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## HEALTH Package of bills related to Georgia's Certificate of Need program which would have affected various titles

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**THE FOLLOWING ARTICLE ADDRESSES A  
PACKAGE OF BILLS RELATED TO GEORGIA'S  
CERTIFICATE OF NEED PROGRAM WHICH  
WOULD HAVE AFFECTED A VARIETY OF  
ARTICLES IN THE OFFICIAL CODE OF GEORGIA  
ANNOTATED.**

\* \* \*

**HEALTH**

***State Health Planning and Development: Amend Chapter 6 of Title  
31 of the Official Code of Georgia Annotated, Relating to  
Exemptions from State Health Planning and Development  
Provisions, so as to Provide Findings of the General Assembly;  
Provide an Exemption for the Development and Offering of New  
Institutional Health Services by Acute Cancer Hospitals with 50 or  
Fewer Beds that Specialize in Advanced Cancer Treatment and that  
Have a Majority of Their Patients Originating from Outside the  
State of Georgia; Provide for Related Matters; Repeal Conflicting  
Laws; and for Other Purposes***

**BILL NUMBER:**

**SB 53**

**SUMMARY:**

The bill would have added an exemption for acute cancer hospitals with fifty or fewer beds from the state's certificate of need requirements.

## HEALTH

***State Health Planning and Development: Amend Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Enact the “Certificate of Need Reformation Act of 2007”; Provide for Transition; Amend Various Other Titles of the Official Code of Georgia Annotated so as to Revise Provisions for Purposes of Conformity; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

SB 164

SUMMARY:

The bill would have extensively revised the state’s certificate of need program.

## HEALTH

***State Health Planning and Development: Amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, Relating to State Health Planning and Development, so as to Revise the Definition of “New Institutional Health Service” for Purposes of Certificate of Need Requirements; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

SB 189/HB 376

SUMMARY:

The bill would have revised the definition of “new institutional health service” to wholly exempt medical offices where surgery is performed by private physicians, or a group of private physicians, who are of a single specialty, regardless of the amount of capital expenditures required for the health service, from certificate of need requirements.

## HEALTH

***State Health Planning and Development: Amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Provide for Extensive Revision of the Certificate of Need Program; Revise and Add Definitions; Revise the Declaration of Policy for State Health Planning; Revise Threshold Amounts for Expenditures; Revise the Composition and Duties of the Health Strategies Council; Revise the Duties of the Department of Community Health; Revise Provisions Relating to Existing Exemptions; Provide for Set Times to Accept Applications for Capital Projects; Require Ambulatory Surgical Centers to Provide Indigent Care; Provide for the Establishment of Minimum Quality Standards as a Consideration for Approval of a Certificate of Need; Provide for a Letter of Intent for Proposed New Clinical Health Services; Amend Various Other Titles of the O.C.G.A. so as to Revise Provisions for Purposes of Conformity; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 210

SUMMARY:

The bill would have extensively revised the certificate of need program. It would have abolished the Health Planning and Review Board and reassigned its hearing functions and “pending matters” to the Commissioner of the Department of Community Health and transferred certain other functions from the Health Strategies Council to the Board of Community Health. It would have required ambulatory surgical centers to provide indigent care; set minimum quality standards for certificate of need approval; imposed a temporary moratorium on issuing certificates of

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need for new health services; and added  
other requirements and exemptions.

## HEALTH

***State Health Planning and Development: Amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, Relating to Exemptions from State Health Planning and Development Provisions, so as to Provide Findings of the General Assembly; Provide an Exemption for the Development and Offering of New Institutional Health Services by Acute Cancer Hospitals with 50 or Fewer Beds that Specialize in Advanced Cancer Treatment and that Have a Majority of Their Patients Originating from Outside the State of Georgia; Require the Provision of a Certain Amount of Uncompensated Indigent Care for the Exemption to be Applicable; Provide a Definition of a Certain Term; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 249

SUMMARY:

The bill would have provided an exemption from certificate of need requirements for certain acute cancer treatment hospitals with fifty or fewer beds that have 65% of their patients coming from outside the state. The exemption would have been contingent on the hospital's provision of a certain amount of uncompensated indigent care.

