formal program for
37 providing on a same-day basis surgical procedures for only the
38 specialty areas identified on the ambulatory surgical facility's 1993
39 Application for Licensure as an Ambulatory Surgical Center and
40 authorized by its certificate of ~~need~~need where a certificate of need is
41 required pursuant to this Article."

42 **SECTION 3.** G.S. 131E-178 reads as rewritten:

43 **"§ 131E-178. Activities requiring certificate of need.**

1 (a) ~~No~~ Unless exempt from review pursuant to G.S. 131E-184, no person shall
2 offer or develop a new institutional health service without first obtaining a certificate of
3 need from the Department; provided, however, no hospital licensed pursuant to Article
4 5 of this Chapter that was established to serve a minority population that would not
5 otherwise have been served and that continues to serve a minority population may be
6 required to obtain a certificate of need for transferring up to 65 beds to nursing care
7 facility beds.

8 (b) ~~No~~ Unless exempt from review pursuant to G.S. 131E-184, no person shall
9 make an acquisition by donation, lease, transfer, or comparable arrangement without
10 first obtaining a certificate of need from the Department, if the acquisition would have
11 been a new institutional health service if it had been made by purchase. In determining
12 whether an acquisition would have been a new institutional health service, the capital
13 expenditure for the asset shall be deemed to be the fair market value of the asset or the
14 cost of the asset, whichever is greater.

15 (c) ~~No~~ Unless exempt from review pursuant to G.S. 131E-184, no person shall
16 incur an obligation for a capital expenditure which is a new institutional health service
17 without first obtaining a certificate of need from the Department. An obligation for a
18 capital expenditure is incurred when:

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

23 (2) A person takes formal action to commit funds for a construction
24 project undertaken as his own contractor; or

25 (3) In the case of donated property, the date on which the gift is
26 completed.

27 (d) Where the estimated cost of a proposed capital expenditure, including the fair
28 market value of equipment acquired by purchase, lease, transfer, or other comparable
29 arrangement, is certified by a licensed architect or engineer to be equal to or less than
30 the expenditure minimum for capital expenditure for new institutional health services,
31 such expenditure shall be deemed not to exceed the amount for new institutional health
32 services regardless of the actual amount expended, provided that the following
33 conditions are met:

34 (1) The certified estimated cost is prepared in writing 60 days or more
35 before the obligation for the capital expenditure is incurred. Certified
36 cost estimates shall be available for inspection at the facility and sent
37 to the Department upon its request.

38 (2) The facility on whose behalf the expenditure was made notifies the
39 Department in writing within 30 days of the date on which such
40 expenditure is made if the expenditure exceeds the expenditure
41 minimum for capital expenditures. The notice shall include a copy of
42 the certified cost estimate.

43 (e) The Department may grant certificates of need which permit capital
44 expenditures only for predevelopment activities. Predevelopment activities include the

1 preparation of architectural designs, plans, working drawings, or specifications, the
2 preparation of studies and surveys, and the acquisition of a potential ~~site-site~~ for a new
3 institutional health service that is not exempt from review pursuant to G.S. 131E-184."

4 **SECTION 4.** G.S. 131E-181 reads as rewritten:

5 "**§ 131E-181. Nature of certificate of need.**

6 (a) A certificate of need shall be valid only for the defined scope, physical
7 location, and person named in the application. A certificate of need shall not be
8 transferred or assigned except as provided in G.S. 131E-189(c).

9 (b) A recipient of a certificate of need, or any person who may subsequently
10 acquire, in any manner whatsoever permitted by law, the service for which that
11 certificate of need was issued, is required to materially comply with the representations
12 made in its application for that certificate of need. The Department shall require any
13 recipient of a certificate of need, or its successor, whose service is in operation to
14 submit to the Department evidence that the recipient, or its successor, is in material
15 compliance with the representations made in its application for the certificate of need
16 which granted the recipient the right to operate that service. In determining whether the
17 recipient of a certificate of need, or its successor, is operating a service which materially
18 differs from the representations made in its application for that certificate of need, the
19 Department shall consider cost increases to the recipient, or its successor, including, but
20 not limited to, the following:

- 21 (1) Any increase in the consumer price index;
- 22 (2) Any increased cost incurred because of Government requirements,
23 including federal, State, or any political subdivision thereof; and
- 24 (3) Any increase in cost due to professional fees or the purchase of
25 services and supplies.

