

House Bill 249

By: Representatives Stover of the 71st, Spencer of the 180th, Kirby of the 114th, and Willard of the 51st

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 amend other provisions in various titles of the
3 Official Code of Georgia Annotated for purposes of conformity; to provide for related
4 matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

10 style="text-align:center">**SECTION 2.**

11 Said title is further amended in Code Section 31-2-5, relating to the transfer of personnel and
12 functions to the Department of Community Health, by revising subsection (c) as follows:

13 "(c) The department shall succeed to all rules, regulations, policies, procedures, and
14 administrative orders of the predecessor agency or unit which were in effect on June 30,
15 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the
16 functions transferred to the department by this chapter. Such rules, regulations, policies,
17 procedures, and administrative orders shall remain in effect until amended, repealed,
18 superseded, or nullified by proper authority or as otherwise provided by law. Rules of the
19 department shall be adopted, promulgated, and implemented as provided in Chapter 13 of
20 Title 50, the 'Georgia Administrative Procedure Act,' ~~except that only rules promulgated~~
21 ~~pursuant to Chapter 6 of this title shall be subject to the provisions of Code Section~~
22 ~~31-6-21.1."~~

23

SECTION 3.

24 Said title is further amended in Code Section 31-2-7, relating to rules and regulations and
 25 variances and waivers, by revising subsection (b) as follows:

26 "(b) The department upon application or petition may grant variances and waivers to
 27 specific rules and regulations which establish standards for facilities or entities regulated
 28 by the department as follows:

29 (1) The department may authorize departure from the literal requirements of a rule or
 30 regulation by granting a variance upon a showing by the applicant or petitioner that the
 31 particular rule or regulation that is the subject of the variance request should not be
 32 applied as written because strict application would cause undue hardship. The applicant
 33 or petitioner additionally must show that adequate standards affording protection of
 34 health, safety, and care exist and will be met in lieu of the exact requirements of the rule
 35 or regulation in question;

36 (2) The department may dispense entirely with the enforcement of a rule or regulation
 37 by granting a waiver upon a showing by the applicant or petitioner that the purpose of the
 38 rule or regulation is met through equivalent standards affording equivalent protection of
 39 health, safety, and care;

40 (3) The department may grant waivers and variances to allow experimentation and
 41 demonstration of new and innovative approaches to delivery of services upon a showing
 42 by the applicant or petitioner that the intended protections afforded by the rule or
 43 regulation which is the subject of the request are met and that the innovative approach has
 44 the potential to improve service delivery;

45 (4) Waivers or variances which affect an entire class of facilities may only be approved
 46 by the Board of Community Health and shall be for a time certain, as determined by the
 47 board. A notice of the proposed variance or waiver affecting an entire class of facilities
 48 shall be made in accordance with the requirements for notice of rule making in Chapter
 49 13 of Title 50, the 'Georgia Administrative Procedure Act'; or

50 (5) Variances or waivers which affect only one facility in a class may be approved or
 51 denied by the department and shall be for a time certain, as determined by the
 52 department. The department shall maintain a record of such action and shall make this
 53 information available to the board and all other persons who request it.

54 ~~This subsection shall not apply to rules adopted by the department pursuant to Code~~
 55 ~~Section 31-6-21.1."~~

56

SECTION 4.

57 Said title is further amended in Code Section 31-7-3, relating to requirements for permits to
 58 operate institutions, by revising subsection (a) as follows:

