

House Bill 1376

By: Representatives Dodson of the 84th, Post 1, Skipper of the 116th, Watson of the 60th, Post 2, Stephens of the 123rd, Hudson of the 95th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state
2 health planning and development, so as to change the capital expenditure thresholds for
3 health care facilities; to change certain definitions; to define diagnostic and other imaging
4 services as diagnostic, rehabilitation, and treatment centers; to delete an exception for
5 ambulatory surgery in a physician's office; to require indigent and charity care services in
6 such diagnostic, treatment, and rehabilitation centers; to continue an exemption for existing
7 physician owned single speciality surgery centers; to provide for financial and utilization
8 reporting by all health care facilities; to provide for related matters; to provide an effective
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health
13 planning and development, is amended by striking Code Section 31-6-2, relating to
14 definitions, and inserting in its place the following:

15 "31-6-2.

16 As used in this chapter, the term:

17 (1) 'Ambulatory surgical or obstetrical facility' means a public or private facility, not a
18 part of a hospital, which provides surgical or obstetrical treatment performed under
19 general or regional anesthesia in an operating room environment to patients not requiring
20 hospitalization.

21 (2) 'Application' means a written request for a certificate of need made to the department,
22 containing such documentation and information as the department may require.

23 (3) 'Bed capacity' means space used exclusively for inpatient care, including space
24 designed or remodeled for inpatient beds even though temporarily not used for such
25 purposes. The number of beds to be counted in any patient room shall be the maximum
26 number for which adequate square footage is provided as established by rules of the

1 Department of Human Resources, except that single beds in single rooms shall be
2 counted even if the room contains inadequate square footage.

3 (4) 'Certificate of need' means an official determination by the department, evidenced by
4 certification issued pursuant to an application, that the action proposed in the application
5 satisfies and complies with the criteria contained in this chapter and rules promulgated
6 pursuant hereto.

7 (5) 'Clinical health services' means diagnostic, treatment, or rehabilitative services
8 provided in a health care facility, or parts of the physical plant where such services are
9 located in a health care facility, and includes, but is not limited to, the following:
10 radiology and diagnostic imaging, such as magnetic resonance imaging and positron
11 emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive care;
12 coronary care; pediatrics; gynecology; obstetrics; general medical care; medical/surgical
13 care; inpatient nursing care, whether intermediate, skilled, or extended care; cardiac
14 catheterization; open-heart surgery; inpatient rehabilitation; and alcohol, drug abuse, and
15 mental health services.

16 (6) 'Consumer' means a person who is not employed by any health care facility or
17 provider and who has no financial or fiduciary interest in any health care facility or
18 provider.

19 (6.1) 'Department' means the Department of Community Health established under
20 Chapter 5A of this title.

21 (7) 'Develop,' with reference to a project, means:

22 (A) Constructing, remodeling, installing, or proceeding with a project, or any part of
23 a project, or a capital expenditure project, the cost estimate for which exceeds
24 ~~\$900,000.00~~ the thresholds specified in subparagraph (B) of paragraph (14) of this
25 Code section; or

26 (B) The expenditure or commitment of funds exceeding ~~\$500,000.00~~ the equipment
27 thresholds specified in subparagraph (F) or (H) of paragraph 14 of this Code section for
28 orders, purchases, leases, or acquisitions through other comparable arrangements of
29 major medical equipment.

30 Notwithstanding subparagraphs (A) and (B) of this paragraph, the expenditure or
31 commitment or incurring an obligation for the expenditure of funds to develop certificate
32 of need applications, studies, reports, schematics, preliminary plans and specifications,
33 or working drawings or to acquire, develop, or prepare sites shall not be considered to be
34 the developing of a project.

35 (7.1) 'Diagnostic, treatment, or rehabilitation center' means any professional or business
36 undertaking, whether for profit or not for profit, which offers or proposes to offer any
37 clinical health service in a setting which is not part of a hospital.

