

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 714

Short Title: Amend Certificate of Need.

(Public)

Sponsors: Senators Rand; Forrester and Purcell.

Referred to: Health Care.

March 28, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE DEFINITION OF "AMBULATORY SURGICAL
3 FACILITY" BY REDUCING THE NUMBER OF REQUIRED OPERATING
4 ROOMS FROM TWO TO ONE AND TO AMEND THE DEFINITION OF "NEW
5 INSTITUTIONAL HEALTH SERVICE" BY INCLUDING CONSTRUCTION,
6 DEVELOPMENT, ESTABLISHMENT, INCREASE IN NUMBER, OR
7 RELOCATION OF AN OPERATING ROOM OR OPERATING ROOMS AND
8 TO EXTEND THE DETERMINATIVE EFFECT OF THE STATE MEDICAL
9 FACILITIES PLAN TO ALL OPERATING ROOMS.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 131E-146 reads as rewritten:

12 "**§ 131E-146. Definitions.**

13 As used in this Part, unless otherwise specified:

- 14 (1) "Ambulatory surgical facility" means a facility designed for the
15 provision of a specialty ambulatory surgical program or a
16 multispecialty ambulatory surgical program. An ambulatory surgical
17 facility serves patients who require local, regional or general
18 anesthesia and a period of post-operative observation. An ambulatory
19 surgical facility may only admit patients for a period of less than 24
20 hours and must provide at least ~~two~~one designated operating ~~rooms~~
21 room and at least one designated recovery room, have available the
22 necessary equipment and trained personnel to handle emergencies,
23 provide adequate quality assurance and assessment by an evaluation
24 and review committee, and maintain adequate medical records for each
25 patient. An ambulatory surgical facility may be operated as a part of a
26 physician or dentist's office, provided the facility is licensed under
27 G.S. Chapter 131E, Article 6, Part D, but the performance of
28 incidental, limited ambulatory surgical procedures which do not

1 constitute an ambulatory surgical program as defined in subdivision
2 (1a) and which are performed in a physician or dentist's office does not
3 make that office an ambulatory surgical facility.

4 (1a) "Ambulatory surgical program" means a formal program for providing
5 on a same-day basis those surgical procedures which require local,
6 regional or general anesthesia and a period of post-operative
7 observation to patients whose admission for more than 24 hours is
8 determined, prior to surgery, to be medically unnecessary.

9 (2) "Commission" means the North Carolina Medical Care Commission."

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

11 **"§ 131E-176. Definitions.**

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

14 ...

15 (1a) "Ambulatory surgical facility" means a facility designed for the
16 provision of a specialty ambulatory surgical program or a
17 multispecialty ambulatory surgical program. An ambulatory surgical
18 facility serves patients who require local, regional or general
19 anesthesia and a period of post-operative observation. An ambulatory
20 surgical facility may only admit patients for a period of less than 24
21 hours and must provide at least ~~two~~one designated operating ~~rooms~~
22 room and at least one designated recovery room, have available the
23 necessary equipment and trained personnel to handle emergencies,
24 provide adequate quality assurance and assessment by an evaluation
25 and review committee, and maintain adequate medical records for each
26 patient. An ambulatory surgical facility may be operated as a part of a
27 physician or dentist's office, provided the facility is licensed under
28 G.S. Chapter 131E, Article 6, Part D, but the performance of
29 incidental, limited ambulatory surgical procedures which do not
30 constitute an ambulatory surgical program as defined in subdivision
31 (1b) and which are performed in a physician's or dentist's office does
32 not make that office an ambulatory surgical facility.

33 ...

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

35 ...

36 t. ~~The relocation or expansion of part or all of an ambulatory~~
37 ~~surgical facility which requires a new license under Part D of~~
38 ~~Article 6 of this Chapter, or the relocation and addition of part~~
39 ~~or all of a hospital operating room to a building other than one~~
40 ~~within which it is currently located. The construction,~~
41 development, establishment, increase in the number, or
42 relocation of an operating room or operating rooms, other than
43 the relocation of an operating room or operating rooms within
44 the same building or on the same grounds or to grounds not

1 separated by more than a public right-of-way adjacent to the
2 grounds where the operating room is or operating rooms are
3 currently located."

4 **SECTION 3.** G.S. 131E-183(a) reads as rewritten:

5 "(a) The Department shall review all applications utilizing the criteria outlined in
6 this subsection and shall determine that an application is either consistent with or not in
7 conflict with these criteria before a certificate of need for the proposed project shall be
8 issued.

9 (1) The proposed project shall be consistent with applicable policies and
10 need determinations in the State Medical Facilities Plan, the need
11 determination of which constitutes a determinative limitation on the
12 provision of any health service, health service facility, health service
13 facility beds, dialysis stations, ~~ambulatory surgical operating rooms,~~ or
14 home health offices that may be approved.

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

16 (3) The applicant shall identify the population to be served by the
17 proposed project, and shall demonstrate the need that this population
18 has for the services proposed, and the extent to which all residents of
19 the area, and, in particular, low income persons, racial and ethnic
20 minorities, women, handicapped persons, the elderly, and other
21 underserved groups are likely to have access to the services proposed.

22 (3a) In the case of a reduction or elimination of a service, including the
23 relocation of a facility or a service, the applicant shall demonstrate that
24 the needs of the population presently served will be met adequately by
25 the proposed relocation or by alternative arrangements, and the effect
26 of the reduction, elimination or relocation of the service on the ability
27 of low income persons, racial and ethnic minorities, women,
28 handicapped persons, and other underserved groups and the elderly to
29 obtain needed health care.