59 "(a) Any person or persons responsible for the operation of any institution, or who may
 60 hereafter propose to establish and operate an institution and to provide specified clinical
 61 services, shall submit an application to the department for a permit to operate the institution
 62 and provide such services, such application to be made on forms prescribed by the
 63 department. No institution shall be operated in this state without such a permit, which shall
 64 be displayed in a conspicuous place on the premises. No clinical services shall be provided
 65 by an institution except as approved by the department in accordance with the rules and
 66 regulations established pursuant to Code Section 31-7-2.1. Failure or refusal to file an
 67 application for a permit shall constitute a violation of this chapter and shall be dealt with
 68 as provided for in Article 1 of Chapter 5 of this title. Following inspection and
 69 classification of the institution for which a permit is applied for, the department may issue
 70 or refuse to issue a permit or a provisional permit. Permits issued shall remain in force and
 71 effect until revoked or suspended; provisional permits issued shall remain in force and
 72 effect for such limited period of time as may be specified by the department. Upon
 73 conclusion of the Atlantic Cardiovascular Patient Outcomes Research Team (C-PORT)
 74 Study, the department shall consider and analyze the data and conclusions of the study and
 75 promulgate rules pursuant to Code Section 31-7-2.1 to regulate the quality of care for
 76 therapeutic cardiac catheterization. All hospitals that participated in the study and are
 77 exempt from obtaining a certificate of need based on paragraph (22) of subsection (a) of
 78 former Code Section 31-6-47 shall apply for a permit to continue providing therapeutic
 79 cardiac catheterization services once the department promulgates the rules required by this
 80 Code section."

81 **SECTION 5.**

82 Said title is further amended in Code Section 31-7-75, relating to the functions and powers
 83 of county and municipal hospital authorities, by revising paragraph (24) as follows:

84 "(24) To provide management, consulting, and operating services including, but not
 85 limited to, administrative, operational, personnel, and maintenance services to another
 86 hospital authority, hospital, health care facility, ~~as said term is defined in Chapter 6 of this~~
 87 ~~title~~, person, firm, corporation, or any other entity or any group or groups of the
 88 foregoing; to enter into contracts alone or in conjunction with others to provide such
 89 services without regard to the location of the parties to such transactions; to receive
 90 management, consulting, and operating services including, but not limited to,
 91 administrative, operational, personnel, and maintenance services from another such
 92 hospital authority, hospital, health care facility, person, firm, corporation, or any other
 93 entity or any group or groups of the foregoing; and to enter into contracts alone or in

94 conjunction with others to receive such services without regard to the location of the
95 parties to such transactions;"

96 **SECTION 6.**

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

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

104 **SECTION 7.**

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

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

118 **SECTION 8.**

119 Said title is further amended by revising Code Section 31-7-155, relating to certificates of
120 need for new service or extending service area and exemption from certificate, as follows:

121 "31-7-155.

122 ~~(a) No home health agency initiating service or extending the range of its service area shall~~
123 ~~be licensed unless the Department of Community Health determines, in accordance with~~
124 ~~Article 3 of Chapter 6 of this title and regulations pursuant thereto, that there is a need for~~
125 ~~said services within the area to be served. All home health agencies which were delivering~~
126 ~~services prior to July 1, 1979, and were certified for participation in either Title XVIII or~~
127 ~~Title XIX of the federal Social Security Act prior to such date shall be exempt from a~~

128 ~~certificate of need, except in those instances where expansion of services or service areas~~
 129 ~~is requested by such home health agencies. Such exemption from a certificate of need shall~~
 130 ~~extend to all areas in which a home health agency was licensed by the department to~~
 131 ~~provide services on or before December 31, 1989, except as provided in subsection (b) of~~
 132 ~~this Code section.~~

133 ~~(b) Concerning an exemption from a certificate of need pursuant to subsection (a) of this~~
 134 ~~Code section, service areas which were the subject of litigation pending in any court of~~
 135 ~~competent jurisdiction, whether by way of appeal, remand, stay, or otherwise, as of~~
 136 ~~December 31, 1989, shall not be so exempt except as set forth in the final unappealed~~
 137 ~~administrative or judicial decision rendered in such litigation.~~

138 ~~(c) Except with respect to a home health agency's service areas which were the subject of~~
 139 ~~litigation pending in any court of competent jurisdiction as of December 31, 1989, the~~
 140 ~~Department of Community Health shall not consider any request for or issue a~~
 141 ~~determination of an exemption from a certificate of need pursuant to this Code section after~~
 142 ~~December 31, 1989. Reserved.~~

143 **SECTION 9.**

144 Said title is further amended by repealing in its entirety Code Section 31-7-179, relating to
 145 certificate of need not required for hospice care.