1 (7.2) 'Diagnostic or other imaging services,' with respect to a 'diagnostic, rehabilitation,
 2 and treatment center,' means magnetic resonance imaging, CT scanning, PET scan, or
 3 other high end imaging services as defined by the department by rule but not X-ray,
 4 fluoroscopy, or ultrasound services provided or offered in a physician's office or his or
 5 her group practice's office.

6 (8) 'Health care facility' means hospitals; other special care units, including but not
 7 limited to podiatric facilities; skilled nursing facilities; intermediate care facilities;
 8 personal care homes; ambulatory surgical or obstetrical facilities; health maintenance
 9 organizations; home health agencies; diagnostic, treatment, or rehabilitation centers, but
 10 only to the extent that subparagraph (G) or (H), or both subparagraphs (G) and (H), of
 11 paragraph (14) of this Code section are applicable thereto; and facilities which are
 12 devoted to the provision of treatment and rehabilitative care for periods continuing for
 13 24 hours or longer for persons who have traumatic brain injury, as defined in Code
 14 Section 37-3-1.

15 (9) 'Health maintenance organization' means a public or private organization organized
 16 under the laws of this state which:

17 (A) Provides or otherwise makes available to enrolled participants health care services,
 18 including at least the following basic health care services: usual physicians' services,
 19 hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area
 20 coverage;

21 (B) Is compensated, except for copayments, for the provision of the basic health care
 22 services listed in subparagraph (A) of this paragraph to enrolled participants on a
 23 predetermined periodic rate basis; and

24 (C) Provides physicians' services primarily:

25 (i) Directly through physicians who are either employees or partners of such
 26 organization; or

27 (ii) Through arrangements with individual physicians organized on a group practice
 28 or individual practice basis.

29 (10) 'Health Strategies Council' or 'council' means the body created by this chapter to
 30 advise the Department of Community Health and adopt the state health plan.

31 (11) 'Home health agency' means a public agency or private organization, or a
 32 subdivision of such an agency or organization, which is primarily engaged in providing
 33 to individuals who are under a written plan of care of a physician, on a visiting basis in
 34 the places of residence used as such individuals' homes, part-time or intermittent nursing
 35 care provided by or under the supervision of a registered professional nurse, and one or
 36 more of the following services:

37 (A) Physical therapy;

1 (B) Occupational therapy;

2 (C) Speech therapy;

3 (D) Medical social services under the direction of a physician; or

4 (E) Part-time or intermittent services of a home health aide.

5 (12) 'Hospital' means an institution which is primarily engaged in providing to inpatients,
6 by or under the supervision of physicians, diagnostic services and therapeutic services for
7 medical diagnosis, treatment, and care of injured, disabled, or sick persons or
8 rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such
9 term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, and other
10 specialty hospitals.

11 (13) 'Intermediate care facility' means an institution which provides, on a regular basis,
12 health related care and services to individuals who do not require the degree of care and
13 treatment which a hospital or skilled nursing facility is designed to provide but who,
14 because of their mental or physical condition, require health related care and services
15 beyond the provision of room and board.

16 (14) 'New institutional health service' means:

17 (A) The construction, development, or other establishment of a new health care
18 facility;

19 (B) Any expenditure by or on behalf of a health care facility in excess of ~~\$900,000.00~~
20 \$1,500,000.00 which, under generally accepted accounting principles consistently
21 applied, is a capital expenditure, except expenditures for acquisition of an existing
22 health care facility not owned or operated by or on behalf of a political subdivision of
23 this state, or any combination of such political subdivisions, or by or on behalf of a
24 hospital authority, as defined in Article 4 of Chapter 7 of this title or certificate of need
25 owned by such facility in connection with its acquisition;

26 (C) Any increase in the bed capacity of a health care facility except as provided in
27 Code Section 31-6-47;

28 (D) Clinical health services which are offered in or through a health care facility,
29 which were not offered on a regular basis in or through such health care facility within
30 the 12 month period prior to the time such services would be offered;