30 (4) Where alternative methods of meeting the needs for the proposed
31 project exist, the applicant shall demonstrate that the least costly or
32 most effective alternative has been proposed.

33 (5) Financial and operational projections for the project shall demonstrate
34 the availability of funds for capital and operating needs as well as the
35 immediate and long-term financial feasibility of the proposal, based
36 upon reasonable projections of the costs of and charges for providing
37 health services by the person proposing the service.

38 (6) The applicant shall demonstrate that the proposed project will not
39 result in unnecessary duplication of existing or approved health service
40 capabilities or facilities.

41 (7) The applicant shall show evidence of the availability of resources,
42 including health manpower and management personnel, for the
43 provision of the services proposed to be provided.

- 1 (8) The applicant shall demonstrate that the provider of the proposed
2 services will make available, or otherwise make arrangements for, the
3 provision of the necessary ancillary and support services. The
4 applicant shall also demonstrate that the proposed service will be
5 coordinated with the existing health care system.
- 6 (9) An applicant proposing to provide a substantial portion of the project's
7 services to individuals not residing in the health service area in which
8 the project is located, or in adjacent health service areas, shall
9 document the special needs and circumstances that warrant service to
10 these individuals.
- 11 (10) When applicable, the applicant shall show that the special needs of
12 health maintenance organizations will be fulfilled by the project.
13 Specifically, the applicant shall show that the project accommodates:
- 14 a. The needs of enrolled members and reasonably anticipated new
15 members of the HMO for the health service to be provided by
16 the organization; and
- 17 b. The availability of new health services from non-HMO
18 providers or other HMOs in a reasonable and cost-effective
19 manner which is consistent with the basic method of operation
20 of the HMO. In assessing the availability of these health
21 services from these providers, the applicant shall consider only
22 whether the services from these providers:
- 23 1. Would be available under a contract of at least five years'
24 duration;
- 25 2. Would be available and conveniently accessible through
26 physicians and other health professionals associated with
27 the HMO;
- 28 3. Would cost no more than if the services were provided
29 by the HMO; and
- 30 4. Would be available in a manner which is
31 administratively feasible to the HMO.
- 32 (11) Repealed by Session Laws 1987, c. 511, s. 1.
- 33 (12) Applications involving construction shall demonstrate that the cost,
34 design, and means of construction proposed represent the most
35 reasonable alternative, and that the construction project will not unduly
36 increase the costs of providing health services by the person proposing
37 the construction project or the costs and charges to the public of
38 providing health services by other persons, and that applicable energy
39 saving features have been incorporated into the construction plans.
- 40 (13) The applicant shall demonstrate the contribution of the proposed
41 service in meeting the health-related needs of the elderly and of
42 members of medically underserved groups, such as medically indigent
43 or low income persons, Medicaid and Medicare recipients, racial and
44 ethnic minorities, women, and handicapped persons, which have

1 traditionally experienced difficulties in obtaining equal access to the
2 proposed services, particularly those needs identified in the State
3 Health Plan as deserving of priority. For the purpose of determining
4 the extent to which the proposed service will be accessible, the
5 applicant shall show:

- 6 a. The extent to which medically underserved populations
7 currently use the applicant's existing services in comparison to
8 the percentage of the population in the applicant's service area
9 which is medically underserved;
- 10 b. Its past performance in meeting its obligation, if any, under any
11 applicable regulations requiring provision of uncompensated
12 care, community service, or access by minorities and
13 handicapped persons to programs receiving federal assistance,
14 including the existence of any civil rights access complaints
15 against the applicant;
- 16 c. That the elderly and the medically underserved groups
17 identified in this subdivision will be served by the applicant's
18 proposed services and the extent to which each of these groups
19 is expected to utilize the proposed services; and
- 20 d. That the applicant offers a range of means by which a person
21 will have access to its services. Examples of a range of means
22 are outpatient services, admission by house staff, and admission
23 by personal physicians.

24 (14) The applicant shall demonstrate that the proposed health services
25 accommodate the clinical needs of health professional training
26 programs in the area, as applicable.

27 (15) to (18) Repealed by Session Laws 1987, c. 511, s. 1.

28 (18a) The applicant shall demonstrate the expected effects of the proposed
29 services on competition in the proposed service area, including how
30 any enhanced competition will have a positive impact upon the cost
31 effectiveness, quality, and access to the services proposed; and in the
32 case of applications for services where competition between providers
33 will not have a favorable impact on cost effectiveness, quality, and
34 access to the services proposed, the applicant shall demonstrate that its
35 application is for a service on which competition will not have a
36 favorable impact.

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

38 (20) An applicant already involved in the provision of health services shall
39 provide evidence that quality care has been provided in the past.

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

41 **SECTION 4.** This act is effective when it becomes law. This act shall not
42 apply to any project which was not a new institutional health service as defined in G.S.
43 131E-176(16) prior to the effective date of this act and for which there has been a
44 capital expenditure exceeding fifty thousand dollars (\$50,000) or there was a legally

1 binding obligation for a capital expenditure exceeding fifty thousand dollars (\$50,000)
2 in effect on or before the effective date of this act and which was reasonably expected to
3 be completed by December 31, 2002. A facility or office that was not licensed as an
4 ambulatory surgical facility prior to the effective date of this act shall not become an
5 ambulatory surgical facility by virtue of the amendment set forth in Sections 1 and 2 of
6 this act and may not be licensed as an ambulatory surgical facility under Part D of
7 Article 6 of Chapter 131E of the General Statutes without a certificate of need.