146 **SECTION 10.**

147 Said title is further amended by revising Code Section 31-7-307, relating to certificate of
 148 need not required of private home care provider licensees, as follows:

149 "31-7-307.

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

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

158 **SECTION 11.**

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

161 "31-8-153.1.
 162 After June 30, 1993, any hospital authority, county, municipality, or other state or local
 163 public or governmental entity is authorized to transfer moneys to the trust fund. Transfer
 164 of funds under the control of a hospital authority, county, municipality, or other state or
 165 local public or governmental entity shall be a valid public purpose for which those funds
 166 may be expended. ~~The department is authorized to transfer to the trust fund moneys paid~~
 167 ~~to the state by a health care facility as a monetary penalty for the violation of an agreement~~
 168 ~~to provide a specified amount of clinical health services to indigent patients pursuant to a~~
 169 ~~certificate of need held by such facility.~~ Such transfers shall be irrevocable and shall be
 170 used only for the purposes contained in Code Section 31-8-154."

171 **SECTION 12.**

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

174 "31-8-181.

175 This article shall not apply to the following:

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

183 (2) A hospital. However, to the extent that a hospital's nursing home, personal care home
 184 as defined by Code Section ~~31-6-2~~ 31-7-12, hospice as defined by Code Section
 185 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program,
 186 or home health agency holds itself out as providing care, treatment, or therapeutic
 187 activities for persons with Alzheimer's disease or Alzheimer's related dementia as part of
 188 a specialty unit, such nursing home, personal care home, hospice, respite care service,
 189 adult day program, or home health agency shall be subject to the provisions of this
 190 article."

191 **SECTION 13.**

192 Said title is further amended in Code Section 31-11-100, relating to definitions relative to the
 193 Georgia Trauma Care Network Commission, by revising paragraph (3) as follows:

194 "(3) 'Trauma center' means a facility designated by the Department of Public Health as
 195 a Level I, II, III, or IV or burn trauma center. However, a burn trauma center shall not

196 be considered or treated as a trauma center for purposes of certificate of need
 197 requirements under state law or regulations, including exceptions to need and adverse
 198 impact standards allowed by the department for trauma centers or for purposes of
 199 identifying safety net hospitals."

200 **SECTION 14.**

201 Code Section 33-45-1 of the Official Code of Georgia Annotated, relating to definitions
 202 relative to continuing care providers and facilities, is revised by amending paragraphs (1),
 203 (6), and (12) as follows:

204 "(1) 'Continuing care' means furnishing pursuant to a continuing care agreement:

205 (A) Lodging that is not:

206 (i) In a skilled nursing facility, as such term is defined in paragraph (34) of Code
 207 Section 31-6-2;

208 (ii) An intermediate care facility, as such term is defined in paragraph (22) of Code
 209 Section 31-6-2;

210 (iii) An assisted living community, as such term is defined in Code Section
 211 31-7-12.2; or

212 (iv) A personal care home, as such term is defined in Code Section 31-7-12;

213 (B) Food; and

214 (C) Nursing care provided in a facility or in another setting designated by the
 215 agreement for continuing care to an individual not related by consanguinity or affinity
 216 to the provider furnishing such care upon payment of an entrance fee including skilled
 217 or intermediate nursing services and, at the discretion of the continuing care provider,
 218 personal care services including, without limitation, assisted living care services
 219 designated by the continuing care agreement, including such services being provided
 220 pursuant to a contract to ensure the availability of such services to an individual not
 221 related by consanguinity or affinity to the provider furnishing such care upon payment
 222 of an entrance fee."

