



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 1043**

**SENATE BILL NO. 1842**

**By Gardenhire, Watson**

Substituted for: House Bill No. 1730

By Cameron Sexton, Daniel, Matheny, Clemmons

AN ACT to amend Tennessee Code Annotated, Title 68, relative to certificate of need.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-1602, is amended by deleting subdivision (12) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 68-11-1602, is further amended by adding the following as a new subdivision to be appropriately designated:

( ) "Pediatric patient" means a patient who is fourteen (14) years of age or younger;

SECTION 3. Tennessee Code Annotated, Section 68-11-1602(7)(A), is amended by deleting the subdivision in its entirety and substituting instead the following:

(A) "Healthcare institution" means any agency, institution, facility, or place, whether publicly or privately owned or operated, that provides health services and that is one (1) of the following: nursing home; recuperation center; hospital; ambulatory surgical treatment center; mental health hospital; intellectual disability institutional habilitation facility; home care organization or any category of service provided by a home care organization for which authorization is required under part 2 of this chapter; outpatient diagnostic center; rehabilitation facility; residential hospice; or nonresidential substitution-based treatment center for opiate addiction;

SECTION 4. Tennessee Code Annotated, Section 68-11-1605(5), is amended by inserting the language "the quality of health care to be provided and" between the language "and consider" and "the health care needs".

SECTION 5. Tennessee Code Annotated, Section 68-11-1607(a), is amended by deleting subdivision (a)(2) in its entirety.

SECTION 6. Tennessee Code Annotated, Section 68-11-1607(a)(4), is amended by deleting the subdivision and substituting instead the following:

(4) Initiation of any of the following healthcare services: burn unit, neonatal intensive care unit, open heart surgery, organ transplantation, cardiac catheterization, linear accelerator, positron emission tomography, home health, hospice, psychiatric, or opiate addiction treatment provided through a nonresidential substitution-based treatment center for opiate addiction;

SECTION 7. Tennessee Code Annotated, Section 68-11-1607(a), is further amended by deleting subdivision (a)(6) in its entirety.

SECTION 8. Tennessee Code Annotated, Section 68-11-1607(a), is further amended by deleting subdivision (a)(7) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 68-11-1607(a), is further amended by deleting subdivision (a)(9) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 68-11-1607(a), is further amended by adding the following as new subdivisions (a)(10) and (a)(11):

(10) Initiation of magnetic resonance imaging:

(A) In any county with a population in excess of two hundred fifty thousand (250,000) according to the 2010 federal census or any subsequent federal census, only for providing magnetic resonance imaging to pediatric patients; and

(B) In any county with a population of two hundred fifty thousand (250,000) or less according to the 2010 federal census or any subsequent federal census, for providing magnetic resonance imaging to any patients;

(11) Increasing the number of magnetic resonance imaging machines, in any county with a population of two hundred fifty thousand (250,000) or less according to the 2010 federal census or any subsequent federal census, by one (1) or more, except for replacing or decommissioning an existing machine;

(12) Establishing a satellite emergency department facility by a hospital at a location other than the hospital's main campus;

SECTION 11. Tennessee Code Annotated, Section 68-11-1607(g), is amended by deleting the subsection in its entirety and by substituting instead the following:

(g)(1)(A)(i) Notwithstanding subdivision (a)(3)(A) or (a)(5), no more frequently than one (1) time every three (3) years, a hospital, rehabilitation facility, or mental health hospital may increase its total number of licensed beds in any bed category by ten percent (10%) or less of its licensed capacity at any one (1) campus over any period of one (1) year for any services or purposes it is licensed to perform without obtaining a certificate of need. The hospital, rehabilitation facility, or mental health hospital shall provide written notice of the increase in beds to the agency on forms provided by the agency prior to the request for licensing by the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate.

(ii) A hospital, rehabilitation facility, or mental health hospital shall not:

(a) Increase its number of licensed beds for any service or purpose for which it is not licensed to provide; or

(b) Redistribute beds within its bed complement to a different category.

(B) For the purposes of this subsection (g), "campus" means structures and physical areas that have the same address and are immediately adjacent or strictly contiguous to the facility's or hospital's main buildings.

(2) For new hospitals, rehabilitation facilities, or mental health hospitals, the ten percent (10%) increase authorized by subdivision (g)(1) cannot be requested until one (1) year after the date all of the new beds were initially licensed.

(3) When determining projected county hospital bed need for certificate of need applications, all notices filed with the agency pursuant to subdivision (g)(1), with written confirmation from the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate, that a request and application for license has been received and a review has been scheduled, shall be considered with the total of licensed hospital beds, plus the number of beds from approved certificates of need, but yet unlicensed.

SECTION 12. Tennessee Code Annotated, Section 68-11-1607(i), is amended by deleting from the first sentence the language "lithotripters".

SECTION 13. Tennessee Code Annotated, Section 68-11-1607, is amended by adding the following as new subsections:

(n)(1) Any person who provides magnetic resonance imaging services shall file an annual report by March 1 of each year with the agency concerning adult and pediatric patients that details the mix of payors by percentage of cases for the prior calendar

year for its patients, including private pay, private insurance, uncompensated care, charity care, medicare, and medicaid.

(2) In any country with a population in excess of two hundred fifty thousand (250,000) according to the 2010 federal census or any subsequent federal census, any person who initiates magnetic resonance imaging services shall notify the agency in writing that imaging services are being initiated and shall indicate whether pediatric patients will be provided imaging services.

