

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 889

Short Title: CON/Nonprofit Nursing Home Repeal.

(Public)

Sponsors: Representatives Holt; P. Wilson and Wood.

Referred to: Human Resources.

March 27, 1989

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CERTIFICATE OF NEED REQUIREMENTS FROM
NONPROFIT NURSING HOMES.

The General Assembly of North Carolina enacts:

Section 1. 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:

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

- 1 (1a) and which are performed in a physician's or dentist's office does
2 not make that office an ambulatory surgical facility.
- 3 (1a) 'Ambulatory surgical program' means a formal program for providing
4 on a same-day basis those surgical procedures which require local,
5 regional or general anesthesia and a period of post-operative
6 observation to patients whose admission for more than 24 hours is
7 determined, prior to surgery, to be medically unnecessary.
- 8 (2) 'Bed capacity' means space used exclusively for inpatient care,
9 including space designed or remodeled for licensed inpatient beds even
10 though temporarily not used for such purposes. The number of beds to
11 be counted in any patient room shall be the maximum number for
12 which adequate square footage is provided as established by rules of
13 the Department except that single beds in single rooms are counted
14 even if the room contains inadequate square footage. The term 'bed
15 capacity' also refers to the number of dialysis stations in kidney
16 disease treatment centers, including freestanding dialysis units.
- 17 (2a) 'Capital expenditure' means an expenditure which under generally
18 accepted accounting principles is not properly chargeable as an
19 expense of operation and maintenance.
- 20 (3) 'Certificate of need' means a written order of the Department setting
21 forth the affirmative findings that a proposed project sufficiently
22 satisfies the plans, standards, and criteria prescribed for such projects
23 by this Article and by rules of the Department as provided in G.S.
24 131E-183(a) and which affords the person so designated as the legal
25 proponent of the proposed project the opportunity to proceed with the
26 development of such project.
- 27 (4) 'Certified cost estimate' means an estimate of the total cost of a project
28 certified by the proponent of the project within 60 days prior to or
29 subsequent to the date of submission of the proposed new institutional
30 health service to the Department and which is based on:
- 31 a. Preliminary plans and specifications;
32 b. Estimates of the cost of equipment certified by the manufacturer
33 or vendor; and
34 c. Estimates of the cost of management and administration of the
35 project.
- 36 (5) 'Change in bed capacity' means (i) any relocation of health service
37 facility beds, or dialysis stations from one licensed facility or campus
38 to another, or (ii) any redistribution of health service facility bed
39 capacity among the categories of health service facility bed as defined
40 in G.S. 131E-176 (9c), or (iii) any increase in the number of health
41 service facility beds, or dialysis stations in kidney disease treatment
42 centers, including freestanding dialysis units.
- 43 (5a) 'Chemical dependency treatment facility' means a public or private
44 facility, or unit in a facility, which is engaged in providing 24-hour a

1 day treatment for chemical dependency or substance abuse. This
2 treatment may include detoxification, administration of a therapeutic
3 regimen for the treatment of chemically dependent or substance
4 abusing persons and related services. The facility or unit may be:

- 5 a. A unit within a general hospital or an attached or freestanding
6 unit of a general hospital licensed under Article 5, Chapter
7 131E, of the General Statutes,
8 b. A unit within a psychiatric hospital or an attached or
9 freestanding unit of a psychiatric hospital licensed under Article
10 1A of General Statutes Chapter 122 or Article 2 of General
11 Statutes Chapter 122C,
12 c. A freestanding facility specializing in treatment of persons who
13 are substance abusers or chemically dependent licensed under
14 Article 1A of General Statutes Chapter 122 or Article 2 of
15 General Statutes Chapter 122C; and may be identified as
16 'chemical dependency, substance abuse, alcoholism, or drug
17 abuse treatment units,' 'residential chemical dependency,
18 substance abuse, alcoholism or drug abuse facilities,' 'social
19 setting detoxification facilities' and 'medical detoxification
20 facilities,' or by other names if the purpose is to provide
21 treatment of chemically dependent or substance abusing
22 persons, but shall not include halfway houses or recovery farms.

23 (5b) 'Chemical dependency treatment beds' means beds that are licensed
24 for detoxification or for the inpatient treatment of chemical
25 dependency. Residential treatment beds for the treatment of chemical
26 dependency or substance abuse are chemical dependency treatment
27 beds but those residential treatment beds that were developed and
28 operated without a certificate of need shall not be counted in the
29 inventory of chemical dependency treatment beds in the State Health
30 Plans prepared by the Department pursuant to G.S. 131E-177(4) after
31 July 1, 1987. The State Health Plans prepared after July 1, 1987, shall
32 also contain no limitation on the proportion of the overall inventory of
33 chemical dependency treatment beds located in any of the types of
34 chemical dependency treatment facilities identified in subdivision (5a).

35 (6) 'Department' means the North Carolina Department of Human
36 Resources.

37 (7) To 'develop' when used in connection with health services, means to
38 undertake those activities which will result in the offering of
39 institutional health service not provided in the previous 12-month
40 reporting period or the incurring of a financial obligation in relation to
41 the offering of such a service.