31 (E) Any conversion or upgrading of a facility such that it is converted from a type of
32 facility not covered by this chapter to any of the types of health care facilities which are
33 covered by this chapter;

34 (F) The purchase or lease by or on behalf of a health care facility of diagnostic or
35 therapeutic equipment with a value in excess of \$500,000.00. The acquisition of one or
36 more items of functionally related diagnostic or therapeutic equipment shall be
37 considered as one project;

1 (G) Clinical health services which are offered in or through a diagnostic, treatment, or
 2 rehabilitation center which were not offered on a regular basis in or through that center
 3 within the 12 month period prior to the time such services would be offered, but only
 4 if the clinical health services are any of the following:

5 (i) Radiation therapy;

6 (ii) Biliary lithotripsy;

7 (iii) Surgery in an operating room environment in a physician's office or his or her
 8 group practice's office, including but not limited to ambulatory surgery; ~~provided,~~
 9 ~~however, this provision shall not apply to surgery performed in the offices of an~~
 10 ~~individual private physician or single group practice of private physicians if such~~
 11 ~~surgery is performed in a facility that is owned, operated, and utilized by such~~
 12 ~~physicians who also are of a single specialty and the capital expenditure associated~~
 13 ~~with the construction, development, or other establishment of the clinical health~~
 14 ~~service does not exceed the amount of \$1 million; and~~

15 (iv) Cardiac catheterization; or

16 (v) Diagnostic or other imaging services; or

17 (H) The purchase, lease, or other use by or on behalf of a diagnostic, treatment, or
 18 rehabilitation center of diagnostic or therapeutic equipment with a value in excess of
 19 \$500,000.00. The acquisition of one or more items of functionally related diagnostic
 20 or therapeutic equipment shall be considered as one project.

21 The dollar amounts specified in subparagraphs (B), (F), and (H) of this paragraph;
 22 ~~division (iii) of subparagraph (G) of this paragraph, and of paragraph (7) of this Code~~
 23 ~~section~~ shall be adjusted annually by an amount calculated by multiplying such dollar
 24 amounts (as adjusted for the preceding year) by the annual percentage of change in the
 25 composite construction index, or its successor or appropriate replacement index, if any,
 26 published by the Bureau of the Census of the Department of Commerce of the United
 27 States government for the preceding calendar year, commencing on July 1, ~~1991~~ 2005,
 28 and on each anniversary thereafter of publication of the index. The department shall
 29 immediately institute rule-making procedures to adopt such adjusted dollar amounts. In
 30 calculating the dollar amounts of a proposed project for purposes of subparagraphs (B),
 31 (F), and (H) of this paragraph, ~~division (iii) of subparagraph (G) of this paragraph, and~~
 32 ~~of paragraph (7) of this Code section~~; the costs of all items subject to review by this
 33 chapter and items not subject to review by this chapter associated with and
 34 simultaneously developed or proposed with the project shall be counted, except for the
 35 expenditure or commitment of or incurring an obligation for the expenditure of funds to
 36 develop certificate of need applications, studies, reports, schematics, preliminary plans
 37 and specifications or working drawings, or to acquire sites.

1 (15) 'Nonclinical health services' means services or functions provided or performed by
2 a health care facility, and the parts of the physical plant where they are located in a health
3 care facility that are not diagnostic, therapeutic, or rehabilitative services to patients and
4 are not clinical health services defined in this chapter.

5 (16) 'Offer' means that the health care facility is open for the acceptance of patients or
6 performance of services and has qualified personnel, equipment, and supplies necessary
7 to provide specified clinical health services.

8 (16.1) 'Operating room environment' means an environment which meets the minimum
9 physical plant and operational standards specified on January 1, 1991, for ambulatory
10 surgical treatment centers in Section 290-5-33-.10 of the rules of the Department of
11 Human Resources.

