

Senate Bill 158

By: Senators Watson of the 1st, Kennedy of the 18th, Cowser of the 46th, Jackson of the 2nd, Albers of the 56th 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 create additional exemptions from the certificate  
3 of need requirement; to create a certificate of need process for freestanding emergency  
4 services; to provide for department application standards for freestanding emergency  
5 services; to provide for additional exemptions from certificate of need for hospital  
6 expenditures, multi-specialty surgical centers, and the sale of single specialty surgery centers;  
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health  
11 planning and development, is amended in Code Section 31-6-2, relating to definitions, by  
12 adding new paragraphs to read as follows:

13 "(16.1) 'Freestanding emergency service' means an emergency service that is structurally  
14 separate and distinct from a hospital."

15 "(32.1) 'Rural restriction area' means a county that is served by a single hospital with no  
16 more than 100 inpatient beds."

17 **SECTION 2.**

18 Said chapter is further amended in Code Section 31-6-40, relating to certificate of need  
19 required for new institutional health services and exemption, by revising subsection (d) as  
20 follows:

21 "(d)(1) A county without a hospital shall be deemed to have a need for a freestanding  
22 emergency service and only one freestanding emergency service shall be operated in each  
23 county. Applications for a certificate of need for a freestanding emergency service shall  
24 be filed no later than December 31, 2017. If multiple applications are received during  
25 such period, the department shall competitively review the applications using criteria

26 including service delivery, financial soundness, staff qualifications, and local support for  
27 each applicant. In the event the certificate of need granted to a freestanding emergency  
28 service is not implemented or the service closes, the department shall accept applications  
29 for a freestanding emergency service in the county at issue.

30 (2) A certificate of need issued to a destination cancer hospital shall authorize the beds  
31 and all new institutional health services of such destination cancer hospital. As used in  
32 this ~~subsection~~ paragraph, the term 'new institutional health service' shall have the same  
33 meaning provided for in subsection (a) of this Code section. A certificate of need shall  
34 only be issued to a destination cancer hospital that locates itself and all affiliated facilities  
35 within 25 miles of a commercial airport in this state with five or more runways. Such  
36 destination cancer hospital shall not be required to apply for or obtain additional  
37 certificates of need for new institutional health services related to the treatment of cancer  
38 patients, and such new institutional health services related to the treatment of cancer  
39 patients offered by the destination cancer hospital shall not be reviewed under any  
40 service-specific need methodology or rules except for those promulgated by the  
41 department for destination cancer hospitals. After commencing operations, in order to  
42 add an additional new institutional health service, a destination cancer hospital shall  
43 apply for and obtain an additional certificate of need under the applicable statutory  
44 provisions and any rules promulgated by the department for destination cancer hospitals,  
45 and such applications shall only be granted if the patient base of such destination cancer  
46 hospital is composed of at least 65 percent of out-of-state patients for two consecutive  
47 years. The department may apply rules for a destination cancer hospital only for those  
48 services that the department determines are to be used by the destination cancer hospital  
49 in connection with the treatment of cancer. In no case shall destination cancer hospital  
50 specific rules be used in the case of an application for open heart surgery, perinatal  
51 services, cardiac catheterization, and other services deemed by the department to be not  
52 reasonably related to the diagnosis and treatment of cancer; provided, however, that the  
53 department shall apply the destination cancer hospital specific rules if a destination  
54 cancer hospital applies for services and equipment required for it to meet federal or state  
55 laws applicable to a hospital. If such destination cancer hospital cannot show a patient  
56 base of a minimum of 65 percent from outside of this state, then its application for any  
57 new institutional health service shall be evaluated under the specific statutes and rules  
58 applicable to that particular service. If such destination cancer hospital applies for a  
59 certificate of need to add an additional new institutional health service before  
60 commencing operations or completing two consecutive years of operation, such applicant  
61 may rely on historical data from its affiliated entities, as set forth in paragraph (2) of  
62 subsection (b.1) of Code Section 31-6-42. Because destination cancer hospitals provide

63 services primarily to out-of-state residents, the number of beds, services, and equipment  
 64 destination cancer hospitals use shall not be counted as part of the department's inventory  
 65 when determining the need for those items by other providers. No person shall be issued  
 66 more than one certificate of need for a destination cancer hospital. Nothing in this Code  
 67 section shall in any way require a destination cancer hospital to obtain a certificate of  
 68 need for any purpose that is otherwise exempt from the certificate of need requirement.  
 69 Beginning January 1, 2010, the department shall not accept any application for a  
 70 certificate of need for a new destination cancer hospital; provided, however, that all other  
 71 provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic  
 72 equipment shall be applicable to an existing destination cancer hospital."