42 (8), (9) Repealed by Session Laws 1987, c. 511, s. 1.

43 (9a) 'Health service' means an organized, interrelated medical, diagnostic,
44 therapeutic, and/or rehabilitative activity that is integral to the clinical

- 1 management of a sick, injured, or disabled person. 'Health service'
2 does not include administrative and other activities that are not integral
3 to clinical management.
- 4 (9b) 'Health service facility' means a hospital; psychiatric facility;
5 rehabilitation facility; for-profit long term care facility; kidney disease
6 treatment center, including freestanding hemodialysis units;
7 intermediate care facility for the mentally retarded; home health
8 agency; chemical dependency treatment facility; and ambulatory
9 surgical facility.
- 10 (9c) 'Health service facility bed' means a bed licensed for use in a health
11 service facility in the categories of (i) acute care beds; (ii) psychiatric
12 beds; (iii) rehabilitation beds; (iv) intermediate nursing care or skilled
13 nursing care beds in for-profit facilities; (v) intermediate care beds for
14 the mentally retarded; and (vi) chemical dependency treatment beds.
- 15 (10) 'Health maintenance organization (HMO)' means a public or private
16 organization which has received its certificate of authority under
17 Chapter 57B of the General Statutes and which either is a qualified
18 health maintenance organization under Section 1310(d) of the Public
19 Health Service Act or:
- 20 a. Provides or otherwise makes available to enrolled participants
21 health care services, including at least the following basic
22 health care services: usual physician services, hospitalization,
23 laboratory, X ray, emergency and preventive services, and out-
24 of-area coverage;
- 25 b. Is compensated, except for copayments, for the provision of the
26 basic health care services listed above to enrolled participants
27 by a payment which is paid on a periodic basis without regard
28 to the date the health care services are provided and which is
29 fixed without regard to the frequency, extent, or kind of health
30 service actually provided; and
- 31 c. Provides physicians' services primarily (i) directly through
32 physicians who are either employees or partners of such
33 organizations, or (ii) through arrangements with individual
34 physicians or one or more groups of physicians organized on a
35 group practice or individual practice basis.
- 36 (11) 'Health systems agency' means an independent, private, nonprofit
37 corporation, incorporated in this State, that engages in regional health
38 planning and development functions.
- 39 (12) 'Home health agency' means a private organization or public agency,
40 whether owned or operated by one or more persons or legal entities,
41 which furnishes or offers to furnish home health services.
42 'Home health services' means items and services furnished to an
43 individual by a home health agency, or by others under arrangements
44 with such others made by the agency, on a visiting basis, and except

1 for paragraph e. of this subdivision, in a place of temporary or
2 permanent residence used as the individual's home as follows:

- 3 a. Part-time or intermittent nursing care provided by or under the
4 supervision of a registered nurse;
5 b. Physical, occupational or speech therapy;
6 c. Medical social services, home health aid services, and other
7 therapeutic services;
8 d. Medical supplies, other than drugs and biologicals and the use
9 of medical appliances;
10 e. Any of the foregoing items and services which are provided on
11 an outpatient basis under arrangements made by the home
12 health agency at a hospital or nursing home facility or
13 rehabilitation center and the furnishing of which involves the
14 use of equipment of such a nature that the items and services
15 cannot readily be made available to the individual in his home,
16 or which are furnished at such facility while he is there to
17 receive any such item or service, but not including
18 transportation of the individual in connection with any such
19 item or service.

20 (13) 'Hospital' means a public or private institution which is primarily
21 engaged in providing to inpatients, by or under supervision of
22 physicians, diagnostic services and therapeutic services for medical
23 diagnosis, treatment, and care of injured, disabled, or sick persons, or
24 rehabilitation services for the rehabilitation of injured, disabled, or sick
25 persons. The term includes all facilities licensed pursuant to G.S.
26 131E-77 of the General Statutes.

27 (13a) 'Hospice' means any coordinated program of home care with provision
28 for inpatient care for terminally ill patients and their families. This care
29 is provided by a medically directed interdisciplinary team, directly or
30 through an agreement under the direction of an identifiable hospice
31 administration. A hospice program of care provides palliative and
32 supportive medical and other health services to meet the physical,
33 psychological, social, spiritual and special needs of patients and their
34 families, which are experienced during the final stages of terminal
35 illness and during dying and bereavement.

36 (14) Repealed by Session Laws 1987, c. 511, s. 1, effective July 1, 1987.

37 (14a) 'Intermediate care facility for the mentally retarded' means facilities
38 licensed pursuant to Article 2 of Chapter 122C of the General Statutes
39 for the purpose of providing health and habilitative services based on
40 the developmental model and principles of normalization for persons
41 with mental retardation, autism, cerebral palsy, epilepsy or related
42 conditions.

43 (14b) " Intermediate nursing care" means the provision of for-profit health-
44 related care and services on a regular basis to individuals who do not

1 require the degree of care and treatment that hospitals or skilled
2 nursing care provide, but who because of their mental or physical
3 condition require health-related care and services above the level of
4 room and board.