26 (c) Whenever a certificate of need is issued more than 12 months after the
27 application for the certificate of need began review, the Department shall adjust the
28 capital expenditure amount proposed by increasing it to reflect any inflation in the
29 Department of Commerce's Construction Cost Index that has occurred since the date
30 when the application began review; and the Department shall use this recalculated
31 capital expenditure amount in the certificate of need issued for the project.

32 (d) A project authorized by a certificate of need is complete when the health
33 service or the health service facility for which the certificate of need was issued is
34 licensed and certified and is in material compliance with the representations made in the
35 certificate of need application.

36 (e) Any recipient of a certificate of need received on or before the effective date
37 of the amendments to G.S. 131E-184 that qualifies for exempt status pursuant to G.S.
38 131E-184, as amended, may serve the Department with written notice of a request for
39 exemption. The Department shall grant the exemption where the request for exemption
40 shows that the applicant qualifies for exempt status pursuant to any provision of G.S.
41 131E-184.

42 (f) A recipient of a certificate of need that requests exempt status pursuant to
43 subsection (e) of this section shall comply with the requirements of subsections (b), (c),
44 and (d) of this section until the Department issues the exemption. The requirements of

1 subsections (b), (c), and (d) shall cease to apply to a recipient of a certificate of need on
2 the date the exemption is issued by the Department pursuant to G.S. 131E-184."

3 **SECTION 5.** G.S. 131E-182 reads as rewritten:

4 **"§ 131E-182. Application.**

5 (a) The Department in its rules shall establish schedules for submission and
6 review of completed applications. The schedules shall provide that applications for
7 similar proposals in the same health service area will be reviewed together.

8 (b) An application for a certificate of need shall be made on forms provided by
9 the Department. The application forms, which may vary according to the type of
10 proposal, shall require such information as the Department, by its rules deems necessary
11 to conduct the review. An applicant shall be required to furnish only that information
12 necessary to determine whether the proposed new institutional health service is
13 consistent with the review criteria implemented under G.S. 131E-183 and with duly
14 adopted standards, plans and criteria.

15 (b1) An application for exemption from certificate of need review submitted
16 pursuant to G.S. 131E-184 shall be made on forms provided by the Department. The
17 application forms shall require any information that the Department deems necessary,
18 by rule, to conduct the review. An applicant shall be required to furnish only that
19 information that is necessary to determine whether the proposed project, health service,
20 or health service facility meets the requirements for exempt status consistent with the
21 review criteria implemented under G.S. 131E-184.

22 (c) All fees established by the Department for submitting an application for a
23 certificate of need are due when the application is submitted. These fees are not
24 refundable, regardless of whether a certificate of need is issued."

25 **SECTION 6.** G.S. 131E-183 reads as rewritten:

26 **"§ 131E-183. Review criteria.**

27 (a) This section shall not apply to applications for exemption submitted pursuant
28 to G.S. 131E-184.

29 (a1) The Department shall review all applications utilizing the criteria outlined in
30 this subsection and shall determine that an application is either consistent with or not in
31 conflict with these criteria before a certificate of need for the proposed project shall be
32 issued.

- 33 (1) The proposed project shall be consistent with applicable policies and
34 need determinations in the State Medical Facilities Plan, the need
35 determination of which constitutes a determinative limitation on the
36 provision of any health service, health service facility, health service
37 facility beds, dialysis stations, ambulatory surgical operating rooms, or
38 home health offices that may be approved. The need determinations in
39 the State Medical Facilities Plan shall not constitute determinative
40 limitations on the provision of any project, health service, health
41 service facility, health service facility bed, dialysis stations, or
42 ambulatory surgical operating rooms that are exempt from certificate
43 of need review pursuant to G.S. 131E-184.

44 ...

(b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

(c) Repealed by Session Laws 1987, c. 511, s. 1."

SECTION 7. G.S. 131E-184 reads as rewritten:

"§ 131E-184. Exemptions from review.

(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:

- (1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations.
 - (1a) To comply with State licensure standards.
 - (1b) To comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that act.
- (2) Repealed by Session Laws 1987, c. 511, s. 1.
- (3) To provide data processing equipment.
- (4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review.
- (5) To replace or repair facilities destroyed or damaged by accident or natural disaster.
- (6) To provide any nonhealth service facility or service.
- (7) To provide replacement equipment.
- (8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition.
- (9) To develop or acquire a physician office building regardless of cost, unless a new institutional health service other than defined in G.S. 131E-176(16)b. is offered or developed in the building.

