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Modifications to Georgia Certificate of Need Statute

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Georgia Governor Brian Kemp signed House Bill 1339 (the "Law") into law on April 19, 2024. The Law revised existing provisions of the Georgia Certificate of Need statute (the "Statute"). The Law became effective July 1, 2024. Among the more significant amendments to the Statute included in the Law are the following:

I. Single Specialty and Joint Venture Ambulatory Surgery Centers.

The Law amended provisions of the Statute relating to physician-owned single specialty and joint venture single specialty ambulatory surgical centers operating under LNRs/DET-ASCs as follows:

1. Amended the definitions of "Single Specialty Ambulatory Surgical Center" and "Joint Venture Ambulatory Surgical Center" by adding a sentence allowing surgeons who are not owners and/or employees of the single specialty physician group that is identified as the owner/operator or the joint venture partner of the ASC to perform procedures in the ASC, provided that the surgeon is of the same surgical specialty as the physician group that is associated with the surgery center.
2. Amended the above definitions by adding a sentence that makes it clear that the owner/operator of the surgery center may enter into a management and/or administrative services agreement and that such an arrangement will not adversely affect the validity of the LNR/DET-ASC.
3. Amended O.C.G.A Section 31-6-70(B)(i) and (ii) pertaining to indigent/charity care commitments to provide that the Department shall establish minimum indigent/charity care commitments "on and after January 1, 2026," and that the Department will review such commitments every 12 months thereafter.

II. Capital Expenditure and Equipment Expenditure Thresholds.

The Law deleted all references to capital expenditure and equipment expenditure thresholds throughout the Statute. As a result of these amendments, the following are now exempt from CON review, regardless of the amount of the capital expenditure or the cost or fair market value of the diagnostic or therapeutic equipment:

1. Any capital expenditure by a "health care facility," regardless of the amount, is no longer

included in the definition of a “new institutional health service” and, therefore, is no longer subject to CON review. (O.C.G.A. Section 31-6-40(a)(2)).
2. A health care facility (other than a physician group or hospital) may repair or replace any diagnostic, therapeutic or other imaging equipment, regardless of the cost, without CON review. (O.C.G.A. Section 31-6-47(a)(10)).
3. A proposed project to renovate, remodel, refurbish or upgrade a health care facility, regardless of the cost, is exempt from CON review. (O.C.G.A. Section 31-6-47(a)(27)).
4. The acquisition or lease of diagnostic, therapeutic or other imaging equipment by a physician group or hospital, regardless of the cost, is exempt from CON review. (O.C.G.A. Section 31-6-47(a)(28)).
5. A proposed project by a hospital to expand or add clinical health services specified in O.C.G.A. Section 31-6-47(a)(29)(A) at the hospital’s primary campus, or to relocate such services from one location to another on the hospital’s primary campus, is not subject to CON review regardless of the cost. (O.C.G.A. Section 31-6-47(a)(29)).

III. Revisions to Existing CON Exemptions.

The Law also revised several existing CON exemptions set forth in the Statute, as follows.

1. A hospital may increase its bed capacity the greater of (i) 10 beds, or (ii) 20% of its licensed bed capacity, in any consecutive three-year period, if the hospital maintained an overall occupancy rate of greater than 60% over the preceding 12-month period. (O.C.G.A. Section 31-6-47(a)(15)).
2. A health care facility (other than a SNF, ICTF or a “micro-hospital”) located in an urban county may relocate the facility within a 5-mile radius of the existing facility, so long as the facility does not offer new or expanded clinical health services in the new location. (O.C.G.A. Section 31-6-47(a)(24)).
3. A medical-surgical hospital that meets all the criteria set forth in O.C.G.A. Section 31-6-47(a)(26)(A) may relocate and replace the facility within a 5-mile radius of the facility and within the same county in which the facility is located, provided the requirements of O.C.G.A. Section 31-6-47(a)(26)(B) are also met.

IV. New Exemptions to CON.

In addition to the foregoing, the Law added new exemptions for the following types of health care facilities and clinical health services:

1. New or expanded psychiatric or substance abuse inpatient programs or state-funded beds that serve Medicaid and uninsured patients (O.C.G.A. Section 31-6-47(a)(30)).
2. New or expanded basic perinatal services offered by a rural hospital (O.C.G.A. Section 31-6-47(a)(31)).
3. New or expanded “birthing centers” (O.C.G.A. Section 31-6-47(a)(31.1)).
4. New acute care hospitals located in a rural county. (O.C.G.A. Section 31-6-47(a)(32)).
5. New acute care hospitals located in a rural county where a short stay acute care hospital has been closed for more than 12 months. (O.C.G.A. Section 31-6-47(a)(33)).
6. New short stage general hospitals located within a county with a population of more than 1 million people, to address an underserved population previously served by a hospital that closed within 48 months of the filing of the determination request for the proposed new hospital. (O.C.G.A. Section 31-6-47(a)(34)).
7. The transfer of beds from the primary campus of one acute care hospital to the primary

campus of another general acute care hospital within the same hospital system, which is located within a 15-mile radius of the transferring hospital. (O.C.G.A. Section 31-6-47(a)(35)).

V. Changes to CON Review and Appeal Process.

The Law also modified the CON review and appeal process in several respects, as follows:

1. Amended O.C.G.A. Section 31-6-43(a) to require the submission of a letter of intent to file a CON application at least 25 days prior to the submission of the application (reduced from 30 days).
2. Amended O.C.G.A. Section 31-6-4(43)(b) to eliminate the process of receiving, reviewing and "deeming" a CON application "complete;" henceforth, the application is "deemed complete" upon receipt of the application by the Department. As a result, the 120-day review cycle and 30-day deadline for the submission of notices of opposition will commence upon the date the Department received the application.
3. Amended O.C.G.A. Section 31-6-44 to eliminate the appeal of a hearing officer decision to the DCH Commissioner as the final step of the administrative review process; as a result, the decision of a hearing officer will constitute the final administrative decision of the Department.

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