5 (14c) " Long term care facility" means a for-profit health service facility
6 whose bed complement of health service facility beds is composed
7 principally of skilled nursing beds or intermediate nursing care beds,
8 or both.

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

10 (16) 'New institutional health services' means:

- 11 a. The construction, development, or other establishment of a new
12 health service facility;
- 13 b. The obligation by any person of any capital expenditure on
14 behalf of or for a health service facility as defined in
15 subsection(9b) of this section exceeding two million dollars
16 (\$2,000,000), other than one to acquire an existing health
17 service facility or to replace such a facility destroyed or
18 irreparably damaged by accident or natural disaster. The cost of
19 any studies, surveys, designs, plans, working drawings,
20 specifications, and other activities, including staff effort and
21 consulting and other services, essential to the acquisition,
22 improvement, expansion, or replacement of any plant or
23 equipment with respect to which an expenditure is made shall
24 be included in determining if the expenditure exceeds two
25 million dollars (\$2,000,000);
- 26 c. Any change in bed capacity as defined in G.S.131E-176(5);
- 27 d. The offering of dialysis services or home health services by or
28 on behalf of a health service facility if those services were not
29 offered within the previous 12 months by or on behalf of the
30 facility;
- 31 e. A change in a project that was subject to certificate of need
32 review and for which a certificate of need was issued, if the
33 change is proposed during the development of the project or
34 within one year after the project was completed. For purposes
35 of this subdivision, a change in a project is a change of more
36 than fifteen percent (15%) of the approved capital expenditure
37 amount or the addition of a health service that is to be located in
38 the facility, or portion thereof, that was constructed or
39 developed in the project;
- 40 f. The offering of a health service by or on behalf of a health
41 service facility if the service was not offered by or on behalf of
42 the health service facility in the previous 12 months and if the
43 annual operating costs of the service equal or exceed one
44 million dollars (\$1,000,000), or the expansion of an existing

- 1 health service when an annual operating cost of one million
2 dollars (\$1,000,000) is directly associated with the offering of
3 the expanded portion of the service;
- 4 g. to k. Repealed by Session Laws 1987, c. 511, s. 1.
- 5 l. The purchase, lease, or acquisition of any health service facility,
6 or portion thereof, or a controlling interest in the health service
7 facility or portion thereof, if the health service facility was
8 developed under a certificate of need issued pursuant to G.S.
9 131E-180;
- 10 m. Any conversion of nonhealth service facility beds to health service
11 facility beds;
- 12 n. The construction, development, or other establishment of a
13 hospice if the operating budget thereof is in excess of one
14 hundred thousand dollars (\$100,000).
- 15 (17) 'North Carolina State Health Coordinating Council' means the Council
16 that prepares, with the Department of Human Resources, the State
17 Medical Facilities Plan, a component of the State Health Plan.
- 18 (18) To 'offer,' when used in connection with health services, means that
19 the health service facility or health maintenance organization holds
20 itself out as capable of providing, or as having the means for the
21 provision of, specified health services.
- 22 (19) 'Person' means an individual, a trust or estate, a partnership, a
23 corporation, including associations, joint stock companies, and
24 insurance companies; the State, or a political subdivision or agency or
25 instrumentality of the State.
- 26 (20) 'Project' or 'capital expenditure project' means a proposal to undertake
27 a capital expenditure that results in the offering of a new institutional
28 health service as defined by this Article. A project, or capital
29 expenditure project, or proposed project may refer to the project from
30 its earliest planning stages up through the point at which the specified
31 new institutional health service may be offered. In the case of facility
32 construction, the point at which the new institutional health service
33 may be offered must take place after the facility is capable of being
34 fully licensed and operated for its intended use, and at that time it shall
35 be considered a health service facility.
- 36 (21) 'Psychiatric facility' means a public or private facility licensed
37 pursuant to Article 2 of Chapter 122C of the General Statutes and
38 which is primarily engaged in providing to inpatients, by or under the
39 supervision of a physician, psychiatric services for the diagnosis and
40 treatment of mentally ill persons.
- 41 (22) 'Rehabilitation facility' means a public or private inpatient facility
42 which is operated for the primary purpose of assisting in the
43 rehabilitation of disabled persons through an integrated program of

- 1 medical and other services which are provided under competent,
2 professional supervision.
- 3 (23) " Skilled nursing care" means the provision of that degree of for-profit
4 care to inpatients who require medical or nursing care, or rehabilitation
5 services for the rehabilitation of injured, disabled, or sick persons.
- 6 (24) 'State Health Plan' means the plan prepared by the Department of
7 Human Resources and the North Carolina State Health Coordinating
8 Council and approved by the Governor.
- 9 (25) 'State Medical Facilities Plan' means a component of the State Health
10 Plan prepared by the Department of Human Resources and the North
11 Carolina State Health Coordinating Council, and approved by the
12 Governor.
- 13 (26) Repealed by Session Laws 1983 (Regular Session, 1984), c.1002, s. 9.
- 14 (27) Repealed by Session Laws 1987, c. 511, s.1."
- 15 Sec. 2. This act shall become effective October 1, 1989.