

The Senate Health and Human Services Committee offered the following substitute to SB 433:

ADOPTED

**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 provide that certain destination cancer hospitals
3 are subject to certificate of need requirements; to add a definition and revise a definition; to
4 provide certain conditions relating to certificates of need for new institutional health services;
5 to provide that skilled nursing facilities, intermediate care facilities, and intermingled nursing
6 facilities may be allowed to divide under certain conditions; to provide considerations for
7 qualification for issuance of certificates of need relating to destination cancer hospitals; to
8 provide considerations for skilled nursing facilities, intermediate care facilities, and
9 intermingled nursing facilities to relocate; to provide for penalties for destination cancer
10 hospitals which fail to comply with minimum requirements; to exempt prisons and other
11 secure correctional institutions of the Department of Corrections and the Department of
12 Juvenile Justice from certificate of need requirements; to provide for related matters; to
13 repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

15 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health
16 planning and development, is amended in Code Section 31-6-2, relating to definitions, by
17 adding a new paragraph and by revising paragraph (8) to read as follows:
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19 "(6.2) 'Destination cancer hospital' means an institution with a licensed bed capacity of
20 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care
21 services to cancer inpatients and outpatients, by or under the supervision of physicians,
22 and whose proposed annual patient base is composed of a minimum of 65 percent of
23 patients who reside outside of the State of Georgia."

24 "(8) 'Health care facility' means hospitals; destination cancer hospitals; other special care
25 units, including but not limited to podiatric facilities; skilled nursing facilities;
26 intermediate care facilities; personal care homes; ambulatory surgical or obstetrical

1 facilities; health maintenance organizations; home health agencies; diagnostic, treatment,
2 or rehabilitation centers, but only to the extent that subparagraph (G) or (H), or both
3 subparagraphs (G) and (H), of paragraph (14) of this Code section are applicable thereto;
4 and facilities which are devoted to the provision of treatment and rehabilitative care for
5 periods continuing for 24 hours or longer for persons who have traumatic brain injury,
6 as defined in Code Section 37-3-1."

7 SECTION 2.

8 Said chapter is further amended in Code Section 31-6-40, relating to certificate of need
9 required for offering health care, by adding a new subsection to read as follows:

10 "(e) A certificate of need issued to a destination cancer hospital shall authorize the beds
11 and all new institutional health services of such destination cancer hospital. As used in this
12 subsection, the term 'new institutional health service' shall have the same meaning provided
13 for in paragraph (14) of Code Section 31-6-2. Such destination cancer hospital shall not
14 be required to apply for or obtain additional certificates of need for new institutional health
15 services, and such new institutional health services offered by the destination cancer
16 hospital shall not be reviewed under any service specific need methodology or rules except
17 for those promulgated by the department for destination cancer hospitals. After
18 commencing operations, in order to add an additional new institutional health service, a
19 destination cancer hospital shall apply for and obtain an additional certificate of need under
20 the applicable statutory provisions and any rules promulgated by the department for
21 destination cancer hospitals, and such applications shall only be granted if the patient base
22 of such destination cancer hospital is composed of at least 65 percent of out-of-state
23 patients for two consecutive years. If such destination cancer hospital cannot show a
24 patient base of a minimum of 65 percent from outside of this state, then its application for
25 any new institutional health service shall be evaluated under the specific statutes and rules
26 applicable to that particular service. If such destination cancer hospital applies for a
27 certificate of need to add an additional new institutional health service before commencing
28 operations or completing two consecutive years of operation, such applicant may rely on
29 historical data from its affiliated entities, as set forth in paragraph (2) of subsection (b.1)
30 of Code Section 31-6-42. Because destination cancer hospitals provide services primarily
31 to out-of-state residents, the number of beds, services, and equipment destination cancer
32 hospitals use shall not be counted as part of the department's inventory when determining
33 the need for those items by other providers. Nothing in this Code section shall in any way
34 require a destination cancer hospital to obtain a certificate of need for any purpose that is
35 otherwise exempt from the certificate of need requirement."

SECTION 3.

Said chapter is further amended in Code Section 31-6-40.1, relating to acquisition of health care facilities, penalty for failure to notify the department, limitation on applications, agreement to care for indigent patients, and penalties, as follows:

"31-6-40.1.

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

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

- (1) Skilled nursing facilities;
- (2) Intermediate care facilities; and
- (3) Home health agencies,

to only such times after the department has determined there is an unmet need for such facilities. The department shall make a determination as to whether or not there is an unmet need for each type of facility at least every six months and shall notify those requesting such notification of that determination.

(c) The department may require that any applicant for a certificate of need agree to provide a specified amount of clinical health services to indigent patients as a condition for the grant of a certificate of need; provided, however, that each facility granted a certificate of need by the department as a destination cancer hospital shall be required to provide uncompensated indigent or charity care for residents of Georgia which meets or exceeds 3 percent of such destination cancer hospital's annual adjusted gross revenues. As used in this subsection, the term 'uncompensated indigent or charity care' shall have the same meaning as in paragraph (6) of subsection (a) of Code Section 31-6-40.2. A grantee or successor in interest of a certificate of need or an authorization to operate under this chapter which violates such an agreement, whether made before or after July 1, 1991, shall be liable to the department for a monetary penalty in the amount of the difference between the amount of services so agreed to be provided and the amount actually provided. Any penalty so recovered shall be paid into the state treasury.

