

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 107

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

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

Referred to: Health, if favorable, Judiciary 1, if favorable, Regulatory Reform, if favorable,
Rules, Calendar, and Operations of the House

February 15, 2023

1 A BILL TO BE ENTITLED
2 AN ACT REPEALING NORTH CAROLINA'S CERTIFICATE OF NEED LAWS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.(a)** G.S. 6-19.1(a) reads as rewritten:

5 "(a) In any civil action, other than an adjudication for the purpose of establishing or fixing
6 a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party
7 who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of
8 law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing
9 party to recover reasonable attorney's fees, including attorney's fees applicable to the
10 administrative review portion of the case, in contested cases arising under Article 3 of Chapter
11 150B, to be taxed as court costs against the appropriate agency if:

12 (1) The court finds that the agency acted without substantial justification in
13 pressing its claim against the party; and

14 (2) The court finds that there are no special circumstances that would make the
15 award of attorney's fees unjust. The party shall petition for the attorney's fees
16 within 30 days following final disposition of the case. The petition shall be
17 supported by an affidavit setting forth the basis for the request.

18 ~~Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the~~
19 ~~administrative review portion of the case in contested cases arising under Article 9 of Chapter~~
20 ~~131E of the General Statutes.~~

21 Nothing in this section grants permission to bring an action against an agency otherwise
22 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
23 bring the action.

24 Any attorney's fees assessed against an agency under this section shall be charged against the
25 operating expenses of the agency and shall not be reimbursed from any other source."

26 **SECTION 1.(b)** Subsection (a) of this section applies to contested cases arising on
27 or after January 1, 2024.

28 **SECTION 2.(a)** G.S. 7A-29(a) reads as rewritten:

29 "(a) From any final order or decision of the North Carolina Utilities Commission not
30 governed by subsection (b) of this section, ~~the Department of Health and Human Services under~~
31 ~~G.S. 131E-188(b)~~, the North Carolina Industrial Commission, the North Carolina State Bar under
32 G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the
33 Commissioner of Insurance under G.S. 58-2-80, the State Board of Elections under
34 G.S. 163-127.6, the Office of Administrative Hearings under G.S. 126-34.02, or the Secretary of



1 Environmental Quality under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to
 2 the Court of Appeals."

3 **SECTION 2.(b)** Subsection (a) of this section applies to appeals arising on or after
 4 January 1, 2024.

5 **SECTION 3.** G.S. 58-50-61(a) reads as rewritten:

6 "(a) Definitions. – As used in this section, in G.S. 58-50-62, and in Part 4 of this Article,
 7 the term:

8 ...

9 (7a) "Health care facility" means a hospital; long-term care hospital; psychiatric
 10 facility; rehabilitation facility; nursing home facility; adult care home; kidney
 11 disease treatment center, including freestanding hemodialysis units;
 12 intermediate care facility for individuals with intellectual disabilities; home
 13 health agency office; chemical dependency treatment facility; diagnostic
 14 center; hospice office, hospice inpatient facility, or hospice residential care
 15 facility; or ambulatory surgical facility.

16 (8) "Health care provider" means any person who is licensed, registered, or
 17 certified under Chapter 90 of the General Statutes or the laws of another state
 18 to provide health care services in the ordinary care of business or practice or
 19 a profession or in an approved education or training program; a health care
 20 facility as defined in ~~G.S. 131E-176(9b)~~ this section or the laws of another
 21 state to operate as a health care facility; or a pharmacy.

22"

23 **SECTION 4.** G.S. 58-55-35(a) reads as rewritten:

24 "(a) Whenever long-term care insurance provides coverage for the facilities, services, or
 25 physical or mental conditions listed below, unless otherwise defined in the policy and certificate,
 26 and approved by the Commissioner, the facilities, services, or conditions have the following
 27 definitions:

28 ...

29 (10) ~~Hospice. – As defined in G.S. 131E-176(13a).~~ Any coordinated program of
 30 home care with provision for inpatient care for terminally ill patients and their
 31 families. This care is provided by a medically directed interdisciplinary team
 32 directly or through an agreement under the direction of an identifiable hospice
 33 administration. A hospice program of care provides palliative and supportive
 34 medical and other health services to meet the physical, psychological, social,
 35 spiritual, and special needs of patients and their families, which are
 36 experienced during the final stages of terminal illness and during dying and
 37 bereavement.

38 (11) Intermediate care facility for individuals with intellectual disabilities. – As
 39 defined in G.S. 131E-176(14a). Facilities licensed pursuant to Article 2 of
 40 Chapter 122C of the General Statutes for the purpose of providing health and
 41 habilitative services based on the developmental model and principles of
 42 normalization for individuals with intellectual disabilities, autism, cerebral
 43 palsy, epilepsy, or related conditions.

44"

45 **SECTION 5.** G.S. 90-414.4(a1)(1) reads as rewritten:

46 "(1) The following providers of Medicaid services licensed to operate in the State
 47 that have an electronic health record system shall begin submitting, at a
 48 minimum, demographic and clinical data by June 1, 2018:

49 a. ~~Hospitals as defined in G.S. 131E-176(13).~~ Hospitals, defined for the
 50 purposes of this section as public or private institutions which are
 51 primarily engaged in providing to inpatients, by or under supervision

1 of physicians, diagnostic services and therapeutic services for medical
2 diagnosis, treatment, and care of injured, disabled, or sick persons, or
3 rehabilitation services for the rehabilitation of injured, disabled, or
4 sick persons. The term includes all facilities licensed pursuant to
5 G.S. 131E-77, except long-term care hospitals.

6 b. Physicians licensed to practice under Article 1 of Chapter 90 of the
7 General Statutes, except for licensed physicians whose primary area
8 of practice is psychiatry.

