



# State of Tennessee

## PUBLIC CHAPTER NO. 985

HOUSE BILL NO. 2269

By Representatives Boyd, Jernigan, Todd, Greg Martin, Hardaway, Helton-Haynes

Substituted for: Senate Bill No. 2009

By Senators Reeves, Jackson

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 68, relative to the health facilities commission.

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

SECTION 1. Tennessee Code Annotated, Section 68-11-1607(a)(6), is amended by deleting the subdivision and substituting:

(6) Except as provided in subsections (x) and (y), the establishment of a satellite emergency department facility or a satellite inpatient facility by a hospital at a location other than the hospital's main campus; and

SECTION 2. Tennessee Code Annotated, Section 68-11-1607, is amended by adding the following as new subsections:

(x)

(1) Except as provided in subdivision (x)(2), and subject to subdivision (x)(3), this part does not require a certificate of need for actions in a county that has no acute care hospital that is actively licensed under this title located within the county.

(2) The exception created by subdivision (x)(1) does not apply to:

(A) A rehabilitation facility;

(B) A home care organization other than a home care organization described in subsection (r) or (s);

(C) Hospice;

(D) Opiate addiction treatment provided through a nonresidential substitution-based treatment center for opiate addiction;

(E) A nursing home; or

(F) Organ transplantation.

(3) If the action to be taken pursuant to subdivision (x)(1) is the establishment by a hospital of a satellite emergency department facility at a location other than such affiliate hospital's main campus, then the satellite emergency department facility must be at least ten (10) miles away from any actively licensed acute care hospital or satellite emergency department facility located in another county.

(y) In a county other than a county described in subdivision (q)(1) or subdivision (x)(1), this part does not require a certificate of need for a hospital to establish a satellite emergency department facility at a location that is within ten (10) miles of such affiliate hospital's main campus; provided, that such location is ten (10) miles or more from another actively licensed acute care hospital or satellite emergency department facility.

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(z) If, on June 30, 2025, the initiation or provision of a service or the establishment or operation of a facility was subject to the requirement to obtain a certificate of need pursuant to this part but was not subject to the requirement to obtain a license pursuant to part 2 of this chapter or title 33, chapter 2, and, on or after July 1, 2025, the initiation or provision of such service or the establishment or operation of such facility becomes subject to the requirement to obtain both a certificate of need pursuant to this part and a license pursuant to part 2 of this chapter or title 33, chapter 2, then a person may begin initiating or providing the service or establishing or operating the facility upon receiving the certificate of need or obtaining the license, whichever occurs first.

SECTION 3. Tennessee Code Annotated, Section 68-11-1602(10)(A)(iv), is amended by deleting the subdivision.

SECTION 4. Tennessee Code Annotated, Section 68-11-1602(10)(B), is amended by adding the following as a new subdivision:

(viii) An intellectual disability institutional habitation facility;

SECTION 5. Tennessee Code Annotated, Section 68-11-1607(a), is amended by deleting subdivisions (3)(A), (3)(B), (5), and (7).

SECTION 6. Tennessee Code Annotated, Section 68-11-1607(m)(2), is amended by deleting the subdivision and substituting:

(2) A person who initiates magnetic resonance imaging services shall notify the commission in writing that imaging services are being initiated and shall indicate whether magnetic resonance imaging services will be provided to a patient who is fourteen (14) years of age or younger on more than five (5) occasions per year.

SECTION 7. Tennessee Code Annotated, Section 68-11-1607(u), is amended by deleting the subsection and substituting:

(u)

(1) A provider of positron emission tomography established without a certificate of need must become accredited by the American College of Radiology and provide to the commission proof of the accreditation within two (2) years of the date of licensure.

(2) A provider of positron emission tomography established without a certificate of need that fails to comply with the accreditation requirement of subdivision (u)(1) is subject to licensure sanction under § 68-11-207 as a violation of part 2 of this chapter or of the rules or minimum standards issued pursuant to part 2 of this chapter.

SECTION 8. Tennessee Code Annotated, Section 68-11-204(a)(1), is amended by deleting the subdivision and substituting:

(1) A person, partnership, association, or corporation, this state, a county or local government unit, and any division, department, board, or agency of a government unit, shall not establish, conduct, operate, or maintain the following in this state without a license:

(A) A hospital;

(B) A recuperation center;

(C) A nursing home;

(D) A home for the aged;

(E) A residential HIV supportive living facility;

(F) An assisted-care living facility;

- (G) A home care organization;
- (H) A residential hospice;
- (I) A birthing center;
- (J) A prescribed child care center;
- (K) A renal dialysis clinic;
- (L) An outpatient diagnostic center;
- (M) An ambulatory surgical treatment center;
- (N) An adult care home;
- (O) A traumatic brain injury residential home;
- (P) A burn unit;
- (Q) A neonatal intensive care unit;
- (R) Magnetic resonance imaging; or
- (S) Positron emission tomography.

