



## Georgia General Assembly Once Again Considered CON Repeal

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A bill introduced last week in the Georgia General Assembly sought to eliminate the state's Certificate of Need ("CON") program, which has been in place since 1979.<sup>1</sup> The CON program's goals are: "(1) to measure and define need, (2) to control costs, and (3) to guarantee access to healthcare services."<sup>2</sup> However, the representatives who introduced the bill advocated that "the free market provides the best means of providing the highest quality care at the lowest possible cost."<sup>3</sup> Opponents of the bill said it would be harmful to hospitals and other providers. Maggie Gill, the president and CEO of Memorial Health in Savannah, said that "without the CON process, providers would have the ability to selectively offer only the most profitable services."<sup>4</sup> Ms. Gill went on to state that if providers could selectively offer only those services, there would be a disproportionate number of uninsured and underinsured patients seeking care at safety-net hospitals, which would directly impact the ability to continue to provide resource-intensive services, like emergency services.<sup>5</sup> The bill, which stalled in committee and did not reach the full house for a vote on Monday, February 29, 2016, sought to repeal the CON program effective December 31, 2017.

The primary substantive change would have been repealing Title 31, Chapter 6 of the Official Code of Georgia Annotated (Georgia Code), titled "State Health Planning and Development." A key provision within that Chapter provides "[o]n and after July 1, 2008, any new institutional health service shall be required to obtain a certificate of need pursuant to this chapter."<sup>6</sup> The provision goes on to state that a CON is required for the construction, development, or other establishment of a new health care facility, any expenditure<sup>7</sup> by or on behalf of a health care facility in excess of a certain threshold, and multiple other project-types and expenditures. A "health care facility" is defined as:

[H]ospitals; destination cancer hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical centers or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers . . .<sup>8</sup>

These provisions, along with many other Georgia Code sections, would have disappeared if H.B. 1055 became law. Other significant changes to the Georgia Code would have included:

- Deleting sections within the "Rural Hospital Assistance Act" such that the amount granted to any qualified hospital will not be tied to CON expenditure threshold;
- Removing sections throughout the Georgia Code that explicitly exempt certain provider

<sup>1</sup> *Certificate of Need (CON)*, GEORGIA DEPARTMENT OF COMMUNITY HEALTH, <http://dch.georgia.gov/certificate-need-con> (last visited Feb. 23, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> H.B. 1055, Reg. Sess. (Georgia 2016), <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/1055>.

<sup>4</sup> Andy Miller, *Proposal Seeks End to Georgia Regulation Guiding Building of Hospitals*, THE ATLANTA JOURNAL-CONSTITUTION, Feb. 22, 2016, <http://www.myajc.com/news/news/state-regional-govt-politics/proposal-seeks-end-to-georgia-regulation-guiding-b/nqWHX/>.

<sup>5</sup> *Id.*

<sup>6</sup> O.C.G.A. § 31-6-40(a).

<sup>7</sup> *Id.*

<sup>8</sup> O.C.G.A. § 31-6-2(17).

types, such as hospice providers<sup>9</sup> and private home care providers,<sup>10</sup> from obtaining a CON (an exemption would not be required since no CON program would exist);

- Eliminating provisions requiring that a home health agency obtain a favorable need determination before obtaining licensure;<sup>11</sup>
- Deleting definitions throughout the Georgia Code that reference provisions within Title 31, Chapter 6;
- Removing a requirement that the Georgia Housing and Finance Authority finance a project for a participating provider only if the Department of Community Health has issued a certificate of need, if such a certificate is required;<sup>12</sup>

H.B. 1055 would also have made notable additions to Title 31, Chapter 7, titled “Regulation and Construction of Hospitals and Other Health Care Facilities”:

- The following definition of “specialty hospital” would have been added and notably an exception would have been made for a destination cancer hospital: “a hospital that is primarily or exclusively engaged in the care and treatment of one of the following: patients with a cardiac condition, patients with an orthopedic condition, patients receiving a surgical procedure, or patients receiving any other specialized category of services defined by the [Department of Community Health]. Such term shall not include a destination cancer hospital or a psychiatric hospital.”
- A requirement would have been added that would include, as a part of the facility permitting process, a pledge to provide some care to Georgia’s poor and indigent patients, including a “written commitment to offer services for indigent and charity patients at a standard that meets or exceeds 3 percent of annual adjusted gross revenues for the general hospital, destination cancer hospital, specialty hospital, or diagnostic and treatment center.”

The bill stalled in committee and did not reach the full house for a vote. Other efforts to repeal CON laws in Georgia have also been blocked in the legislature in the past. Though the bill did not move forward, the provisions above remain relevant within the health care community because they are likely to be revisited.

<sup>9</sup> See O.C.G.A. § 31-7-179.

<sup>10</sup> See O.C.G.A. § 31-7-307.

<sup>11</sup> See O.C.G.A. § 31-7-155.

<sup>12</sup> See O.C.G.A. § 50-26-19.

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