

HB 677-FN – AS INTRODUCED

2013 SESSION

13-0442
01/10

HOUSE BILL **677-FN**

AN ACT relative to the certificate of need board.

SPONSORS: Rep. Kurk, Hills 2; Rep. Rosenwald, Hills 30; Sen. Gilmour, Dist 12

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill:

- I. Changes the membership of the health services planning and review board.
- II. Clarifies standard development under the certificate of need law.
- III. Requires certain periodic reports.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to the certificate of need board.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Health Services Planning and Review Board. RSA 151-C:3 is repealed and reenacted to read
2 as follows:

3 151-C:3 Health Services Planning and Review Board.

4 I.(a) There is hereby established a health services planning and review board composed of
5 the following members:

6 (1) The commissioner of the department of health and human services, or designee.

7 (2) The insurance commissioner, or designee.

8 (3) Three persons, each from a different region of the state whose occupation is not in
9 the delivery of health care services, who has no fiduciary obligation or financial interest in any
10 health care facility or health care insurer licensed or regulated by this state, and who is not related
11 in his or her immediate family to anyone who is involved in the delivery of health care services or
12 health insurance, appointed by governor and council.

13 (b) The commissioner of the department of health and human services, or designee, and
14 the insurance commissioner, or designee, shall serve as the only permanent members of the board.
15 All other members of the board shall serve 3-year terms, provided that of the initial members, one
16 person appointed pursuant to subparagraph I(a)(3) shall serve for one year, one person appointed
17 pursuant to subparagraph I(a)(3) shall serve for 2 years, and one person appointed pursuant to
18 subparagraph I(a)(3) shall serve for 3 years. Members of the board shall not serve more than 2 full
19 consecutive terms.

20 II. The governor shall appoint a chairman of the board, who shall serve at the pleasure of
21 the governor, from among its members.

22 III. Members of the board shall be reimbursed for reasonable expenses incurred in carrying
23 out their duties under this chapter.

24 IV. The board shall be administratively attached, pursuant to RSA 21-G:10, to the
25 department of health and human services and shall exercise its powers, duties, functions, and
26 responsibilities independently of the department, except as specifically provided by law. The board
27 shall submit its budget requests and such reports required of it by law through the department of
28 health and human services.

29 V. The commissioner of the department of health and human services shall provide staff as
30 the board directs. The board may also hire consultants and other staff; provided that such expenses
31 shall not exceed \$500,000 annually. The commissioner shall also provide space for the board and

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1 staff and other assistance and materials as necessary.

2 2 Certificate of Need; Standard Development. Amend RSA 151-C:5, II(a) to read as follows:

3 (a) The construction, development, expansion, or alteration of any acute care facility
4 requiring a capital expenditure of more than [~~\$1,759,512~~] **\$2,974,891**. The board shall, by rule,
5 adjust the capital expenditure threshold annually using an appropriate inflation index.

6 3 Certificate of Need; Standard Development. Amend RSA 151-C:5, II(d)-(f) to read as follows:

7 (d)(1) The purchase, lease, **by either capital, operating or any other kind of lease,**
8 donation, transfer, or other [~~comparable~~] arrangement by or on behalf of a health care provider **to**
9 **obtain the use** of diagnostic or therapeutic equipment for which [~~the cost or, in the case of~~
10 ~~donation,~~] the value is in excess of \$400,000, including standards for one or more articles of
11 diagnostic or therapeutic equipment which are necessarily interdependent in the performance of
12 their ordinary functions as determined by the board.

13 (2) The board shall not develop standards for the purchase of **replacement**
14 equipment which is substantially similar to equipment owned by the provider within the preceding
15 12 months, provided the **replacement** equipment will **be used in the same facility as the**
16 **replaced equipment, will** not result in a substantial increase in **total annual** operating costs **to**
17 **the health care provider** above that of the [~~existing or~~] replaced equipment, **and the replaced**
18 **equipment will be removed from service by the health care provider or any of its affiliates.**
19 **Regardless of any other criteria for determining if equipment is substantially similar,**
20 **replacement equipment shall not be substantially similar if its value exceeds the original**
21 **value of the replaced equipment by more than 15 percent plus inflation since the**
22 **acquisition of the replaced equipment;**

23 (e) The increase or conversion of inpatient beds;

24 (f)(1) Except as provided in subparagraph (2) **and RSA 151-C:13, I(a)**, the construction,
25 development, expansion, renovation, or alteration of any nursing home, ambulatory surgical facility,
26 rehabilitation hospital, psychiatric hospital, specialty hospital, or other health care facility requiring
27 a capital expenditure of more than [~~\$1,173,000~~] **\$1,983,260**. The board shall, by rule, adjust the
28 capital expenditure threshold annually using an appropriate inflation index.

29 (2) The threshold amount for construction of ambulatory surgical centers within the
30 service area of a hospital with fewer than 70 general hospital beds licensed by the department of
31 health and human services shall be [~~\$500,000~~] **\$845,374**, which threshold shall be adjusted annually
32 using an appropriate inflation index, unless there is an objection by such hospital, in which case the
33 application shall be subject to review regardless of value. The board shall determine by rule the
34 service areas of such hospitals.

35 4 New Paragraph; Certificate of Need; Standard Development. Amend RSA 151-C:7 by
36 inserting after paragraph IV the following new paragraph:

37 V. The utilization and the financial impact of increased utilization, the effect on the average

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1 cost of a procedure, whether total health care costs of the state will be increased, not just whether
2 unit costs will be decreased, and health outcomes. The board shall not consider the effect on existing
3 providers as a factor.

4 5 New Section; Additional Reports Required. Amend RSA 151-C by inserting after section 12
5 the following new section:

6 151-C:12-a Additional Reports Required.

