

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

16
17
18
19

H.96

Introduced by Representatives Cordes of Bristol, Arsenault of Williston,
Berbeco of Winooski, Black of Essex, Chapin of East
Montpelier, Cina of Burlington, Goldman of Rockingham,
Harrison of Chittenden, Logan of Burlington, Marcotte of
Coventry, McFaun of Barre Town, Olson of Starksboro, Page of
Newport City, and Priestley of Bradford

Referred to Committee on

Date:

Subject: Health; health care facilities; Green Mountain Care Board; certificates
of need

Statement of purpose of bill as introduced: This bill proposes to increase the
monetary thresholds that trigger a certificate of need requirement and to
exempt health care services and health care facility projects that are the result
of a contract awarded by the State of Vermont.

An act relating to increasing the monetary thresholds for certificates of need

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 18 V.S.A. § 9434 is amended to read:~~

~~§ 9434. CERTIFICATE OF NEED; GENERAL RULES~~

1 ~~(a) A health care facility other than a hospital shall not develop or have~~
2 developed on its behalf a new health care project without issuance of a
3 certificate of need by the Board. For purposes of this subsection, a “new
4 health care project” includes the following:

5 (1) The construction, development, purchase, renovation, or other
6 establishment of a health care facility, or any capital expenditure by or on
7 behalf of a health care facility, for which the capital cost exceeds
8 ~~\$1,500,000.00~~ \$10,000,000.00.

9 (2) A change from one licensing period to the next in the number of
10 licensed beds of a health care facility through addition or conversion, or
11 through relocation from one physical facility or site to another.

12 (3) The offering of any home health service, or the transfer or
13 conveyance of more than a 50 percent ownership interest in a health care
14 facility other than a hospital or nursing home.

15 (4) The purchase, lease, or other comparable arrangement of a single
16 piece of diagnostic and therapeutic equipment for which the cost, or in the case
17 of a donation the value, is in excess of ~~\$1,000,000.00~~ \$10,000,000.00. For
18 purposes of this subdivision, the purchase or lease of one or more articles of
19 diagnostic or therapeutic equipment that are necessarily interdependent in the
20 performance of their ordinary functions or that would constitute any health
21 ~~care facility included under subdivision 9432(8)(B) of this title, as determined~~

1 ~~by the Board, shall be considered together in calculating the amount of an~~

2 expenditure. The Board's determination of functional interdependence of
3 items of equipment under this subdivision shall have the effect of a final
4 decision and is subject to appeal under section 9381 of this title.

5 (5) The offering of a health care service or technology having an annual
6 operating expense that exceeds ~~\$500,000.00~~ \$10,000,000.00 for either of the
7 next two budgeted fiscal years, if the service or technology was not offered or
8 employed, either on a fixed or a mobile basis, by the health care facility within
9 the previous three fiscal years.

10 (6) The construction, development, purchase, lease, or other
11 establishment or expansion of an ambulatory surgical center for which the cost
12 exceeds \$10,000,000.00.

13 (b) A hospital shall not develop or have developed on its behalf a new
14 health care project without issuance of a certificate of need by the Board. For
15 purposes of this subsection, a "new health care project" includes the following:

16 (1) The construction, development, purchase, renovation, or other
17 establishment of a health care facility, or any capital expenditure by or on
18 behalf of a hospital, for which the capital cost exceeds ~~\$3,000,000.00~~
19 \$10,000,000.00.

20 (2) The purchase, lease, or other comparable arrangement of a single
21 ~~piece of diagnostic and therapeutic equipment for which the cost, or in the case~~

1 ~~of a donation the value is in excess of \$1,500,000.00 \$10,000,000.00. For~~
2 purposes of this subdivision, the purchase or lease of one or more articles of
3 diagnostic or therapeutic equipment that are necessarily interdependent in the
4 performance of their ordinary functions or that would constitute any health
5 care facility included under subdivision 9432(8)(B) of this title, as determined
6 by the Board, shall be considered together in calculating the amount of an
7 expenditure. The Board's determination of functional interdependence of
8 items of equipment under this subdivision shall have the effect of a final
9 decision and is subject to appeal under section 9381 of this title.

10 (3) The offering of a health care service or technology having an annual
11 operating expense that exceeds ~~\$1,000,000.00~~ \$10,000,000.00 for either of the
12 next two budgeted fiscal years, if the service or technology was not offered or
13 employed, either on a fixed or a mobile basis, by the hospital within the
14 previous three fiscal years.

15 (4) A change from one licensing period to the next in the number of
16 licensed beds of a health care facility through addition or conversion, or
17 through relocation from one physical facility or site to another.

18 (5) The offering of any home health service.