12 (17) 'Person' means any individual, trust or estate, partnership, corporation (including
13 associations, joint-stock companies, and insurance companies), state, political
14 subdivision, hospital authority, or instrumentality (including a municipal corporation) of
15 a state as defined in the laws of this state.

16 (18) 'Personal care home' means a residential facility having at least 25 beds and
17 providing, for compensation, protective care and oversight of ambulatory, nonrelated
18 persons who need a monitored environment but who do not have injuries or disabilities
19 which require chronic or convalescent care, including medical, nursing, or intermediate
20 care. Personal care homes include those facilities which monitor daily residents'
21 functioning and location, have the capability for crisis intervention, and provide
22 supervision in areas of nutrition, medication, and provision of transient medical care.
23 Such term does not include:

24 (A) Old age residences which are devoted to independent living units with kitchen
25 facilities in which residents have the option of preparing and serving some or all of their
26 own meals; or

27 (B) Boarding facilities which do not provide personal care.

28 (19) Reserved.

29 (20) 'Project' means a proposal to take an action for which a certificate of need is
30 required under this chapter. A project or proposed project may refer to the proposal from
31 its earliest planning stages up through the point at which the new institutional health
32 service is offered.

33 (21) 'Review board' means the Health Planning Review Board created by this chapter.

34 (22) 'Skilled nursing facility' means a public or private institution or a distinct part of an
35 institution which is primarily engaged in providing inpatient skilled nursing care and
36 related services for patients who require medical or nursing care or rehabilitation services
37 for the rehabilitation of injured, disabled, or sick persons.

1 (23) 'State health plan' means a comprehensive program adopted by the Health Strategies
 2 Council, approved by the Governor, and implemented by the State of Georgia for the
 3 purpose of providing adequate health care services and facilities throughout the state."

4 **SECTION 2.**

5 Said chapter is further amended by adding at the end of Code Section 31-6-40, relating to the
 6 certificate of need required for offering health care, a new subsection (e) to read as follows:

7 "(e) Any person who, on or before the effective date of this subsection, has offered or
 8 developed a diagnostic or other imaging service in a diagnostic, treatment, or rehabilitation
 9 center or performed surgery in the offices of an individual private physician or group
 10 practice of physicians in such a facility owned, operated, or utilized by such physicians
 11 who:

12 (1) Are of the same surgical speciality; and

13 (2) Incurred a total capital expenditure associated with the construction, other
 14 development, or other establishment of such clinical health service in an amount less than
 15 \$1,400,000.00,

16 shall be exempt from the provisions of this chapter requiring a certificate of need for such
 17 facility."

18 **SECTION 3.**

19 Said chapter is further amended by striking Code Section 31-6-40.1, relating to acquisition
 20 of health care facilities, and inserting in its place the following:

21 "31-6-40.1.

22 (a) Any person who acquires a health care facility by stock or asset purchase, merger,
 23 consolidation, or other lawful means shall notify the department of such acquisition, the
 24 date thereof, and the name and address of the acquiring person. Such notification shall be
 25 made in writing to the department within 45 days following the acquisition and the
 26 acquiring person may be fined by the department in the amount of \$500.00 for each day
 27 that such notification is late. Such fine shall be paid into the state treasury.

28 (b) The department may limit the time periods during which it will accept applications for
 29 the following health care facilities:

30 (1) Skilled nursing facilities;

31 (2) Intermediate care facilities; and

32 (3) Home health agencies,

33 to only such times after the department has determined there is an unmet need for such
 34 facilities. The department shall make a determination as to whether or not there is an unmet

1 need for each type of facility at least every six months and shall notify those requesting
2 such notification of that determination.

3 (c) The department may require that any applicant for a certificate of need agree to provide
4 a specified amount of clinical health services to indigent patients as a condition for the
5 grant of a certificate of need. A grantee or successor in interest of a certificate of need or
6 an authorization to operate under this chapter which violates such an agreement, whether
7 made before or after July 1, 1991, shall be liable to the department for a monetary penalty
8 in the amount of the difference between the amount of services so agreed to be provided
9 and the amount actually provided. Any penalty so recovered shall be paid into the state
10 treasury.