7 I. In addition to the reports required under RSA 151-C:12, an applicant receiving a
8 certificate of need shall make periodic reports to the board relative to capital costs as compared to
9 approved amounts.

10 II. The department of health and human services shall make periodic reports to the board
11 relative to the operating costs of a particular project and the overall costs to the state using the all-
12 payer claims data base.

13 III. The board shall submit an annual report, beginning November 1, 2013, for the entire
14 state and for each hospital services area containing the following information to the speaker of the
15 house of representatives, the president of the senate, and the governor:

16 (a) Per-capita supply of health care resources, including, at least, acute care hospitals,
17 rehabilitation and post-acute beds, and licensed physicians; and

18 (b) Per-capita rates of utilization, spending, and relative prices for major categories of
19 care for at least commercial payers and the Medicare program.

20 6 Certificate of Need; Definitions. Amend RSA 151-C:2, VI to read as follows:

21 VI. “Capital expenditure” means an expenditure which, under generally accepted accounting
22 principles consistently applied, is not properly chargeable as an expense of operation or
23 maintenance, and includes acquisition by purchase, by transfer, or by **capital, operating or any**
24 **other type of** lease or comparable arrangement, or through donation, if the expenditure would have
25 been considered a capital expenditure if acquisition had been by purchase.

26 7 Repeal. RSA 151-C, relative to the certificate of need law, is repealed.

27 8 Exemption Added. Amend RSA 151-C:13, I(h) and (i) to read as follows:

28 (h) Notwithstanding any other provision of this chapter, a skilled nursing facility
29 distinct part unit established by Androscoggin Valley Hospital or Franklin Regional Hospital in
30 order to qualify as a critical access hospital under 42 U.S.C. section 1395i-4 and 42 CFR Part 485,
31 Subpart F; provided, that the number of beds in the skilled nursing facility distinct part unit shall
32 not exceed the hospital’s existing skilled nursing patient capacity. For purposes of this
33 subparagraph, the term “existing skilled nursing patient capacity” means with respect to each
34 month, the number of skilled nursing patient days for such month divided by the number of days in
35 such month, and shall be the highest such number from the 12-month period ending immediately
36 prior to the filing of the federal request for approval of the distinct part unit; provided, however, that
37 the number determined under this subparagraph shall not exceed 10 beds; [~~and~~]

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1 (i) Acute care centers established, operated, or designated by the department pursuant
2 to RSA 141-C:26; *and*

3 (j) *Federally qualified health centers as defined in section 330 of the Public*
4 *Health Service Act (42 U.S.C. section 2546).*

5 9 Repeal. 2012, 282:17, II, relative to a prospective repeal of RSA 151-C, is repealed.

6 10 Applicability. The current health services planning and review board shall continue to
7 function until the new board established in section 1 of this act is in place.

8 11 Effective Date.

9 I. Sections 1 and 10 of this act shall take effect August 1, 2013.

10 II. Section 7 of this act shall take effect June 30, 2019.

11 III. Section 9 of this act shall take effect upon its passage.

12 IV. The remainder of this act shall take effect February 1, 2014.

HB 677 FISCAL NOTE

AN ACT relative to the certificate of need board.

FISCAL IMPACT:

The Department of Health and Human Services states this bill, **as introduced**, will increase state restricted revenue and expenditures by \$500,000 in FY 2016 and each year thereafter. The New Hampshire Association of Counties state this bill will decrease county expenditures by an indeterminable amount in FY 2016 and in each year thereafter. There will be no impact on county revenue, or local revenue and expenditures.

METHODOLOGY:

The Department of Health and Human Services states the proposed legislation: changes the composition of the Health Services Planning and Review Board and reduces the number of members from 10 to 5, clarifies the statutory language regarding leased and replacement diagnostic and therapeutic equipment, increases the threshold amounts for standards concerning new institutional health services, requires the Department and the Board to prepare and submit additional health care reports, and delays repeal of the certificate of need law from June 30, 2015 to June 30, 2019.

- The Department assumes the changes to the Board composition and the reduction in the number of board members will decrease state restricted revenue and expenditures by an indeterminable amount since only 5 members would be reimbursed for their reasonable expenses.
- The reporting requirements may result in some additional administrative work however; the Health Services Planning and Review Board's annual budget is limited in statute to \$500,000 and is funded by administrative fees which are pro-rated among acute care hospitals, specialty hospitals, and private nursing homes.
- The Department assumes the changes concerning leases and replacement equipment may increase the number of certificate of need applications by a small amount.
- The Department assumes extending the repeal date could prevent uncontrolled spending for new and additional healthcare facilities, programs and equipment. The Department states the capital and operating costs related to additional facilities are passed on to those who pay for healthcare including state, county and local governments. The Department also recognizes the risk that overspending by a healthcare entity could lead to unsustainable operating losses and potentially impact access to medical care.

The Department indicates, by extending the repeal date by 4 years, the Health Services Planning and Review Board would continue to operate through FY 2019 with an annual budget capped at \$500,000 and funded by administrative fees. The Department is not able to project the overall impact on healthcare costs or access to healthcare. In addition, the Department states the bill would prevent the Board from considering the effect of a proposed project on existing providers. The Department assumes this provision could stimulate competition, but could also have a negative effect on some safety net providers.

The New Hampshire Association of Counties states this bill restructures the Health Services Planning and Review Board, makes changes to the Certificate of Need Process, and maintains the existence of the Board and the process until June 30, 2019. The Association states county nursing homes are subject to the process which results in containment of increased health care costs which would be due to increases long-term care beds. The Association indicates to the extent this process remains in place and growth in nursing home beds and facilities is contained, growth in county expenditures will also be contained. The Association is not able to project the actual fiscal impact.