9 c. Physician assistants as defined in ~~21 NCAC 32S.0201~~ 21 NCAC 32S
10 .0201.

11 d. Nurse practitioners as defined in ~~21 NCAC 36.0801~~ 21 NCAC 36
12 .0801."

13 **SECTION 6.** G.S. 90-414.4(b)(1) reads as rewritten:

14 "(1) Each ~~hospital, as defined in G.S. 131E-176(13)~~ hospital that has an electronic
15 health record system."

16 **SECTION 7.** G.S. 113A-12(3)e. reads as rewritten:

17 "e. A health care facility financed pursuant to Article 1 of Chapter 131A
18 of the General Statutes ~~or receiving a certificate of need under Article~~
19 ~~9 of Chapter 131E of the General Statutes."~~

20 **SECTION 8.** G.S. 122C-23.1(e) reads as rewritten:

21 "(e) As used in this section, "residential treatment facility" means a "residential facility"
22 as defined in and licensed under this Chapter, ~~but not subject to Certificate of Need requirements~~
23 ~~under Article 9 of Chapter 131E of the General Statutes.~~ Chapter."

24 **SECTION 9.** G.S. 131D-2.4(a) reads as rewritten:

25 "(a) Licensure. – Except for those facilities exempt under G.S. 131D-2.3, the Department
26 of Health and Human Services shall inspect and license all adult care homes. The Department
27 shall issue a license for a facility not currently licensed as an adult care home for a period of six
28 months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter
29 and rules adopted thereunder, the Department shall issue a license for the balance of the calendar
30 year. ~~A facility not currently licensed as an adult care home that was licensed as an adult care~~
31 ~~home within the preceding 12 months is considered an existing health service facility for the~~
32 ~~purposes of G.S. 131E-184(a)(8)."~~

33 **SECTION 10.** G.S. 131E-13(a)(1) reads as rewritten:

34 "(1) The corporation shall continue to provide the same or similar clinical hospital
35 services to its patients in medical-surgery, obstetrics, pediatrics, outpatient
36 and emergency treatment, including emergency services for the indigent, that
37 the hospital facility provided prior to the lease, sale, or conveyance. These
38 services may be terminated only as prescribed ~~by Certificate of Need Law~~
39 ~~prescribed in Article 9 of Chapter 131E of the General Statutes, or, if~~
40 ~~Certificate of Need Law is inapplicable,~~ by review procedure designed to
41 guarantee public participation pursuant to rules adopted by the Secretary of
42 the Department of Health and Human Services."

43 **SECTION 11.** G.S. 131E-84(a1) reads as rewritten:

44 "(a1) In the event of a declaration of a state of emergency by the Governor in accordance
45 with Article 1A of Chapter 166A of the General Statutes, a declaration of a national emergency
46 by the President of the United States, a declaration of a public health emergency by the Secretary
47 of the United States Department of Health and Human Services; or to the extent necessary to
48 allow for consistency with any temporary waiver or modification issued by the Secretary of the
49 United States Department of Health and Human Services or the Centers for Medicare and
50 Medicaid Services under section 1135 or 1812(f) of the Social Security Act; or when the Division
51 of Health Service Regulation determines the existence of an emergency that poses a risk to the

1 health or safety of patients, the Division of Health Service Regulation may ~~do either or both of~~
2 ~~the following:~~

3 (1) ~~Temporarily temporarily~~ waive any rules of the Commission pertaining to
4 hospitals.

5 (2) ~~Notwithstanding G.S. 131E-183, allow a hospital to temporarily increase its~~
6 ~~bed capacity."~~

7 **SECTION 12.** G.S. 131E-136(4) reads as rewritten:

8 "(4) "Home health agency" means a home care agency which is certified to receive
9 Medicare and Medicaid reimbursement for providing nursing care, therapy,
10 medical social services, and home health aide services on a part-time,
11 intermittent ~~basis as set out in G.S. 131E-176(12), and is thereby also subject~~
12 ~~to Article 9 of Chapter 131E.basis."~~

13 **SECTION 13.** G.S. 148-19.1 reads as rewritten:

14 **"§ 148-19.1. Exemption from licensure and certificate of need.**

15 (a) Inpatient chemical dependency or substance abuse facilities that provide services
16 exclusively to inmates of the Department of Adult Correction or offenders under the supervision
17 of the Division of Community Supervision and Reentry of the Department of Adult Correction
18 shall be exempt from licensure by the Department of Health and Human Services under Chapter
19 122C of the General Statutes. If an inpatient chemical dependency or substance abuse facility
20 provides services both to inmates or offenders under supervision and to members of the general
21 public, the portion of the facility that serves inmates or offenders under supervision shall be
22 exempt from licensure.

23 (b) ~~Any person who contracts to provide inpatient chemical dependency or substance~~
24 ~~abuse services to inmates of the Department of Adult Correction or to offenders under the~~
25 ~~supervision of the Division of Community Supervision and Reentry of the Department of Adult~~
26 ~~Correction may construct and operate a new chemical dependency or substance abuse facility for~~
27 ~~that purpose without first obtaining a certificate of need from the Department of Health and~~
28 ~~Human Services pursuant to Article 9 of Chapter 131E of the General Statutes. However, a new~~
29 ~~facility or addition developed for that purpose without a certificate of need shall not be licensed~~
30 ~~pursuant to Chapter 122C of the General Statutes and shall not admit anyone other than inmates~~
31 ~~unless the owner or operator first obtains a certificate of need."~~

32 **SECTION 14.** Article 9 of Chapter 131E of the General Statutes,
33 G.S. 130A-45.02(i), 143B-1292, 150B-2(8a)k., and 150B-21.1(a)(6) are repealed.

34 **SECTION 15.** This act becomes effective January 1, 2024.