19 (c) In the case of a project that requires a certificate of need under this
20 section, expenditures for which are anticipated to be in excess of

21 ~~\$50,000,000.00~~ \$50,000,000.00, the applicant first shall secure a conceptual

1 ~~development phase certificate of need, in accordance with the standards and~~
2 procedures established in this subchapter, that permits the applicant to make
3 expenditures for architectural services, engineering design services, or any
4 other planning services, as defined by the Board, needed in connection with
5 the project. Upon completion of the conceptual development phase of the
6 project, and before offering or further developing the project, the applicant
7 shall secure a final certificate of need in accordance with the standards and
8 procedures established in this subchapter. Applicants shall not be subject to
9 sanctions for failure to comply with the provisions of this subsection if such
10 failure is solely the result of good faith reliance on verified project cost
11 estimates issued by qualified persons, which cost estimates would have led a
12 reasonable person to conclude the project was not anticipated to be in excess of
13 ~~\$30,000,000.00~~ \$50,000,000.00 and therefore not subject to this subsection.
14 The provisions of this subsection notwithstanding, expenditures may be made
15 in preparation for obtaining a conceptual development phase certificate of
16 need, which expenditures shall not exceed ~~\$1,500,000.00 for non-hospitals or~~
17 ~~\$3,000,000.00 for hospitals~~ \$10,000,000.00.

18 (d) If the Board determines that a person required to obtain a certificate of
19 need under this subchapter has separated a single project into components in
20 order to avoid cost thresholds or other requirements under this subchapter, the
21 ~~person shall be required to submit an application for a certificate of need for~~

1 ~~the entire project, and the Board may proceed under section 9445 of this title.~~

2 The Board's determination under this subsection shall have the effect of a final
3 decision and is subject to appeal under section 9381 of this title.

4 (e) The Board may periodically adjust the monetary jurisdictional
5 thresholds contained in this section. In doing so, the Board shall reflect the
6 same categories of health care facilities, services, and programs recognized in
7 this section. Any adjustment by the Board shall not exceed an amount
8 calculated using the cumulative Consumer Price Index rate of inflation.

9 Sec. 2. 18 V.S.A. § 9435 is amended to read:

10 § 9435. EXCLUSIONS

11 * * *

12 (i) Excluded from this subchapter are the offering of a health care service,
13 or the construction, development, purchase, renovation, or other establishment
14 of a health care facility, as the result of a contract awarded by the State of
15 Vermont.

16 Sec. 3. EFFECTIVE DATE

17 ~~This act shall take effect on July 1, 2025.~~

Sec. 1. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop or have
~~*developed on its behalf a new health care project without issuance of a*~~

~~certificate of need by the Board. For purposes of this subsection, a “new health care project” includes means any of the following:~~

~~(1) The construction, development, purchase, renovation, or other establishment of a health care facility, or any capital expenditure by or on behalf of a health care facility, for which the capital cost exceeds \$1,500,000.00 \$10,000,000.00.~~

~~(2) A change from one licensing period to the next in the number of licensed beds of a health care facility through addition or conversion, or through relocation from one physical facility or site to another.~~

~~(3) The offering of any home health service, or the transfer or conveyance of more than a 50 percent ownership interest in a health care facility other than a hospital or nursing home.~~

~~(4) The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of \$1,000,000.00 \$5,000,000.00. For purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment that are necessarily interdependent in the performance of their ordinary functions or that would constitute any health care facility included under subdivision 9432(8)(B) of this title, as determined by the Board, shall be considered together in calculating the amount of an expenditure. The Board’s determination of functional interdependence of items~~

~~of equipment under this subdivision shall have the effect of a final decision and is subject to appeal under section 9381 of this title.~~

~~(5) The offering of a health care service or technology having an annual operating expense that exceeds \$500,000.00 \$3,000,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the health care facility within the previous three fiscal years.~~

~~(6) The construction, development, purchase, lease, or other establishment or expansion of an ambulatory surgical center for which the cost exceeds \$10,000,000.00.~~

~~(b) A hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a "new health care project" ~~includes~~ means any of the following:~~

~~(1) The construction, development, purchase, renovation, or other establishment of a health care facility, or any capital expenditure by or on behalf of a hospital, for which the capital cost exceeds \$3,000,000.00 \$10,000,000.00.~~

~~(2) The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of \$1,500,000.00 \$5,000,000.00. For~~

~~purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment that are necessarily interdependent in the performance of their ordinary functions or that would constitute any health care facility included under subdivision 9432(8)(B) of this title, as determined by the Board, shall be considered together in calculating the amount of an expenditure. The Board's determination of functional interdependence of items of equipment under this subdivision shall have the effect of a final decision and is subject to appeal under section 9381 of this title.~~

~~(3) The offering of a health care service or technology having an annual operating expense that exceeds ~~\$1,000,000.00~~ \$3,000,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the hospital within the previous three fiscal years.~~