SECTION 9. Tennessee Code Annotated, Section 68-11-1602(10)(A)(iii), is amended by deleting the subdivision.

SECTION 10. Tennessee Code Annotated, Section 68-11-1602(10)(B), is amended by adding the following as a new subdivision:

- (ix) An ambulatory surgical treatment center.

SECTION 11. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Affiliate" means an entity that is controlled by or under common control with an acute care hospital;

(2) "Control" means the ability through ownership, voting authority, or contract to make final decisions regarding management and operation;

(3) "Hospital-based ambulatory surgical treatment center" means a licensed ambulatory surgical treatment center that is controlled by an acute care hospital or an affiliate of an acute care hospital; and

(4) "Non-hospital ambulatory surgical treatment center" means a licensed ambulatory surgical treatment center that is not a hospital-based ambulatory surgical treatment center.

(b) In addition to licensing standards and requirements applicable to all ambulatory surgical treatment centers, the commission is authorized to adopt by rule licensing standards as described in this subsection (b) for non-hospital ambulatory surgical treatment centers licensed on or after December 1, 2027. Such standards must include, at a minimum, requirements that a non-hospital ambulatory surgical treatment center:

- (1) Participate in the TennCare medical assistance program and provide an amount of care to patients who are TennCare enrollees that is comparable to similarly situated hospital-based ambulatory surgical treatment centers, taking into account the types of outpatient surgeries, procedures, and treatments being performed in the facility; and

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(2) Provide an amount of charity care that is comparable to similarly situated hospital-based ambulatory surgical treatment centers, taking into account the types of outpatient surgeries, procedures, and treatments being performed in the facility.

(c) In developing licensing standards pursuant to this section, the commission shall complete a report by December 1, 2025, that includes a compilation of payor mix information, by geographical area and type of surgery or procedure, for outpatient surgeries, procedures, and treatments performed in hospitals and hospital-based ambulatory surgical surgery centers. The payor mix information must include percentages of patients who are TennCare enrollees, medicare patients, or charity care patients. The report must be developed with participation from and input of various stakeholders, including existing ambulatory surgical treatment centers, physicians, nonprofit hospitals, rural hospitals, investor-owned hospitals, and others in the discretion of the commission.

SECTION 12. Tennessee Code Annotated, Section 68-11-1602, is amended by adding the following as a new subdivision:

( ) "Long-term care hospital" means a hospital with a primary focus on patients with an average length of stay of more than twenty-five (25) days;

SECTION 13. Tennessee Code Annotated, Section 68-11-1607(a)(3)(F), is amended by deleting the subdivision.

SECTION 14. Tennessee Code Annotated, Section 68-11-1607, is amended by adding the following as a new subsection:

( ) This part does not require a certificate of need to establish or operate a long-term care hospital.

SECTION 15. Tennessee Code Annotated, Section 68-11-204(a)(1), is amended by adding the following as a new subdivision:

(T) A linear accelerator.

SECTION 16. Tennessee Code Annotated, Section 68-11-1607(a)(3), is amended by deleting subdivision (C).

SECTION 17. Tennessee Code Annotated, Section 68-11-204(a)(1), is amended by adding the following as new subdivision:

(U) Open heart surgery.

SECTION 18. Tennessee Code Annotated, Title 68, Chapter 11, Part 16, is amended by adding the following as a new section:

(a) The health facilities commission shall create a plan to study, for at least six (6) years, the impact of certificate of need reform and facilities licensure in the healthcare industry. The health facilities commission shall submit such plan to the speaker of the senate, the speaker of the house of representatives, the chair of the health committee of the house of representatives, and the chair of the health and welfare committee of the senate by December 31, 2024.

(b) While conducting the study required by subsection (a), the health facilities commission shall consult with the chair of the health committee of the house of representatives or the chair's designee who must be a member of the house of representatives, the chair of the health and welfare committee of the senate or the chair's designee who must be a member of the senate, and hospital, physician, and community leaders from each of the three (3) grand divisions of this state to produce a report on the findings of the study.

(c) By December 31, 2026, and by December 31 of each even-numbered year thereafter through 2030, the health facilities commission shall submit the report required

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by subsection (b) to the speaker of the senate, the speaker of the house of representatives, the chair of the health committee of the house of representatives, and the chair of the health and welfare committee of the senate on the progress and impact of certificate of need reform and facilities licensure in the healthcare industry.