(b) Those portions of a proposed project which are not proposed for one or more of the purposes under subsection (a) of this section are subject to certificate of need review, if these non-exempt portions of the project are new institutional health services

1 under ~~G.S. 131E-176(16)~~.G.S. 131E-176(16) and are not otherwise exempt from review
2 pursuant to any of the remaining provisions in this section.

3 (c) The Department shall exempt from certificate of need review any conversion
4 of existing acute care beds to psychiatric beds provided:

5 (1) The hospital proposing the conversion has executed a contract with the
6 Department's Division of Mental Health, Developmental Disabilities,
7 and Substance Abuse Services and/or one or more of the Area Mental
8 Health, Developmental Disabilities, and Substance Abuse Authorities
9 to provide psychiatric beds to patients referred by the contracting
10 agency or agencies; and

11 (2) The total number of beds to be converted shall not be more than twice
12 the number of beds for which the contract pursuant to subdivision (1)
13 of this subsection shall provide.

14 (d) The Department shall exempt from certificate of need review the projects,
15 health services, and health service facilities identified in this subsection if it receives
16 prior written notice from the applicant requesting the exemption, which notice shall
17 include an explanation of the project, health service, or health service facility that is
18 sufficient to enable the Department to determine if the applicant qualifies for exempt
19 status pursuant to any provision in subdivisions (d)(1) through (d)(5). The Department
20 shall grant the exemption where the request shows that the applicant qualifies for
21 exempt status pursuant to any provision in subsections (d)(1) through (d)(5). For the
22 purpose of this subsection, the following projects, health services, and health service
23 facilities are exempt from certificate of need review:

24 (1) The construction, development, or other establishment by an
25 established practice within its county or by a rural hospital within its
26 county of any of the following: ambulatory surgical facility,
27 ambulatory surgical program, specialty or multispecialty ambulatory
28 surgical program, and imaging services attendant to a physician's
29 practice, including the acquisition and use of one or more magnetic
30 resonance imaging scanners.

31 (2) The conversion of a specialty ambulatory surgical program to a
32 multispecialty ambulatory surgical program, or the addition of a
33 specialty to a specialty ambulatory surgical program, by an established
34 practice within its county or by a rural hospital within its county.

35 (3) The acquisition of major medical equipment, excluding lithotripter
36 equipment, by purchase, donation, lease, transfer, or comparable
37 arrangement by a rural hospital that is operating pursuant to a
38 certificate of need.

39 (4) A change in bed capacity or the conversion of nonhealth service
40 facility beds to health service facility beds in a rural hospital that is
41 operating pursuant to a certificate of need.

42 (e) An applicant requesting an exemption under any provision in subsection (d)
43 of this section shall certify all of the following with respect to the project, health
44 service, or health service facility for which the exemption is requested:

- 1 (1) If the project, health service, or health service facility is subject to any
2 State licensure requirements, that it will continuously maintain those
3 licenses, except that need-based licensure requirements established by
4 general statute or rules issued pursuant to those statutes shall not apply
5 to projects, health services, or health service facilities that are exempt
6 from review as set forth in this section.
- 7 (2) If the project, health service, or health service facility is subject to
8 minimum standards established by general statute or the rules issued
9 pursuant to those statutes, that it will continuously maintain those
10 minimum standards.
- 11 (3) That the project, health service, or health service facility will provide
12 nonselective necessary medical treatment to medically uninsured,
13 medically indigent or low-income persons, Medicaid recipients, and
14 Medicare recipients.
- 15 (4) That the transference of care of any patient to another health service
16 provider or health service facility shall not be based on the patient's
17 income or the patient's available health insurance coverage."

18 **SECTION 8.** Chapter 131E of the General Statutes is amended by adding a
19 new section to read:

20 **"§ 131E-185.1. Review process for applications for exemption.**

21 The Department shall have 60 days from the day the request is received to review a
22 request for exemption submitted pursuant to G.S. 131E-184. The request for exemption
23 may be made at any time. The Department may extend the review period, upon written
24 notice to the applicant, for a period not to exceed 60 days, if it has requested additional
25 substantive information from the applicant."

