

Senate Bill 123

By: Senators Hill of the 6th, Jones of the 25th, Albers of the 56th, Ligon, Jr. of the 3rd, Cowsert of the 46th 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 eliminate the 65 percent out-of-state patient base
3 requirement for a destination cancer hospital for purposes of certificate of need; to eliminate
4 the 50 bed limitation on destination cancer hospitals; to provide that destination cancer
5 hospitals can increase bed capacity under certain conditions; to eliminate the limitation on
6 the number of destination cancer hospitals that can be issued a certificate of need; to provide
7 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 by revising paragraph (13) of Code Section 31-6-2,
12 relating to definitions, as follows:

13 ~~"(13) 'Destination cancer hospital' means an institution with a licensed bed capacity of~~
14 ~~50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care~~
15 ~~services to cancer inpatients and outpatients, by or under the supervision of physicians;~~
16 ~~and whose proposed annual patient base is composed of a minimum of 65 percent of~~
17 ~~patients who reside outside of the State of Georgia."~~

18 **SECTION 2.**

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

21 "(d) A certificate of need issued to a destination cancer hospital shall authorize the beds
22 and all new institutional health services of such destination cancer hospital. The bed
23 capacity of a destination cancer hospital may be increased in the same manner provided in
24 paragraph (15) of subsection (a) of Code Section 31-6-47 for other hospitals. As used in
25 this subsection, the term 'new institutional health service' shall have the same meaning

26 provided for in subsection (a) of this Code section. A certificate of need shall only be
27 issued to a destination cancer hospital that locates itself and all affiliated facilities within
28 25 miles of a commercial airport in this state with five or more runways. Such destination
29 cancer hospital shall not be required to apply for or obtain additional certificates of need
30 for new institutional health services related to the treatment of cancer patients, and such
31 new institutional health services related to the treatment of cancer patients offered by the
32 destination cancer hospital shall not be reviewed under any service-specific need
33 methodology or rules except for those promulgated by the department for destination
34 cancer hospitals. After commencing operations, in order to add an additional new
35 institutional health service, a destination cancer hospital shall apply for and obtain an
36 additional certificate of need under the applicable statutory provisions and any rules
37 promulgated by the department for destination cancer hospitals, ~~and such applications shall~~
38 ~~only be granted if the patient base of such destination cancer hospital is composed of at~~
39 ~~least 65 percent of out-of-state patients for two consecutive years.~~ The department may
40 apply rules for a destination cancer hospital only for those services that the department
41 determines are to be used by the destination cancer hospital in connection with the
42 treatment of cancer. In no case shall destination cancer hospital specific rules be used in
43 the case of an application for open heart surgery, perinatal services, cardiac catheterization,
44 and other services deemed by the department to be not reasonably related to the diagnosis
45 and treatment of cancer; provided, however, that the department shall apply the destination
46 cancer hospital specific rules if a destination cancer hospital applies for services and
47 equipment required for it to meet federal or state laws applicable to a hospital. ~~If such~~
48 ~~destination cancer hospital cannot show a patient base of a minimum of 65 percent from~~
49 ~~outside of this state, then its application~~ The application by a destination cancer hospital
50 for any new institutional health service shall be evaluated under the specific statutes and
51 rules applicable to that particular service. If such destination cancer hospital applies for
52 a certificate of need to add an additional new institutional health service before
53 commencing operations or completing two consecutive years of operation, such applicant
54 may rely on historical data from its affiliated entities, as set forth in paragraph (2) of
55 subsection (b.1) of Code Section 31-6-42. ~~Because destination cancer hospitals provide~~
56 ~~services primarily to out-of-state residents, the~~ The number of beds, services, and
57 equipment destination cancer hospitals use shall not be counted as part of the department's
58 inventory when determining the need for those items by other providers. No person shall
59 be issued more than one certificate of need for a destination cancer hospital. Nothing in
60 this Code section shall in any way require a destination cancer hospital to obtain a
61 certificate of need for any purpose that is otherwise exempt from the certificate of need
62 requirement. ~~Beginning January 1, 2010, the department shall not accept any application~~

63 ~~for a certificate of need for a new destination cancer hospital; provided, however, all other~~
 64 ~~provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic~~
 65 ~~equipment shall be applicable to an existing destination cancer hospital. Beginning July~~
 66 ~~1, 2017, the department shall accept applications for certificates of need for new destination~~
 67 ~~cancer hospitals.~~"

