

House Bill 263

By: Representatives Chambers of the 81<sup>st</sup>, Knox of the 24<sup>th</sup>, Coan of the 101<sup>st</sup>, Ehrhart of the 36<sup>th</sup>, Smith of the 131<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
2 repeal the certificate of need program: to provide for legislation findings; to repeal Chapter  
3 6 regarding State Health Planning and Development; to eliminate references to the certificate  
4 of need program; to remove the requirement for a certificate of need for certain facilities; to  
5 amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating  
6 to medical assistance generally, so as to eliminate reference to interest on penalties related  
7 to certificate of need; to amend Chapter 26 of Title 50 of the Official Code of Georgia  
8 Annotated, relating to housing and finance authority, so as to remove the requirement for a  
9 certificate of need of a project financed by an authority; to provide for related matters; to  
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 The General Assembly finds and declares that:

- 14 (1) The Georgia Constitution prohibits the General Assembly from authorizing  
15 agreements which defeat or lessen competition or encourage monopolies;
- 16 (2) The Federal Trade Commission and U.S. Department of Justice have determined that  
17 vigorous competition promotes the delivery of high quality, cost-effective health care;  
18 certificate of need programs pose anticompetitive risks that outweigh their economic  
19 benefits; certificate of need programs foster anticompetitive barriers to market entry;  
20 certificate of need programs prevent market entry by those that could provide higher  
21 quality services and delay innovation; and states should decrease barriers to health care  
22 market entry and reconsider whether certificate of need programs best serve their  
23 citizens' health care needs;
- 24 (3) The Federal Trade Commission has stated Georgia's certificate of need program is  
25 contrary to the interests of Georgia's health care consumers;

1 (4) Georgia's State Commission on the Efficacy of the Certificate of Need Program, the  
 2 Federal Trade Commission, and the U.S. Department of Justice note the benefits of  
 3 ambulatory surgery, such as convenience for patients in a less threatening and  
 4 noninstitutional environment, specialized staff, and proven cost efficiencies;

5 (5) In addition to the benefits of ambulatory surgery centers, the Federal Trade  
 6 Commission and U.S. Department of Justice warn that hospitals use certificate of need  
 7 programs to restrict ambulatory surgery centers' entry into the health care market, and the  
 8 Eleventh Circuit of the United States Court of Appeals has warned that Georgia's  
 9 certificate of need program fosters anticompetitive practices and facilitates illegal cartels  
 10 among hospitals;

11 (6) The data analyst for the State Commission on the Efficacy of the Certificate of Need  
 12 Program reported that Georgia has one of the most rigorous certificate of need programs,  
 13 states with rigorous certificate of need programs have less competition, and less  
 14 competition is associated with higher cost;

15 (7) The State Commission on the Efficacy of the Certificate of Need Program reported  
 16 certificates of need do not assure quality, and the commission's data analyst found no  
 17 correlation between certificate of need programs and quality; and

18 (8) It is the intent of this Act to repeal Georgia's certificate of need law so as to promote  
 19 the delivery of high quality, cost-effective health care through free market competition.

## 20 **SECTION 2.**

21 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by  
 22 repealing Chapter 6, relating to state health planning and development, and designating such  
 23 chapter as reserved.

## 24 **SECTION 3.**

25 Said title is further amended by revising subsection (d) of Code Section 31-5A-5, relating to  
 26 transfer of personnel and functions relating to health care to the Department of Community  
 27 Health, as follows:

28 "(d) The department shall succeed to all rules, regulations, policies, procedures, and  
 29 administrative orders of the predecessor agencies which were in effect on June 30, 1999,  
 30 or scheduled to go into effect on or after July 1, 1999, and which relate to the functions  
 31 transferred to the department by this chapter. Such rules, regulations, policies, procedures,  
 32 and administrative orders shall remain in effect until amended, repealed, superseded, or  
 33 nullified by proper authority or as otherwise provided by law. Rules of the department shall  
 34 be adopted, promulgated, and implemented as provided in Chapter 13 of Title 50, the

1 'Georgia Administrative Procedure Act,' ~~except that only the Division of Health Planning~~  
 2 ~~shall be subject to the provisions of Code Section 31-6-21.1."~~

3 **SECTION 4.**

4 Said title is further amended by revising Code Section 31-7-75.3, relating to home health  
 5 agency services operated by hospitals, as follows:

6 "31-7-75.3.

7 A hospital authority which owns or operates a hospital which is qualified to provide home  
 8 health agency services ~~under the exemption provided in paragraph (14.1) of subsection (a)~~  
 9 ~~of Code Section 31-6-47~~ shall be authorized to exercise such powers under this article."

10 **SECTION 5.**

11 Said title is further amended by revising paragraph (1) of subsection (e) of Code Section  
 12 31-7-94.1, the "Rural Hospital Assistance Act," as follows:

13 "(1) Infrastructure development, including, without being limited to, facility renovation  
 14 or equipment acquisition; provided, however, that ~~the amount granted to any qualified~~  
 15 ~~hospital may not exceed the expenditure thresholds that would constitute a new~~  
 16 ~~institutional health service requiring a certificate of need under Chapter 6 of this title and~~  
 17 the grant award may be conditioned upon obtaining local matching funds;"

18 **SECTION 6.**

19 Said title is further amended by revising subsection (i) of Code Section 31-7-116, relating  
 20 to provisions contained in obligations and security for obligations, procedures for issuance  
 21 of bonds and bond anticipation notes, interest rates, and limitations and conditions, as  
 22 follows:

23 "(i) No bonds or bond anticipation notes except refunding bonds shall be issued by an  
 24 authority under this article unless its board of directors shall adopt a resolution finding that  
 25 the project for which such bonds or notes are to be issued will promote the objectives stated  
 26 in subsection (b) of Code Section 31-7-111 and will increase or maintain employment in  
 27 the territorial area of such authority. Nothing contained in this Code section shall be  
 28 construed as permitting any authority created under this article or any qualified sponsor to  
 29 finance, construct, or operate any project without obtaining any ~~certificate of need or other~~  
 30 approval, permit, or license which, under the laws of this state, is required in connection  
 31 therewith."



