

Senate Bill 539

By: Senators Thomas of the 54th, Carter of the 13th, Unterman of the 45th and Goggans of the 7th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 3 of Chapter 6 of Title 31 of the Official Code of Georgia Annotated,
2 relating to the certificate of need program, so as to exempt continuing care retirement
3 communities from certificate of need requirements under certain conditions; to provide for
4 related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 3 of Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to the
8 certificate of need program, is amended by revising Code Section 31-6-47, relating to
9 exemptions from the certificate of need program, by revising subsection (a) as follows:

10 "(a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to:

- 11 (1) Infirmaries operated by educational institutions for the sole and exclusive benefit of
12 students, faculty members, officers, or employees thereof;
- 13 (2) Infirmaries or facilities operated by businesses for the sole and exclusive benefit of
14 officers or employees thereof, provided that such infirmaries or facilities make no
15 provision for overnight stay by persons receiving their services;
- 16 (3) Institutions operated exclusively by the federal government or by any of its agencies;
- 17 (4) Offices of private physicians or dentists whether for individual or group practice,
18 except as otherwise provided in subparagraphs (G) and (H) of paragraph (14) of Code
19 Section 31-6-2;
- 20 (5) Christian Science sanatoriums operated or listed and certified by the First Church of
21 Christ Scientist, Boston, Massachusetts;
- 22 (6) Site acquisitions for health care facilities or preparation or development costs for
23 such sites prior to the decision to file a certificate of need application;
- 24 (7) Expenditures related to adequate preparation and development of an application for
25 a certificate of need;
- 26 (8) The commitment of funds conditioned upon the obtaining of a certificate of need;

1 (9) Expenditures for the acquisition of existing health care facilities by stock or asset
2 purchase, merger, consolidation, or other lawful means unless the facilities are owned or
3 operated by or on behalf of a:

4 (A) Political subdivision of this state;

5 (B) Combination of such political subdivisions; or

6 (C) Hospital authority, as defined in Article 4 of Chapter 7 of this title;

7 (9.1) Expenditures for the restructuring of or for the acquisition by stock or asset
8 purchase, merger, consolidation, or other lawful means of an existing health care facility
9 which is owned or operated by or on behalf of any entity described in subparagraph (A),
10 (B), or (C) of paragraph (9) of this subsection only if such restructuring or acquisition is
11 made by any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this
12 subsection;

13 (10) Expenditures for the minor repair of a health care facility, or parts thereof or
14 services provided or equipment used therein, or replacement of equipment, including, but
15 not limited to, CT scanners;

16 (11) Capital expenditures otherwise covered by this chapter required solely to eliminate
17 or prevent safety hazards as defined by federal, state, or local fire, building,
18 environmental, occupational health, or life safety codes or regulations, to comply with
19 licensing requirements of the Department of Human Resources, or to comply with
20 accreditation standards of the Joint Commission on Accreditation of Hospitals;

21 (12) Cost overruns whose percentage of the cost of a project is equal to or less than the
22 cumulative annual rate of increase in the composite construction index, published by the
23 Bureau of the Census of the Department of Commerce, of the United States government,
24 calculated from the date of approval of the project;

25 (13) Transfers from one health care facility to another such facility of major medical
26 equipment previously approved under or exempted from certificate of need review,
27 except where such transfer results in the institution of a new clinical health service for
28 which a certificate of need is required in the facility acquiring said equipment, provided
29 that such transfers are recorded at net book value of the medical equipment as recorded
30 on the books of the transferring facility;

31 (14) New institutional health services provided by or on behalf of health maintenance
32 organizations or related health care facilities in circumstances defined by the department
33 pursuant to federal law;

34 (15) Increases in the bed capacity of a hospital up to ten beds or 10 percent of capacity,
35 whichever is less, in any consecutive two-year period, in a hospital that has maintained
36 an overall occupancy rate greater than 85 percent for the previous 12 month period; ~~and~~

