

**Acute Care Services Committee
Agency Report
Petition to Apply CON and Licensure Exceptions Equally to
All Ambulatory Surgical Facilities Regardless of Medical/Surgical Specialty
Proposed 2014 State Medical Facilities Plan**

Petitioner:

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Request:

“It is requested that Certificate of Need (CON) and licensure exceptions be applied equally to all ambulatory surgical facilities, regardless of medical/surgical specialty. The request is that orthopedic surgery, ophthalmology, urology, OB/GYN, general surgery, and other medical/surgical specialties be allowed to develop and operate single specialty ambulatory surgical facilities, not subject to the requirements of CON and state licensure, equally as plastic surgery, oral maxillofacial surgery, and otolaryngology (ENT) do presently.”

Background Information:

Chapter Two of the North Carolina State Medical Facilities Plan (SMFP) allows petitioners to recommend changes that may have a statewide effect early in the year. According to the plan, “Changes with the potential for a statewide effect are the addition, deletion, and revision of policies and revision of the projection methodologies.”

N.C.G.S. 131E-178(a), states in part, “No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department...” Pursuant to N.C.G.S. 131E-176(16)u, “The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility.” The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room is a new institutional health service which requires a certificate of need.

The ambulatory surgical facility licensure rules are promulgated under the authority of the N.C. Medical Care Commission pursuant to N.C.G.S. 131E-149. These rules can be found in the North Carolina Administrative Code in 10A NCAC 13C.

Analysis/Implications:

According to Executive Order 139, issued March 3, 2008, “The Council [State Health Coordinating Council] shall consist of 29 members who shall be appointed by the Governor...” The role of the N.C. State Health Coordinating Council (SHCC) includes serving as a forum for hearing regional concerns and recommendations related to state health planning and, ultimately, preparing the annual State Medical Facilities Plan and presenting the plan to the Governor. The petitioner is requesting a change to

certificate of need law which is not under the jurisdiction of the SHCC. Changes to the law are accomplished only by the General Assembly.

According to N.C.G.S. 131E-176, “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 (1b) (1c) of this section and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.” Surgeons are not required by the certificate of need law to obtain a license before performing surgery in their office. However, if the surgeon desires to obtain a license for an “operating room” located in their office, they would be required to obtain a certificate of need first. To obtain a certificate of need, the annual State Medical Facilities Plan would have to identify a need determination for the operating room.

The petitioner requests “licensure exceptions to be applied equally to all ambulatory surgical facilities regardless of medical/surgical specialty”. The N.C. Medical Care Commission has the authority, per statute, for amending licensure rules. The SHCC does not have this authority.

Currently, there are two bills in the N.C. General Assembly. H.B. 177, filed on February 27, 2013, has been referred to the Committee on Health and Human Services of the House of Representatives. Senate Bill 202: Enact CON Reform, filed on March 5, 2013, has been referred to the Committee of Rules and Operations of the Senate. Both bills introduced legislation that would “exempt diagnostic centers from Certificate of Need review and amend Certificate of Need laws pertaining to Single-Specialty Ambulatory Surgery Operating Rooms.”

Agency Recommendation:

The agency deems the petition outside the purview of the SHCC. Amendments to the certificate of need law would come under the jurisdiction of the N.C. General Assembly, and not from the SHCC. The Executive Order does not give the SHCC authority for actions requiring statutory changes. Two bills have been filed in the N.C. Senate and N.C. House of Representatives pertaining to subject matter in the petition. Licensure rule amendments are under the jurisdiction of the N.C. Medical Care Commission and not the SHCC. Given the available information submitted by the March 22, 2013 deadline, and in consideration of the factors above, the agency recommends denying the petition.