223 "(6) 'Limited continuing care' means furnishing pursuant to a continuing care agreement:

224 (A) Lodging that is not:

225 (i) In a skilled nursing facility, as such term is defined in paragraph (34) of Code
 226 Section 31-6-2;

227 (ii) An intermediate care facility, as such term is defined in paragraph (22) of Code
 228 Section 31-6-2;

229 (iii) An assisted living community, as such term is defined in Code Section
 230 31-7-12.2; or

231 (iv) A personal care home, as such term is defined in Code Section 31-7-12;

232 (B) Food; and
 233 (C) Personal services, whether such personal services are provided in a facility such
 234 as a personal care home or an assisted living community or in another setting
 235 designated by the continuing care agreement, to an individual not related by
 236 consanguinity or affinity to the provider furnishing such care upon payment of an
 237 entrance fee."

238 "(12) 'Residential unit' means a residence or apartment in which a resident lives that is
 239 not a skilled nursing facility ~~as defined in paragraph (34) of Code Section 31-6-2~~, an
 240 intermediate care facility ~~as defined in paragraph (22) of Code Section 31-6-2~~, an assisted
 241 living community as defined in Code Section 31-7-12.2, or a personal care home as
 242 defined in Code Section 31-7-12."

243 **SECTION 15.**

244 Code Section 33-45-3 of the Official Code of Georgia Annotated, relating to certificate of
 245 authority required for operation of continuing care facilities, is revised by amending
 246 subsection (b) as follows:

247 "(b) Nothing in this chapter shall be construed so as to modify or limit in any way:
 248 (1) ~~Provisions of Article 3 of Chapter 6 of Title 31 and any rules and regulations~~
 249 ~~promulgated by the Department of Community Health pursuant to such article relating~~
 250 ~~to certificates of need for continuing care retirement communities or home health~~
 251 ~~agencies, as such terms are defined in Code Section 31-6-2; or~~
 252 (2) ~~Provisions~~ provisions of Chapter 7 of Title 31 relating to licensure or permit
 253 requirements and any rules and regulations promulgated by the Department of
 254 Community Health pursuant to such chapter, including, without limitation, licensure or
 255 permit requirements for nursing home care, assisted living care, personal care home
 256 services, home health services, and private home care services."

257 **SECTION 16.**

258 Code Section 33-45-7.1 of the Official Code of Georgia Annotated, relating to provider
 259 authorized to offer continuing care when resident purchases resident owned living unit, is
 260 revised as follows:

261 "33-45-7.1.

262 A provider which has obtained a certificate of authority pursuant to Code Section 33-45-5
 263 and the written approval of the commissioner is authorized to offer, as a part of the
 264 continuing care agreement, continuing care in which the resident purchases a resident
 265 owned living unit, subject to the provisions of ~~Chapters 6 and~~ Chapter 7 of Title 31 and

266 rules and regulations promulgated by the Department of Community Health pursuant to
 267 such ~~chapters~~ chapter relating to ~~certificate of need~~ and licensure requirements."

268 **SECTION 17.**

269 Code Section 37-1-29 of the Official Code of Georgia Annotated, relating to crisis
 270 stabilization units, is amended by revising subsection (j) as follows:

271 "~~(j) Any program licensed as a crisis stabilization unit pursuant to this Code section shall~~
 272 ~~be exempt from the requirements to obtain a certificate of need pursuant to Article 3 of~~
 273 ~~Chapter 6 of Title 31. Reserved.~~"

274 **SECTION 18.**

275 Code Section 43-26-7 of the Official Code of Georgia Annotated, relating to requirements
 276 for licensure as a registered professional nurse, is amended by revising paragraph (4) of
 277 subsection (c) as follows:

278 "(4)(A)(i) Have practiced nursing as a registered professional nurse for a period of
 279 time as determined by the board or have graduated from a nursing education program
 280 within the four years immediately preceding the date of the application;