~~(4) A change from one licensing period to the next in the number of licensed beds of a health care facility through addition or conversion, or through relocation from one physical facility or site to another.~~

~~(5) The offering of any home health service.~~

~~(c) In the case of a project that requires a certificate of need under this section, expenditures for which are anticipated to be in excess of ~~\$30,000,000.00~~ \$50,000,000.00, the applicant first shall secure a conceptual development phase certificate of need, in accordance with the standards and~~

~~procedures established in this subchapter, that permits the applicant to make expenditures for architectural services, engineering design services, or any other planning services, as defined by the Board, needed in connection with the project. Upon completion of the conceptual development phase of the project, and before offering or further developing the project, the applicant shall secure a final certificate of need in accordance with the standards and procedures established in this subchapter. Applicants shall not be subject to sanctions for failure to comply with the provisions of this subsection if such failure is solely the result of good faith reliance on verified project cost estimates issued by qualified persons, which cost estimates would have led a reasonable person to conclude the project was not anticipated to be in excess of ~~\$30,000,000.00~~ \$50,000,000.00 and therefore not subject to this subsection. The provisions of this subsection notwithstanding, expenditures may be made in preparation for obtaining a conceptual development phase certificate of need, which expenditures shall not exceed ~~\$1,500,000.00 for non-hospitals or~~ ~~\$3,000,000.00 for hospitals~~ \$10,000,000.00.~~

~~(d) If the Board determines that a person required to obtain a certificate of need under this subchapter has separated a single project into components in order to avoid cost thresholds or other requirements under this subchapter, the person shall be required to submit an application for a certificate of need for the entire project, and the Board may proceed under section 9445 of this title.~~

~~The Board's determination under this subsection shall have the effect of a final decision and is subject to appeal under section 9381 of this title.~~

~~(e) The Board may periodically adjust the monetary jurisdictional thresholds contained in this section. In doing so, the Board shall reflect the same categories of health care facilities, services, and programs recognized in this section. Any adjustment by the Board shall not exceed an amount calculated using the cumulative Consumer Price Index rate of inflation.~~

~~Sec. 2. 18 V.S.A. § 9435 is amended to read:~~

~~§ 9435. EXCLUSIONS~~

~~* * *~~

~~(f)(1) Excluded from this subchapter are routine replacements of:~~

~~(A) medical equipment that is fully depreciated; and~~

~~(B) nonmedical equipment and fixtures, including furnaces, boilers, refrigeration units, kitchen equipment, heating and cooling units, and similar items, regardless of their remaining useful life.~~

~~(2) These The replacements described in subdivision (1) of this subsection and purchased by a hospital shall be included in the hospital's budget and may be reviewed in the budget process set forth in subchapter 7 of this chapter.~~

~~* * *~~

~~(i) Excluded from this subchapter are emergency and nonemergency ground ambulance services, affiliated agencies, and equipment and supplies used by emergency medical personnel, as those terms are defined in 24 V.S.A. § 2651.~~

Sec. 3. EFFECTIVE DATE

~~*This act shall take effect on July 1, 2025 and shall apply to all new health care projects initiated on or after that date. For applications for a certificate of need that are already in process on July 1, 2025 for which one or more persons have been granted interested party status, the jurisdictional thresholds and exclusions in place at the time the application was filed shall continue to apply until a final decision is made on the application. For applications for a certificate of need that are already in process on July 1, 2025 for which no person has been granted interested party status, the applicant may withdraw the application in accordance with Board rules.*~~

Sec. 1. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a “new health care project” includes means any of the following:

(1) The construction, development, purchase, renovation, or other establishment of a health care facility, or any capital expenditure by or on behalf of a health care facility, for which the capital cost exceeds ~~\$1,500,000.00~~ \$10,000,000.00.

(2) A change from one licensing period to the next in the number of licensed beds of a health care facility through addition or conversion, or through relocation from one physical facility or site to another.

(3) The offering of any home health service, or the transfer or conveyance of more than a 50 percent ownership interest in a health care facility other than a hospital or nursing home.

(4) The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of ~~\$1,000,000.00~~ \$5,000,000.00. For purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment that are necessarily interdependent in the performance of their ordinary functions or that would constitute any health care facility included under subdivision 9432(8)(B) of this title, as determined by the Board, shall be considered together in calculating the amount of an expenditure. The Board's determination of functional interdependence of items of equipment under this subdivision shall have the effect of a final decision and is subject to appeal under section 9381 of this title.

(5) The offering of a health care service or technology having an annual operating expense that exceeds ~~\$500,000.00~~ \$3,000,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the health care facility within the previous three fiscal years.