73 **SECTION 3.**

74 Said chapter is further amended in Code Section 31-6-42, relating to qualifications for  
 75 issuance of certificate, by adding a new subsection to read as follows:

76 "(b.3) In the case of applications for construction, development, or establishment of a  
 77 freestanding emergency service, the applicable considerations as to the need for such  
 78 service shall not include paragraphs (1), (2), (3), (8), (9), (11), (12), (14), and (17) of  
 79 subsection (a) of this Code section but shall include paragraphs (4), (5), (6), (7), (10), (13),  
 80 and (15) of subsection (a) of this Code section;"

81 **SECTION 4.**

82 Said chapter is further amended in Code Section 31-6-47, relating to exemptions from  
 83 chapter, by adding new paragraphs to read as follows:

84 "(10.2) All expenditures by a hospital with a certificate of need except for expenditures  
 85 related to the increase of more than 10 percent in the number of inpatient beds;"

86 "(19.1) Any multi-specialty ambulatory surgical center not located in a rural restriction  
 87 area that is the sole ambulatory surgical center owned by a multi-specialty group practice  
 88 or its members that has at least 25 physicians as members or employed by the group, has  
 89 been in operation for no less than five years, and is a Medicaid provider:

90 (A) Is the only multi-specialty ambulatory surgical center in the county owned by the  
 91 group practice and has two or fewer operating rooms; provided, however, that a center  
 92 exempt pursuant to this paragraph shall be required to obtain a certificate of need in  
 93 order to add any additional operating rooms;

94 (B) Has a hospital affiliation agreement with a hospital within a reasonable distance  
 95 from the facility or the medical staff at the center has admitting privileges or other  
 96 acceptable documented arrangements with such hospital to ensure the necessary backup  
 97 for the center for medical complications. The center shall have the capability to transfer

98 a patient immediately to a hospital within a reasonable distance from the facility with  
 99 adequate emergency room services. Hospitals shall not unreasonably deny a transfer  
 100 agreement or affiliation agreement to the center;

101 (C)(i) Provides care to Medicaid beneficiaries and, if the facility provides medical  
 102 care and treatment to children, to PeachCare for Kids beneficiaries and provides  
 103 uncompensated indigent and charity care in an amount equal to or greater than 4.5  
 104 percent of its adjusted gross revenue; or

105 (ii) If the center is not a participant in Medicaid or the PeachCare for Kids Program,  
 106 provides uncompensated care to Medicaid beneficiaries and, if the facility provides  
 107 medical care and treatment to children, to PeachCare for Kids beneficiaries,  
 108 uncompensated indigent and charity care, or both in an amount equal to or greater  
 109 than 9 percent of its adjusted gross revenue; and

110 (D) Provides annual reports in the same manner and in accordance with Code  
 111 Section 31-6-70.

112 Noncompliance with any condition of this paragraph shall result in a monetary penalty  
 113 in the amount of the difference between the services which the center is required to  
 114 provide and the amount actually provided and may be subject to revocation of its  
 115 exemption status by the department for repeated failure to pay any fines or moneys due  
 116 to the department or for repeated failure to produce data as required by Code Section  
 117 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of  
 118 Title 50, the "Georgia Administrative Procedure Act." The dollar amount specified in  
 119 this paragraph shall be adjusted annually by an amount calculated by the department to  
 120 reflect inflation, which may be calculated by multiplying such dollar amount (as adjusted  
 121 for the preceding year) by the annual percentage of change in the composite index of  
 122 construction material prices, or its successor or appropriate replacement index, if any,  
 123 published by the United States Department of Commerce for the preceding calendar year,  
 124 commencing on July 1, 2009, and on each anniversary thereafter of publication of the  
 125 index. The department shall immediately institute rule-making procedures to adopt such  
 126 adjusted dollar amounts. In calculating the dollar amounts of a proposed project for  
 127 purposes of this paragraph, the costs of all items subject to review by this chapter and  
 128 items not subject to review by this chapter associated with and simultaneously developed  
 129 or proposed with the project shall be counted, except for the expenditure or commitment  
 130 of or incurring an obligation for the expenditure of funds to develop certificate of need  
 131 applications, studies, reports, schematics, preliminary plans and specifications or working  
 132 drawings, or to acquire sites;

133 (19.2) Any single specialty ambulatory surgical center not located in a rural restriction  
 134 area that has operated under an exemption such as a letter of nonreviewability and (i) is

135 transferred or sold to a multi-specialty group or its members; and (ii) the center continues  
136 to operate as single specialty ambulatory surgery center;"

137 **SECTION 5.**

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