281 ~~(B)~~(ii) If the applicant entered a nontraditional nursing education program as a
 282 licensed practical nurse whose academic education as a licensed practical nurse
 283 included clinical training in pediatrics, obstetrics and gynecology, medical-surgical,
 284 and mental illness, have practiced nursing as a registered professional nurse in a
 285 health care facility for at least one year in the three years preceding the date of the
 286 application, and such practice is documented by the applicant and approved by the
 287 board; provided, however, that for an applicant ~~that~~ who does not meet the experience
 288 requirement of this subparagraph, the board shall require the applicant to complete a
 289 320 hour postgraduate preceptorship arranged by the applicant under the oversight of
 290 a registered nurse where such applicant is transitioned into the role of a registered
 291 professional nurse. The preceptorship shall have prior approval of the board, and
 292 successful completion of the preceptorship shall be verified in writing by the
 293 preceptor; or

294 ~~(C)~~(iii) If the applicant entered a nontraditional nursing education program as
 295 anything other than a licensed practical nurse whose academic education as a licensed
 296 practical nurse included clinical training in pediatrics, obstetrics and gynecology,
 297 medical-surgical, and mental illness, have graduated from such program and practiced
 298 nursing as a registered professional nurse in a health care facility for at least two years
 299 in the five years preceding the date of the application, and such practice is
 300 documented by the applicant and approved by the board; provided, however, that for

301 an applicant ~~that~~ who does not meet the experience requirement of this subparagraph,
 302 the board shall require the applicant to complete a postgraduate preceptorship of at
 303 least 480 hours but not more than 640 hours, as determined by the board, arranged by
 304 the applicant under the oversight of a registered professional nurse where such
 305 applicant is transitioned into the role of a registered professional nurse. The
 306 preceptorship shall have prior approval of the board, and successful completion of the
 307 preceptorship shall be verified in writing by the preceptor.

308 (B) For purposes of this paragraph, the term 'health care facility' means an acute care
 309 inpatient facility, a long-term acute care facility, an ambulatory surgical center or
 310 obstetrical facility ~~as defined in Code Section 31-6-2~~, and a skilled nursing facility, so
 311 long as such skilled nursing facility has 100 beds or more and provides health care to
 312 patients with similar health care needs as those patients in a long-term acute care
 313 facility;"

314 **SECTION 19.**

315 Code Section 50-13-42 of the Official Code of Georgia Annotated, relating to the
 316 applicability of the Administrative Procedure Act, is amended by revising subsection (a) as
 317 follows:

318 "(a) In addition to those agencies expressly exempted from the operation of this chapter
 319 under paragraph (1) of Code Section 50-13-2, this article shall not apply to the
 320 Commissioner of Agriculture, the Public Service Commission, ~~the Certificate of Need~~
 321 ~~Appeal Panel~~, or the Department of Community Health, unless specifically provided
 322 otherwise for certain programs or in relation to specific laws, or to the Department of Labor
 323 with respect to unemployment insurance benefit hearings conducted under the authority of
 324 Chapter 8 of Title 34. Such exclusion does not prohibit such office or agencies from
 325 contracting with the Office of State Administrative Hearings on a case-by-case basis."

326 **SECTION 20.**

327 Code Section 50-26-19 of the Official Code of Georgia Annotated, relating to financing
 328 acquisition, construction, and equipping of health care facilities, is amended by revising
 329 subsection (c) as follows:

330 "~~(c) The authority may not finance a project for any participating provider unless the~~
 331 ~~Department of Community Health, or any successor thereof, has issued a certificate of need~~
 332 ~~or comparable certification of approval to the participating provider for the project to be~~
 333 ~~financed by the authority if the acquisition of such project by the participating provider~~
 334 ~~would require a certificate of need or comparable certification of approval under Chapter~~
 335 ~~6 of Title 31."~~

336

SECTION 21.

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