(o)(1) An application for certificate of need for organ transplantation shall separately:

(A) Identify each organ to be transplanted under the application; and

(B) State, by organ, whether the organ transplantation recipients will be adult patients or pediatric patients.

(2) After an initial application for transplantation has been granted, the addition of a new organ to be transplanted or the addition of a new recipient category shall require a separate certificate of need; the application shall:

(A) Identify the organ to be transplanted under the application; and

(B) State whether the organ transplantation recipients will be adult patients or pediatric patients.

(3)(A) For the purposes of certificate of need approval for organ transplantation programs under this part, any program submitted to the United Network for Organ Sharing (UNOS) by January 1, 2017, shall not be required to obtain a certificate of need.

(B) If the organ transplantation program ceases to be a UNOS-approved program, then a certificate of need shall be required.

(p) After receiving a certificate of need, an outpatient diagnostic center shall become accredited by the American College of Radiology in the modalities provided by that facility within a period of time set by rule by the agency as a condition of receiving a certificate of need.

SECTION 14. Tennessee Code Annotated, Section 68-11-1608(a)(5), is amended by inserting the language "any applicable quality measures under § 68-11-1609(b) and" between the language "consistent with" and "the state health plan".

SECTION 15. Tennessee Code Annotated, Section 68-11-1609(b), is amended by inserting the language "will provide health care that meets appropriate quality standards," between the language "and maintained," and "and will contribute".

SECTION 16. Tennessee Code Annotated, Section 68-11-1609, is amended by adding the following as a new subsection:

( ) The agency shall maintain continuing oversight over any certificate of need that it approves on or after July 1, 2016. Oversight by the agency shall include requiring annual reports concerning continued need and appropriate quality measures as determined by the agency. The agency may impose conditions on a certificate of need that require the demonstration of compliance with continued need and quality measures; provided, that conditions for quality measures may not be more stringent than those measures identified by the applicant in the applicant's submitted application.

SECTION 17. Tennessee Code Annotated, Section 68-11-1609, is further amended by adding the following as a new subsection:

( ) If an applicant's application is denied by the agency, then the applicant shall receive on request a refund equal to twenty-five percent (25%) of the examination fee for its application.

SECTION 18. Tennessee Code Annotated, Section 68-11-1610, is amended by adding the following as a new subsection:

( ) If a person, who is not the applicant or the agency, seeks review of a decision in a contested case, then that person shall file an appeal fee equal to twenty-five percent (25%) of the examination fee for the application that was filed in the case.

SECTION 19. Tennessee Code Annotated, Section 68-11-1617(e), is amended by adding the following as a new subdivision to be appropriately designated:

- ( ) The failure to meet a quality standard applicable to the violator.

SECTION 20. Tennessee Code Annotated, Section 68-11-1623, is amended by deleting the section in its entirety and substituting instead the following:

(a) All fees and civil penalties authorized by this part, with the exception of fees established pursuant to § 68-11-1625, shall be paid by the health services and development agency or the collecting agency to the state treasurer and deposited in the state general fund and credited to a separate account for the agency. Fees include, but are not limited to, fees for the application of certificates of need, subscriptions, project cost overruns, copying, and contested cases. Disbursements from that account shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of this part by the agency. Funds remaining in the account at the end of any fiscal year shall not revert to the general fund but shall remain available for expenditure in accordance with law.

(b) The agency shall prescribe fees by rule as authorized by this part. The fees shall be in an amount that provides for the cost of administering the implementation and enforcement of this part by the agency. Fees prescribed by the agency shall be adjusted as necessary to provide that the account is fiscally self-sufficient and that revenues from fees do not exceed necessary and required expenditures.

SECTION 21. Tennessee Code Annotated, Title 68, Chapter 11, Part 16, is amended by adding the following as a new section to be appropriately designated:

(a) In consultation with the state health planning division and the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate, and subject to Section 16 of this act, the agency shall develop measures by rule for assessing quality for entities that, on or after July 1, 2016, receive a certificate of need under this part. In developing quality measures, the agency may seek the advice of stakeholders with respect to certificates of need for specific institutions or services.

(b) If the agency determines that an entity has failed to meet the quality measures developed under this section, the agency shall refer that finding to the board for licensing healthcare facilities or the department of mental health and substance abuse services, whichever is appropriate, for appropriate action on the license of the entity under part 2 of this chapter.

(c) If the agency determines that an entity has failed to meet any quality measure imposed as a condition for a certificate of need by the agency, the agency may impose penalties pursuant to § 68-11-1617 or revoke a certificate of need pursuant to § 68-11-1619.

SECTION 22. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 23. This act shall take effect July 1, 2016, the public welfare requiring it. This act shall apply to applications filed on or after July 1, 2016.

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PASSED: April 20, 2016

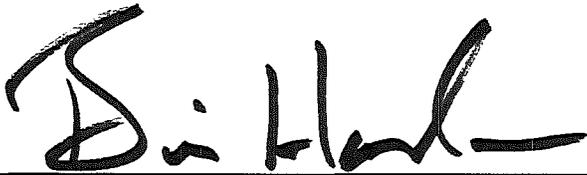


RON RAMSEY  
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 20<sup>th</sup> day of April 2016



BILL HASLAM, GOVERNOR