26 **SECTION 9.** Chapter 131E of the General Statutes is amended by adding a
27 new section to read:

28 **"§ 131E-186.1. Decision on applications for exemption.**

29 (a) Within the prescribed time limits in G.S. 131E-185.1, the Department shall
30 issue a decision to "approve," "approve with conditions," or "deny" an application for
31 exemption from certificate of need review pursuant to G.S. 131E-184.

32 (b) Within five business days after it makes a decision on a request for
33 exemption, the Department shall provide written notice to the applicant of all the
34 findings and conclusions on which it based its decision, including the criteria used by
35 the Department in making its decision."

36 **SECTION 10.** G.S. 131E-190 reads as rewritten:

37 **"§ 131E-190. Enforcement and sanctions.**

38 (a) Only those new institutional health services which are found by the
39 Department to be needed as provided in this Article and granted certificates of need
40 need, or which are found by the Department to be exempt from review, shall be offered
41 or developed within the State.

42 (b) No formal commitments made for financing, construction, or acquisition
43 regarding the offering or development of a nonexempt new institutional health service

1 shall be made by any person unless a certificate of need for such service or activities has
2 been granted.

3 (c) Repealed by Session Laws 1993, c. 7, s. 11.

4 (d) If any person proceeds to offer or develop a new institutional health service
5 without having first obtained a certificate of need for such services, the penalty for such
6 violation of this Article and rules hereunder may include the withholding of federal and
7 State funds under Titles V, XVIII, and XIX of the Social Security Act for
8 reimbursement of capital and operating expenses related to the provision of the new
9 institutional health service.

10 (e) The Department may revoke or suspend the license of any person who
11 proceeds to offer or develop a nonexempt new institutional health service without
12 having first obtained a certificate of need for such services.

13 (f) The Department may assess a civil penalty of not more than twenty thousand
14 dollars (\$20,000) against any person who knowingly offers or develops any nonexempt
15 new institutional health service within the meaning of this Article without a certificate
16 of need issued under this Article and the rules pertaining thereto, or in violation of the
17 terms or conditions of such a certificate, whenever it determines a violation has
18 occurred and each time the service is provided in violation of this provision. In
19 determining the amount of the penalty the Department shall consider the degree and
20 extent of harm caused by the violation and the cost of rectifying the damage. A person
21 who is assessed a penalty shall be notified of the penalty by registered or certified mail.
22 The notice shall state the reasons for the penalty. If a person fails to pay a penalty, the
23 Department shall refer the matter to the Attorney General for collection. For the purpose
24 of this subsection, the word "person" shall not include an individual in his capacity as an
25 officer, director, or employee of a person as otherwise defined in this Article.

26 The clear proceeds of penalties provided for in this subsection shall be remitted to
27 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

28 (g) No agency of the State or any of its political subdivisions may appropriate or
29 grant funds or financially assist in any way a person, applicant, or facility which is or
30 whose project is in violation of this Article.

31 (h) If any person proceeds to offer or develop a nonexempt new institutional
32 health service without having first obtained a certificate of need for such services, the
33 Secretary of Health and Human Services or any person aggrieved, as defined by G.S.
34 150B-2(6), may bring a civil action for injunctive relief, temporary or permanent,
35 against the person offering, developing or operating any new institutional health service.
36 The action may be brought in the superior court of any county in which the health
37 service facility is located or in the superior court of Wake County.

38 (i) If the Department determines that the recipient of a certificate of need, or its
39 successor, is operating a service which materially differs from the representations made
40 in its application for that certificate of need, the Department may bring an action in
41 Wake County Superior Court or the superior court of any county in which the certificate
42 of need is to be utilized for injunctive relief, temporary or permanent, requiring the
43 recipient, or its successor, to materially comply with the representations in its
44 application. The Department may also bring an action in Wake County Superior Court

1 or the superior court of any county in which the certificate of need is to be utilized to
2 enforce the provisions of this subsection and G.S. 131E-181(b) and the rules adopted in
3 accordance with this subsection and G.S. 131E-181(b)."

4 **SECTION 11.** The Division of Facility Services shall collect a fee of ten
5 dollars (\$10.00) for each license issued pursuant to this act.

6 **SECTION 12.** This act becomes effective October 1, 2001.