1 "31-7-307.

2 ~~(a) A certificate of need issued pursuant to Chapter 6 of this title is not required for any~~  
 3 ~~person, business entity, corporation, or association, whether operated for profit or not for~~  
 4 ~~profit, which is operating as a private home care provider as long as such operation does~~  
 5 ~~not also constitute such person, entity, or organization operating as a home health agency~~  
 6 ~~or personal care home under this chapter.~~

7 ~~(b) A license issued under this article shall not entitle the licensee to operate as a home~~  
 8 ~~health agency, as defined in Code Section 31-7-150, under medicare or Medicaid~~  
 9 ~~guidelines."~~

#### 10 **SECTION 10.**

11 Said title is further amended by revising Code Section 31-8-153.1, relating to irrevocable  
 12 transfer of funds to trust fund and provision for indigent patients, as follows:

13 "31-8-153.1.

14 After June 30, 1993, any hospital authority, county, municipality, or other state or local  
 15 public or governmental entity is authorized to transfer moneys to the trust fund. Transfer  
 16 of funds under the control of a hospital authority, county, municipality, or other state or  
 17 local public or governmental entity shall be a valid public purpose for which those funds  
 18 may be expended. ~~The department is authorized to transfer to the trust fund moneys paid~~  
 19 ~~to the state by a health care facility as a monetary penalty for the violation of an agreement~~  
 20 ~~to provide a specified amount of clinical health services to indigent patients pursuant to a~~  
 21 ~~certificate of need held by such facility.~~ Such transfers shall be irrevocable and shall be  
 22 used only for the purposes contained in Code Section 31-8-154."

#### 23 **SECTION 11.**

24 Said title is further amended by revising Code Section 31-8-181, relating to individuals and  
 25 hospitals excluded from application of article, as follows:

26 "31-8-181.

27 This article shall not apply to the following:

28 (1) An individual licensed to practice medicine under the provisions of Chapter 34 of  
 29 Title 43, and persons employed by such an individual, provided that any nursing home,  
 30 personal care home as defined by Code Section ~~31-6-2~~ 31-7-12, hospice as defined by  
 31 Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult  
 32 day program, or home health agency owned, operated, managed, or controlled by a  
 33 person licensed to practice medicine under the provisions of Chapter 34 of Title 43 shall  
 34 be subject to the provisions of this article; or

1 (2) A hospital. However, to the extent that a hospital's nursing home, personal care home  
 2 as defined by Code Section ~~31-6-2~~ 31-7-12, hospice as defined by Code Section  
 3 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program,  
 4 or home health agency holds itself out as providing care, treatment, or therapeutic  
 5 activities for persons with Alzheimer's disease or Alzheimer's related dementia as part  
 6 of a specialty unit, such nursing home, personal care home, hospice, respite care service,  
 7 adult day program, or home health agency shall be subject to the provisions of this  
 8 article."

## 9 SECTION 12.

10 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to  
 11 medical assistance generally, is amended by revising subsection (b) of Code Section  
 12 49-4-147.2, relating to noneligibility of the Department of Community Health to obtain nor  
 13 be liable for interest on orders, judgments, and liquidated or nonliquidated amounts, and  
 14 exemptions, as follows:

15 "(b) Notwithstanding the provisions of Code Section 7-4-12, 7-4-15, 7-4-16, or 13-6-13,  
 16 or any other statute or judicial construction thereof authorizing interest, the department  
 17 shall not be eligible to obtain nor be liable for interest on orders, judgments, liquidated  
 18 amounts, or unliquidated amounts unless such interest is:

19 (1) Required by federal law or regulations;

20 (2) Interest on penalties as required by Code Section 49-4-146.1; or

21 (3) Interest as required by Code Section 49-4-148; ~~or~~

22 ~~(4) Incurred by a failure to pay the penalty which may be transferred to the Indigent Care~~  
 23 ~~Trust Fund under Code Section 31-8-153.1 within 30 days after the penalty is imposed,~~  
 24 ~~in which event interest shall be paid from the thirty-first day following such imposition~~  
 25 ~~at the same rate as interest on penalties under Code Section 49-4-146.1."~~

## 26 SECTION 13.

27 Chapter 26 of Title 50 of the Official Code of Georgia Annotated, relating to housing and  
 28 finance authority, is amended by striking in its entirety subsection (c) of Code Section  
 29 50-26-19, relating to financing acquisition, construction, and equipping of health care  
 30 facilities, which reads as follows:

31 "(c) The authority may not finance a project for any participating provider unless the  
 32 Department of Community Health, or any successor thereof, has issued a certificate of need  
 33 or comparable certification of approval to the participating provider for the project to be  
 34 financed by the authority if the acquisition of such project by the participating provider

1 would require a certificate of need or comparable certification of approval under Chapter  
2 6 of Title 31."

3 **SECTION 14.**

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