## HEALTH

***State Health Planning and Development: Amend Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Repeal the Certificate of Need Program; Provide for Legislation Findings; Repeal Chapter 6 Regarding State Health Planning and Development; Eliminate References to the Certificate of Need Program; Remove the Requirement for a Certificate of Need for Certain Facilities; Amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, Relating to Medical Assistance Generally, so as to Eliminate Reference to Interest on Penalties Related to Certificate of Need; Amend Chapter 26 of Title 50 of the Official Code of Georgia Annotated, Relating to Housing and Finance Authority, so as to Remove the Requirement for a Certificate of Need of a Project Financed by an Authority; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 263

SUMMARY:

The bill would have eliminated the certificate of need program altogether. It listed legislative findings supporting repeal of the program.



## HEALTH

***State Health Planning and Development: Amend Title 31 of the Official Code of Georgia Annotated, Relating to Definitions Relative to State Health Planning and Development, so as to Revise the Definition of “New Institutional Health Service”; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 337

SUMMARY:

The bill would have revised the definition of “new institutional health service” to ensure that an exemption from certificate of need requirements for offices of a private physician, or a group of private physicians, who specialize in a single surgical service includes physicians who specialize in general surgery.

## HEALTH

***State Health Planning and Development: Amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, Relating to State Health Planning and Development, so as to Enact the “Health Care Competition, Transparency and Improvement Act”; Provide for Extensive Revision of the Certificate of Need Program; Revise the Declaration of Policy for State Health Planning; Revise and Add Definitions; Establish the Health Strategies Advisory Council as the Successor to the Health Strategies Council; Provide for Its Composition and Duties; Revise Provisions Relating to the Department of Community Health; Provide for a Temporary Moratorium on Certificate of Need Applications Under Certain Circumstances; Provide for Penalties, Sanctions, and Enforcement Actions Relating to Certificates of Need; Provide for Related Matters; to Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 568

SUMMARY:

The bill would have provided a comprehensive overhaul of the certificate of need process in Georgia. The bill incorporated many of the suggestions made by the Governor’s Commission on the Efficacy of the Certificate of Need Program, creating a new council with reduced powers to replace the Health Strategies Council and alter requirements for provision of charity and indigent services. It also would have created an exemption for certain diagnostic imaging services.

## HEALTH

***State Health Planning and Development: Amend Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Provide for Extensive Revision of the Certificate of Need Program; Revise the Declaration of Policy for State Health Planning; Revise and Add Definitions; Revise the Composition and Duties of the Health Strategies Council; Revise the Duties of the Department of Community Health; Provide for Graduated Fines for Noncompliance with Notice Provisions; Revise Provisions Relating to the Scope and Validity of a Certificate of Need; Provide for Specific Conditions for the Issuance of a Certificates of Need; Provide for Related Matters; to Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes***

BILL NUMBER:

HB 581

SUMMARY:

The bill would have extensively revised the state's certificate of need program, altering the duties of the Health Strategies Council, imposing fines and penalties for noncompliance with the program, and imposing a temporary moratorium on the program, among other things.

### *History*

In 1946, Congress passed the Hill-Burton Act, which provided funds to states for the building of hospitals.<sup>1</sup> The funds provided in the Hill-Burton Act were conditioned on the states establishing hospital licensing laws.<sup>2</sup> Congress provided a model hospital licensing law based on the minimum standards established by the American College of Surgeons.<sup>3</sup> Each state, including Georgia,

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1. Karen A. Butler, Comment, *Health Care Quality Revolution: Legal Landmines for Hospitals and the Rise of the Critical Pathway*, 58 ALB. L. REV. 843, 845 (1995).

2. *Id.*

3. *Id.*

quickly established its own set of hospital licensing laws.<sup>4</sup> Included in the state-adopted licensing laws were provisions that required new healthcare facilities to fit into the state plan's requirements.<sup>5</sup> Such requirements were then reviewed by federal officials.<sup>6</sup>

In 1966, Congress enacted the 1972 Social Security Act, which fundamentally shaped modern licensing programs, including the current Georgia program.<sup>7</sup> Section 1122 of the 1972 Social Security Act provided that states must "review all capital expenditures when they exceeded \$100,000, when bed capacity changed, or when a 'substantial' change in services took place."<sup>8</sup> States that failed to properly implement section 1122 faced losing Medicare and Medicaid funding.<sup>9</sup> Section 1122's reach was limited, however, in that hospital services could be developed free of state or federal review if funds used for such purpose were entirely private.<sup>10</sup>