(d) The health facilities commission shall conduct the study and compile the reports required by this section using existing resources within the commission's budget.

SECTION 19. Tennessee Code Annotated, Section 68-11-1607(c)(6), is amended by deleting the subdivision and substituting:

(6) An application filed with the commission must be accompanied by a nonrefundable examination fee fixed by the rules of the commission. The examination fee may be applied to a second application for the same project if the letter of intent for the first application is voided for non-compliance with law or rule by the executive director, the commission, or a court. The second application must be filed with the commission within ninety (90) days of the voiding of the first letter of intent for the examination fee to be applied.

SECTION 20. Tennessee Code Annotated, Section 68-11-1610, is amended by deleting the section and substituting:

(a) Within fifteen (15) days of a denial by the commission of all or part of an application, an applicant may petition the commission in writing for a hearing. The petition must be filed with the executive director. Notwithstanding another law, an applicant is barred from filing a petition for a contested case hearing after the fifteen-day period, and the commission has no jurisdiction to consider a late-filed petition. Upon receipt of a timely filed petition, the commission shall initiate a contested case proceeding as provided in this section.

(b) The contested case hearing required by this section must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except as otherwise provided in this section.

(c) Contested cases initiated pursuant to this section must be heard by an administrative law judge sitting alone. Petitions for contested cases received by the commission must be forwarded immediately to the administrative division of the secretary of state's office for assignment to an administrative law judge.

(d) The administrative law judge to whom a case has been assigned shall convene the parties for a scheduling conference within fifteen (15) days of the date the petition for a contested case is filed. At the scheduling conference, the parties shall state their respective positions on the mediation alternative described in this section. If the parties are unable to agree on a mediation alternative, then the scheduling order for the contested case adopted by the administrative law judge must establish a schedule that results in a hearing completed within one hundred eighty (180) days of the date on which the petition for a contested case was received by the commission, with the initial order to be entered within sixty (60) days of the date the hearing is completed. Extensions of time or variances from the scheduling order must be granted sparingly, and only because of unforeseen developments that would cause substantial prejudice to a party.

(e) As an alternative to the contested case process described in subsection (c), the parties may agree to mediation of the issues raised in the contested case. The mediator must be designated by mutual agreement of the parties. The parties may designate a mediator who is not listed as a qualified Supreme Court Rule 31 mediator, but such mediator shall observe the standards of professional conduct set forth in Appendix A to Supreme Court Rule 31, to the extent applicable. The mediator's fee must be shared equally among the parties, except that the state is not required to contribute to payment of the mediator's fee. If mediation results in agreement of the parties, then the agreement must be memorialized in the order terminating the contested case. A mediation proceeding under this subsection (e) is not subject to the scheduling order requirements set forth in subsection (d).

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(f) The general assembly declares the public policy of this state to be that certificate of need contested cases should be resolved through mediation, and the parties to such proceedings are encouraged to pursue this alternative.

(g) Judicial review of the commission's final order in a contested case is as provided by law.

(h) Costs of the contested case proceeding and appeals, including the administrative law judge's costs, deposition costs, expert witness fees, and reasonable attorney fees, must be assessed against the losing party in the contested case. If there is more than one (1) losing party, then the costs must be divided equally among the losing parties. Costs must not be assessed against the commission.

(i) This section governs all contested cases relative to approval or denial decisions by the commission.

SECTION 21. Tennessee Code Annotated, Section 68-11-203(b)(1)(B), is amended by deleting the subdivision and substituting:

(B) The commissioner of disability and aging, or an employee of the department of disability and aging, designated by the commissioner;

SECTION 22. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

(1) Sections 11 and 18-21 take effect July 1, 2024, the public welfare requiring it;

(2) Sections 1 and 2 take effect July 1, 2025, the public welfare requiring it;

(3) Sections 3-8 take effect December 1, 2025, the public welfare requiring it;

(4) Sections 9, 10, and 12-15 take effect December 1, 2027, the public welfare requiring it; and

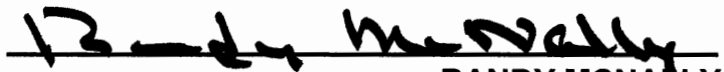
(5) Sections 16 and 17 take effect December 1, 2029, the public welfare requiring it.

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PASSED: April 23, 2024



CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES



RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 21<sup>st</sup> day of May 2024



BILL LEE, GOVERNOR