1 (16) Capital expenditures for a project otherwise requiring a certificate of need if those
 2 expenditures are for a project to remodel, renovate, replace, or any combination thereof,
 3 a medical-surgical hospital and:

4 (A) That hospital:

- 5 (i) Has a bed capacity of not more than 50 beds;
- 6 (ii) Is located in a county in which no other medical-surgical hospital is located;
- 7 (iii) Has at any time been designated as a disproportionate share hospital by the
 8 Department of Community Health; and
- 9 (iv) Has at least 45 percent of its patient revenues derived from medicare, Medicaid,
 10 or any combination thereof, for the immediately preceding three years; and

11 (B) That project:

12 (i) Does not result in any of the following:

- 13 (I) The offering of any new clinical health services;
- 14 (II) Any increase in bed capacity;
- 15 (III) Any redistribution of existing beds among existing clinical health services; or
- 16 (IV) Any increase in capacity of existing clinical health services;

17 (ii) Has at least 80 percent of its capital expenditures financed by the proceeds of a
 18 special purpose county sales and use tax imposed pursuant to Article 3 of Chapter 8
 19 of Title 48; and

20 (iii) Is located within a three-mile radius of and within the same county as the
 21 hospital's existing facility; and

22 (17) Continuing care retirement communities, provided that the skilled nursing
 23 component of the facility is for the exclusive use of residents of the continuing care
 24 retirement community and that a written exemption is obtained from the department;
 25 provided, however, that new sheltered nursing home beds may be used on a limited basis
 26 by persons who are not residents of the continuing care retirement community for a
 27 period up to five years after the date of issuance of the initial nursing home license, but
 28 such beds shall not be eligible for Medicaid reimbursement. For the first year, the
 29 continuing care retirement community sheltered nursing facility may utilize not more
 30 than 50 percent of its licensed beds for patients who are not residents of the continuing
 31 care retirement community. In the second year of operation, the continuing care
 32 retirement community shall allow not more than 40 percent of its licensed beds for new
 33 patients who are not residents of the continuing care retirement community. In the third
 34 year of operation, the continuing care retirement community shall allow not more than
 35 30 percent of its licensed beds for new patients who are not residents of the continuing
 36 care retirement community. In the fourth year of operation, the continuing care
 37 retirement community shall allow not more than 20 percent of its licensed beds for new

1 patients who are not residents of the continuing care retirement community. In the fifth
2 year of operation, the continuing care retirement community shall allow not more than
3 10 percent of its licensed beds for new patients who are not residents of the continuing
4 care retirement community. At no time during the first five years shall the continuing care
5 retirement community sheltered nursing facility occupy more than 50 percent of its
6 licensed beds with patients who are not residents under contract with the continuing care
7 retirement community. At the end of the five-year period, the continuing care retirement
8 community sheltered nursing facility shall be utilized exclusively by residents of the
9 continuing care retirement community, and at no time shall a resident of a continuing care
10 retirement community be denied access to the sheltered nursing facility. At no time shall
11 any existing patient be forced to leave the continuing care retirement community to
12 comply with this paragraph. The department is authorized to promulgate rules and
13 regulations regarding the use and definition of 'sheltered nursing facility' in a manner
14 consistent with this Code section. As used in this paragraph, the term 'continuing care
15 retirement community' means an organization, whether operated for profit or not, which
16 owner or operator undertakes to provide shelter, food, and either nursing care or personal
17 services, whether such nursing care or personal services are provided in the facility or in
18 another setting, and other services, as designated by agreement, to an individual not
19 related by consanguinity or affinity to such owner or operator providing such care
20 pursuant to an agreement for a fixed or variable fee, or for any other remuneration of any
21 type, whether fixed or variable, for the period of care, payable in a lump sum or lump
22 sum and monthly maintenance charges or in installments. Agreements to provide
23 continuing care include agreements to provide care for any duration, including
24 agreements that are terminable by either party."

25 SECTION 2.

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