Then in 1974, Congress passed the National Health Planning and Resources Development Act.<sup>11</sup> This act required states to adopt Certificate of Need (CON) programs in order to continue receiving certain federal healthcare funds and required each state to establish a health planning agency that could review CON requests.<sup>12</sup> Therefore, most states dropped their previously adopted Section 1122 regulations and adopted CON programs pursuant to the National Health Planning and Resources Development Act.<sup>13</sup>

During the 1980s, a large movement away from government regulation and toward deregulation took hold, bringing with it the repeal of the National Health Planning and Resources Development Act in 1986.<sup>14</sup> However, many states' CON programs, including

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4. *Id.*

5. COMM'N ON THE EFFICACY OF THE CERTIFICATE OF NEED PROGRAM, AN ANALYSIS AND EVALUATION OF CERTIFICATE OF NEED REGULATION IN GEORGIA: FINAL REPORT TO THE GEORGIA GENERAL ASSEMBLY AND GOVERNOR PERDUE, at i (2006), available at [http://dch.georgia.gov/00/channel\\_title/0,2094,31446711\\_72483672,00.html](http://dch.georgia.gov/00/channel_title/0,2094,31446711_72483672,00.html) [hereinafter COMMISSION REPORT].

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. COMMISSION REPORT, *supra* note 5, at ii.

12. *Id.*

13. *Id.*

14. *Id.*

Georgia's, were strongly entrenched and survived the federal repeal.<sup>15</sup>

In 1982, the Georgia General Assembly adopted the current CON program in order "to ensure that adequate health care services and facilities are developed in an orderly and economical manner and are made available to all citizens and that only those health care services found to be in the public interest shall be provided in this state."<sup>16</sup> The program is administered by the Department of Community Health, which has among its enumerated functions:

- (1) To conduct the health planning activities of the state and to implement those parts of the state health plan which relate to the government of the state;
- (2) To prepare and revise a draft state health plan . . .
- (3) To assist the Health Strategies Council . . .
- (4) With the prior advice, comment, and recommendations of the Health Strategies Council . . . to adopt, promulgate, and implement rules and regulations sufficient to administer . . . the certificate of need program;
- (5) To define, by rule, the form, content, schedules, and procedures for submission of applications for certificates of need and periodic reports;
- . . .
- (8) To provide, by rule, for a reasonable and equitable fee schedule for certificate of need applications;
- (9) To grant, deny, or revoke a certificate of need . . .<sup>17</sup>

The Department of Community Health is also responsible for establishing fees and procedures for CON-related appeals.<sup>18</sup>

The CON program accomplishes its goal, generally, by limiting the creation of new health care facilities, or "new institutional health service[s]."<sup>19</sup> According to the CON program, "new institutional health service" covers any construction or expansion of a health care

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15. *Id.*

16. O.C.G.A. § 31-6-1 (2006).

17. O.C.G.A. § 31-6-21(b) (Supp. 2007).

18. *Id.*

19. O.C.G.A. § 31-6-40(b) (2006).

facility, including “[a]ny expenditure by or on behalf of a health care facility in excess of \$900,000.00 . . . [a]ny increase in the bed capacity of a health care facility . . . [t]he purchase or lease by or on behalf of a health care facility of diagnostic or therapeutic equipment with a value in excess of \$500,000.00,” and any new clinical health service.<sup>20</sup> Any person or entity wishing to offer new institutional health services is required by the CON program to obtain a certificate of need from the Department of Community Health before offering such services.<sup>21</sup> If “a facility or applicant” knowingly offers new institutional health services without a CON, the commissioner of the Department of Community Health may issue a fine of \$5000 per day for violating the requirements for obtaining a CON.<sup>22</sup>

Ultimately, the Department of Community Health bases its decision to approve or deny a CON application on whether the proposed “new institutional health service” is consistent with certain considerations, including whether the service is “reasonably consistent with the relevant general goals and objectives of the state health plan”; whether the area’s population needs the service; whether there are existing and affordable alternatives in the area; whether the service can and will be adequately funded and whether its building costs are reasonable; whether the “effects of new institutional health service on payors for health services, including governmental payors, are not unreasonable”; whether the new facility will be affordable and physically accessible; and the extent to which the facility will cater to non-local residents and promote efficient, effective, or innovative services.<sup>23</sup> The Department of Community Health’s final decision on the request for CON is judicially reviewable.<sup>24</sup>

Although most agreed that the CON Program accomplished its goal in its early years, its efficacy was eventually doubted.<sup>25</sup>