(6) ~~The construction, development, purchase, lease, or other establishment of an ambulatory surgical center. [Repealed.]~~

(b) ~~A hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a “new health care project” includes the following:~~

(1) ~~The construction, development, purchase, renovation, or other establishment of a health care facility, or any capital expenditure by or on behalf of a hospital, for which the capital cost exceeds \$3,000,000.00.~~

(2) ~~The purchase, lease, or other comparable arrangement of a single piece of diagnostic and therapeutic equipment for which the cost, or in the case of a donation the value, is in excess of \$1,500,000.00. For purposes of this subdivision, the purchase or lease of one or more articles of diagnostic or therapeutic equipment that are necessarily interdependent in the performance of their ordinary functions or that would constitute any health care facility included under subdivision 9432(8)(B) of this title, as determined by the~~

~~Board, shall be considered together in calculating the amount of an expenditure. The Board's determination of functional interdependence of items of equipment under this subdivision shall have the effect of a final decision and is subject to appeal under section 9381 of this title.~~

~~(3) The offering of a health care service or technology having an annual operating expense that exceeds \$1,000,000.00 for either of the next two budgeted fiscal years, if the service or technology was not offered or employed, either on a fixed or a mobile basis, by the hospital within the previous three fiscal years.~~

~~(4) A change from one licensing period to the next in the number of licensed beds of a health care facility through addition or conversion, or through relocation from one physical facility or site to another.~~

~~(5) The offering of any home health service. [Repealed.]~~

(c) In the case of a project that requires a certificate of need under this section, expenditures for which are anticipated to be in excess of ~~\$30,000,000.00~~ \$50,000,000.00, the applicant first shall secure a conceptual development phase certificate of need, in accordance with the standards and procedures established in this subchapter, that permits the applicant to make expenditures for architectural services, engineering design services, or any other planning services, as defined by the Board, needed in connection with the project. Upon completion of the conceptual development phase of the

project, and before offering or further developing the project, the applicant shall secure a final certificate of need in accordance with the standards and procedures established in this subchapter. Applicants shall not be subject to sanctions for failure to comply with the provisions of this subsection if such failure is solely the result of good faith reliance on verified project cost estimates issued by qualified persons, which cost estimates would have led a reasonable person to conclude the project was not anticipated to be in excess of ~~\$30,000,000.00~~ \$50,000,000.00 and therefore not subject to this subsection. The provisions of this subsection notwithstanding, expenditures may be made in preparation for obtaining a conceptual development phase certificate of need, which expenditures shall not exceed ~~\$1,500,000.00 for non-hospitals or \$3,000,000.00 for hospitals~~ \$10,000,000.00.

(d) If the Board determines that a person required to obtain a certificate of need under this subchapter has separated a single project into components in order to avoid cost thresholds or other requirements under this subchapter, the person shall be required to submit an application for a certificate of need for the entire project, and the Board may proceed under section 9445 of this title. The Board's determination under this subsection shall have the effect of a final decision and is subject to appeal under section 9381 of this title.

(e) The Board may periodically adjust the monetary jurisdictional thresholds contained in this section. In doing so, the Board shall reflect the

same categories of health care facilities, services, and programs recognized in this section. Any adjustment by the Board shall not exceed an amount calculated using the cumulative Consumer Price Index rate of inflation.

Sec. 2. 18 V.S.A. § 9435 is amended to read:

§ 9435. EXCLUSIONS

** * **

(f)(1) Excluded from this subchapter are routine replacements of:

(A) medical equipment that is fully depreciated; and

(B) nonmedical equipment and fixtures, including furnaces, boilers, refrigeration units, kitchen equipment, heating and cooling units, and similar items, regardless of their remaining useful life.

(2) These The replacements described in subdivision (1) of this subsection and purchased by a hospital shall be included in the hospital's budget and may be reviewed in the budget process set forth in subchapter 7 of this chapter.

** * **

(i) Excluded from this subchapter are emergency and nonemergency ground ambulance services, affiliated agencies, and equipment and supplies used by emergency medical personnel, as those terms are defined in 24 V.S.A. § 2651.

(j) Excluded from this subchapter are the offering of a health care service, or the construction, development, purchase, renovation, or other establishment of a health care facility, that is owned or operated by the State of Vermont or is funded in whole or in substantial part by a contract or grant awarded by the State of Vermont; provided, however, that the State agency sponsoring the project or awarding the contract or grant shall inform the Green Mountain Care Board prior to commencing the project or within 30 days following the execution of the contract or grant.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage and shall apply to all new health care projects initiated on or after that date. For applications for a certificate of need that are already in process on the date of passage of this act for which one or more persons have been granted interested party status, the jurisdictional thresholds and exclusions in place at the time the application was filed shall continue to apply until a final decision is made on the application. For applications for a certificate of need that are already in process on the date of passage of this act for which no person has been granted interested party status, the applicant may withdraw the application in accordance with Board rules.