

1 H.96

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

3 The Senate proposes to the House to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

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

6 § 9434. CERTIFICATE OF NEED; GENERAL RULES

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

11 (1) The construction, development, purchase, renovation, or other
12 establishment of a health care facility, or any capital expenditure by or on
13 behalf of a health care facility, for which the capital cost exceeds
14 ~~\$1,500,000.00~~ \$10,000,000.00.

15 (2) 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 (3) The offering of any home health service, or the transfer or
19 conveyance of more than a 50 percent ownership interest in a health care
20 facility other than a hospital or nursing home.

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

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

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 [Repealed.]~~

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

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

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

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

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

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

5 (c) In the case of a project that requires a certificate of need under this
6 section, expenditures for which are anticipated to be in excess of
7 ~~\$30,000,000.00~~ \$50,000,000.00, the applicant first shall secure a conceptual
8 development phase certificate of need, in accordance with the standards and
9 procedures established in this subchapter, that permits the applicant to make
10 expenditures for architectural services, engineering design services, or any
11 other planning services, as defined by the Board, needed in connection with the
12 project. Upon completion of the conceptual development phase of the project,
13 and before offering or further developing the project, the applicant shall secure
14 a final certificate of need in accordance with the standards and procedures
15 established in this subchapter. Applicants shall not be subject to sanctions for
16 failure to comply with the provisions of this subsection if such failure is solely
17 the result of good faith reliance on verified project cost estimates issued by
18 qualified persons, which cost estimates would have led a reasonable person to
19 conclude the project was not anticipated to be in excess of ~~\$30,000,000.00~~
20 \$50,000,000.00 and therefore not subject to this subsection. The provisions of
21 this subsection notwithstanding, expenditures may be made in preparation for

1 obtaining a conceptual development phase certificate of need, which
2 expenditures shall not exceed ~~\$1,500,000.00 for non-hospitals or~~
3 ~~\$3,000,000.00 for hospitals~~ \$10,000,000.00.

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

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

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

17 § 9435. EXCLUSIONS

18 * * *

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

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

(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.

9 (i) Excluded from this subchapter are emergency and nonemergency
10 ground ambulance services, affiliated agencies, and equipment and supplies
11 used by emergency medical personnel, as those terms are defined in 24 V.S.A.
12 § 2651.

VT LEG #383157 v.1

1 Sec. 3. EFFECTIVE DATE

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