68 SECTION 3.

69 Said chapter is further amended by revising subsection (c) and by repealing subsection (c.1)
 70 of Code Section 31-6-40.1, relating to acquisition of health care facilities, penalty for failure
 71 to notify the department, limitation on applications, agreement to care for indigent patients,
 72 requirements for destination cancer hospitals, and notice and hearing provisions for penalties,
 73 as follows:

74 "(c) The department may require that any applicant for a certificate of need agree to
 75 provide a specified amount of clinical health services to indigent patients as a condition for
 76 the grant of a certificate of need; provided, however, that each facility granted a certificate
 77 of need by the department as a destination cancer hospital shall be required to provide
 78 uncompensated indigent or charity care for residents of Georgia which meets or exceeds
 79 3 percent of such destination cancer hospital's adjusted gross revenues and provide care to
 80 Medicaid beneficiaries and to veterans. A grantee or successor in interest of a certificate
 81 of need or an authorization to operate under this chapter which violates such an agreement
 82 or violates any conditions imposed by the department relating to such services, whether
 83 made before or after July 1, 2008, shall be liable to the department for a monetary penalty
 84 in the amount of the difference between the amount of services so agreed to be provided
 85 and the amount actually provided and may be subject to revocation of its certificate of
 86 need, in whole or in part, by the department pursuant to Code Section 31-6-45. Any
 87 penalty so recovered shall be paid into the state treasury."

88 SECTION 4.

89 Said chapter is further amended by revising subsection (b.1) of Code Section 31-6-42,
 90 relating to qualifications for issuance of a certificate of need, as follows:

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

95 (1) Paragraphs (4), (5), (6), (9), (12), (13), (15), (16), and (17) of subsection (a) of this
 96 Code section;

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

101 (3) That the proposed new destination cancer hospital ~~states its intent to~~ certifies that it
102 will provide uncompensated indigent or charity care which shall meet or exceed 3 percent
103 of its adjusted gross revenues and provide care to Medicaid beneficiaries and to veterans;

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

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

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

111 (6.1) That the proposed new destination cancer hospital shall enter into a hospital
112 transfer agreement with one or more hospitals within a reasonable distance from the
113 destination cancer hospital or the medical staff at the destination cancer hospital has
114 admitting privileges or other acceptable documented arrangements with such hospital or
115 hospitals to ensure the necessary backup for the destination cancer hospital for medical
116 complications. The destination cancer hospital shall have the capability to transfer a
117 patient immediately to a hospital within a reasonable distance from the destination cancer
118 hospital with adequate emergency room services. Hospitals shall not unreasonably deny
119 a transfer agreement with the destination cancer hospital. In the event that a destination
120 cancer hospital and another hospital cannot agree to the terms of a transfer agreement as
121 required by this paragraph, the department shall mediate between such parties for a period
122 of no more than 45 days. If an agreement is still not reached within such 45 day period,
123 the parties shall enter into binding arbitration conducted by the department;

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

133 (8) That the destination cancer hospital shall express its intent to participate in medical
 134 staffing work force development activities."

135 **SECTION 5.**

136 Said chapter is further amended by revising subsection (a) of Code Section 31-6-45, relating
 137 to revocation of certificate of need, enforcement of chapter, and regulatory investigations and
 138 examinations, as follows:

139 "(a) The department may revoke a certificate of need, in whole or in part, after notice to
 140 the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the
 141 'Georgia Administrative Procedure Act,' for the following reasons:

142 (1) Failure to comply with the provisions of Code Section 31-6-41;

143 (2) The intentional provision of false information to the department by an applicant in
 144 that applicant's application;

145 (3) Repeated failure to pay any fines or moneys due to the department;

146 (4) Failure to maintain minimum quality of care standards that may be established by the
 147 department;

148 (5) Failure to participate as a provider of medical assistance for Medicaid purposes
 149 pursuant to Code Section 31-6-45.2 or any other applicable Code section; or

150 (6) The failure to submit a timely or complete report within 180 days following the date
 151 the report is due pursuant to Code Section 31-6-70; or

152 ~~(7) Failure of a destination cancer hospital to meet an annual patient base composed of
 153 a minimum of 65 percent of patients who reside outside this state for three calendar years
 154 in any five-year period.~~

155 The department may not, however, revoke a certificate of need if the applicant changes the
 156 defined location of the project within the same county less than three miles from the
 157 location specified in the certificate of need for financial reasons or other reasons beyond
 158 its control, including, but not limited to, failure to obtain any required approval from
 159 zoning or other governmental agencies or entities, provided that such change in location
 160 is otherwise consistent with the considerations and rules applied in the evaluation of the
 161 project."

162 **SECTION 6.**

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