(c.1) A destination cancer hospital shall be fined \$1,000,000.00 if less than 65 percent of patients to whom such facility provides service in a calendar year reside outside this state. All revenues collected from any such fine shall be dedicated and deposited by the department into the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

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

3 SECTION 4.

4 Said chapter is further amended by revising subsection (a) of Code Section 31-6-41, relating
5 to the scope and term of validity of a certificate of need, as follows:

6 "(a) A certificate of need shall be valid only for the defined scope, location, cost, service
7 area, and person named in an application, as it may be amended, and as such scope,
8 location, service area, cost, and person are approved by the department, unless such
9 certificate of need owned by an existing health care facility is transferred to a person who
10 acquires such existing facility. In such case, the certificate of need shall be valid for the
11 person who acquires such a facility and for the scope, location, cost, and service area
12 approved by the department. However, in reviewing an application to relocate all or a
13 portion of an existing skilled nursing facility, intermediate care facility, or intermingled
14 nursing facility, the department may allow such facility to divide into two or more such
15 facilities if the department determines that the proposed division is financially feasible and
16 would be consistent with quality patient care."

17 SECTION 5.

18 Said chapter is further amended in Code Section 31-6-42, relating to qualification for issue
19 of certificate of need, by adding new subsections to read as follows:

20 "(b.1) In the case of applications for the construction, development, or establishment of a
21 destination cancer hospital, the applicable considerations as to the need for such service
22 shall not include paragraphs (1), (2), (3), (7), (8), (10), (11), and (14) of subsection (a) of
23 this Code section but shall include:

24 (1) Paragraphs (4), (5), (6), (9), (12), and (13) of subsection (a) of this Code section;

25 (2) That the proposed new destination cancer hospital can demonstrate, based on
26 historical data from the applicant or its affiliated entities, that its annual patient base shall
27 be composed of a minimum of 65 percent of patients who reside outside of the State of
28 Georgia;

29 (3) That the proposed new destination cancer hospital states its intent to provide
30 uncompensated indigent or charity care which shall meet or exceed 3 percent of its annual
31 adjusted gross revenues. As used in this paragraph, 'uncompensated indigent or charity
32 care' shall have the same meaning as in paragraph (6) of subsection (a) of Code Section
33 31-6-40.2;

1 (4) That the proposed new destination cancer hospital shall conduct biomedical or
2 behavioral research projects or service development which is designed to meet a national
3 or regional need;

4 (5) That the proposed new destination cancer hospital shall be reasonably financially and
5 physically accessible;

6 (6) That the proposed new destination cancer hospital shall have a positive relationship
7 to the existing health care delivery system on a regional basis;

8 (7) That an applicant for a new destination cancer hospital shall document in its
9 application that the new facility is not predicted to be detrimental to existing hospitals
10 within the planning area. Such demonstration shall be made by providing an analysis in
11 such application that compares current and projected changes in market share and payer
12 mix for such applicant and such existing hospitals within the planning area. Impact on
13 an existing hospital shall be determined to be adverse if, based on the utilization projected
14 by the applicant, such existing hospital would have a total decrease of 10 percent or more
15 in its average annual utilization, as measured by patient days for the two most recent and
16 available preceding calendar years of data; and

17 (8) That the destination cancer hospital shall express its intent to participate in medical
18 staffing workforce development activities.

19 (b.2) In the case of an application for a replacement skilled nursing facility, intermediate
20 care facility, or intermingled nursing facility at an alternate location or locations from its
21 existing location, the department shall review the application solely under the general
22 considerations set forth in the department's rules as promulgated pursuant to subsection (a)
23 of this Code section and shall not be subject to any service specific considerations
24 established by the department if the following conditions are met:

25 (1) Such facility has received prior certificate of need review and approval or has been
26 deemed under previous provisions of this chapter to be exempt from certificate of need
27 review;

28 (2) The alternate location of the replacement facility is within the same county as the
29 applicant facility; and

30 (3) The replacement facility does not otherwise qualify as an expanded service within
31 the specific review considerations for skilled nursing facilities and intermediate care
32 facilities."

33 SECTION 6.

34 Said chapter is further amended in subsection (a) of Code Section 31-6-47, relating to
35 exemptions from the certificate of need program, by striking the "and" at the end of

1 paragraph (15), by striking the period at the end of paragraph (16) and replacing it with
2 "; and", and by adding a new paragraph to read as follows:

3 "(17) Infirmaries or facilities operated by, on behalf of, or under contract with the
4 Department of Corrections or the Department of Juvenile Justice for the sole and
5 exclusive purpose of providing health care services in a secure environment to prisoners
6 within a penal institution, penitentiary, prison, detention center, or other secure
7 correctional institution. This shall include correctional institutions operated by private
8 entities in this state which house inmates under the Department of Corrections or the
9 Department of Juvenile Justice."

10 **SECTION 7.**

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