11 (d) Any diagnostic, rehabilitation, or treatment center in existence on July 1, 2004,
12 including those centers exempt from certificate of need review under subsection (e) of
13 Code Section 31-6-40, shall provide, on an annual basis, indigent or charity care in an
14 amount not less than 3 percent of adjusted gross revenues, as defined by rule of the
15 department, and be subject to the same monetary penalty as described in subsection (c) of
16 this Code section for failure to meet such obligation; provided, however, that this
17 requirement for the calendar year 2004 shall be measured and subject to the penalty
18 provision of subsection (c) of this Code section for the period from July 1, 2004, through
19 December 31, 2004.

20 ~~(d)~~(e) Penalties authorized under this Code section shall be subject to the same notices and
21 hearing for the levy of fines under Code Section 31-6-45."

22 SECTION 4.

23 Said chapter is further amended by striking Code Section 31-6-70, relating to reports to the
24 department by hospitals, and inserting in its place the following:

25 "31-6-70.

26 (a) There shall be required from each ~~hospital~~ health care facility in this state and each
27 diagnostic, treatment, and rehabilitation center, whether or not it is exempt from filing an
28 application for a certificate of need under this chapter, an annual report of certain health
29 care information specified in this Code section to be submitted to the department. The
30 report shall be due on the ~~last day of January and shall cover the 12 month period preceding~~
31 ~~each such calendar year~~ date specified by the department by rule.

32 (b) The report required under subsection (a) of this Code section shall contain the
33 following information:

- 34 (1) Total gross revenues and expenses;
- 35 (2) Bad debts;
- 36 (3) Amounts of free care extended, excluding bad debts;

- 1 (4) Contractual adjustments for governmental and private payors;
- 2 (5) Amounts of care provided under a Hill-Burton commitment;
- 3 (6) Amounts of charity care provided to indigent persons or persons defined as eligible
- 4 for charity care;
- 5 (7) Amounts of outside sources of funding from governmental entities, philanthropic
- 6 groups, or any other source, including the proportion of any such funding dedicated to the
- 7 care of indigent persons; and
- 8 (8) For cases involving indigent persons or persons eligible for charity care:
- 9 (A) The number of persons treated;
- 10 (B) The number of inpatients and outpatients;
- 11 (C) Total patient days;
- 12 (D) The number of patients categorized by county of residence; and
- 13 (E) The indigent care and charity costs incurred by the ~~hospital~~ health care facility by
- 14 county of residence.
- 15 (c) As used in subsection (b) of this Code section, 'indigent persons' means persons having
- 16 as a maximum allowable income level an amount corresponding to 125 percent of the
- 17 federal poverty guideline and 'persons eligible for charity care' means persons having an
- 18 income level corresponding to more than 125 percent of the federal poverty guideline but
- 19 who have no other governmental or private health insurance support.
- 20 (d) The department shall provide a form for the report required by subsection (a) of this
- 21 Code section and may provide in said form for further categorical divisions of the
- 22 information listed in subsection (b) of this Code section.
- 23 (e) In the event that the department does not receive an annual report from a ~~hospital~~
- 24 health care facility within 30 days following the date such report was due or receives a
- 25 timely but incomplete report, the department shall notify the ~~hospital~~ health care facility
- 26 regarding the deficiencies.
- 27 (f) No application for a certificate of need under Article 3 of this chapter shall be
- 28 considered as complete if the applicant has not submitted the annual report required by
- 29 subsection (a) of this Code section."

30 **SECTION 5.**

31 This Act shall become effective upon its approval by the Governor or upon its becoming law

32 without such approval.

33 **SECTION 6.**

34 All laws and parts of laws in conflict with this Act are repealed.