20. O.C.G.A. § 31-6-2(14) (Supp. 2007).

21. See O.C.G.A. § 31-6-21(b)(9) (Supp. 2007).

22. O.C.G.A. § 31-6-45(c) (2006).

23. O.C.G.A. § 31-6-42(a) (2006).

24. O.C.G.A. § 31-6-44(m) (2006).

25. See, e.g., *Our Opinions: Few Pros to This CON; Certificate of Need Laws, Once Useful, Now Prevent More Hospitals from Providing Open-Heart Surgery*, ATLANTA J.-CONST., Dec. 9, 2004, at A20, available at 2004 WLNR 13599055. But see Monty M. Veazey, *Equal Time: Hospital Regulations Lower Costs, Raise Care*, ATLANTA J.-CONST., May 20, 2004, at A15, available at 2004 WLNR 6329588 (arguing that states with CON Programs have lower costs of health services).

Ultimately, the General Assembly created a special commission to study the effectiveness of the CON Program.<sup>26</sup> This commission was “responsible for conducting a comprehensive review of the certificate of need program which shall include, but not be limited to, the effectiveness of the program in accomplishing its original policy objectives, the costs associated with the program, and the impact on health care and costs of continuing or discontinuing the program.”<sup>27</sup> On December 29, 2006, the Commission on the Efficacy of the Certificate of Need Program released its 267-page final report to the General Assembly and the Governor.<sup>28</sup> Although the Commission agreed on a large portion of the issues it faced, it could not reach a consensus on two significant issues: regulation of ambulatory surgery centers and free-standing imaging centers.<sup>29</sup> These “specialty hospitals” were particularly thorny issues because many believe that they threaten the sustainability of local hospitals by skimming them of their most profitable services.<sup>30</sup>

A variety of bills were introduced in the 2007 session to address perceived problems with the CON program. Very few made it out of committee.

### *Legislative Tracking*

The Senate assigned its CON-related bills to the Health and Human Services Committee, which failed to pass any of the bills.<sup>31</sup> The House assigned its CON-related bills to a Special Committee on CON, which held numerous hearings and discussed the issues at

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26. O.C.G.A. § 31-6-90 (Supp. 2007).

27. O.C.G.A. § 31-6-91 (Supp. 2007).

28. See generally COMMISSION REPORT, *supra* note 5.

29. *Id.* at ES-1. Ambulatory surgery is “any surgery performed on patients who are admitted to a facility that does not admit patients for treatment which would normally require a stay exceeding 24 hours and that does not provide accommodations for treatment of patients for periods of twenty-four hours or longer.” *Id.* at 170.

30. David Wahlberg, *Doctors Take Look at Issues; AMA Delegates Here to Examine Policies*, ATLANTA J.-CONST., Dec. 4, 2004, at C1, available at 2004 WLNR 13031974; see Travis Fain, *Certificate of Need Bill to Start Journey*, MACON TELEGRAPH, Feb. 23, 2007, § A, available at 2007 WLNR 3511955; Philippa Maister, *Hospitals and Doctors Gear Up for Fight Over Territory*, FULTON COUNTY DAILY REP., Jan. 8, 2007.

31. See State of Georgia Final Composite Status Sheet, June 5, 2007.

length.<sup>32</sup> The House Special Committee on CON considered the single issue bills, HB 249 and HB 337, individually.<sup>33</sup> The committee considered provisions of all the extensive revision bills, HB 210, HB 568, and HB 581, as it drafted its substitute to HB 568.<sup>34</sup> None of the bills, in the House or the Senate, reached the floor for a vote.<sup>35</sup> Only HB 249, HB 337, and HB 568 were passed out of committee.<sup>36</sup>

### *HB 249*

HB 249 was sponsored by Representatives Ron Stephens (R-164th), Mickey Channell (R-116th), Mark Butler (R-18th), and Lester Jackson (D-161st).<sup>37</sup> The House first read the bill on February 1, 2007, and again on February 2, 2007.<sup>38</sup> It was referred to the Special Committee on Certificate of Need.<sup>39</sup> The committee favorably reported a substitute on March 19, but the substitute was recommitted on April 20.<sup>40</sup>

The purpose of the bill was to promote cancer treatment hospitals by providing a CON exemption for “nonphysician owned acute care cancer treatment hospitals that have a capacity of 50 or fewer beds”

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32. See generally House Special Committee on Certificate of Need, Archives, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm).

33. See Video Recording of House Special Committee on Certificate of Need, Feb. 9, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing only HB 249); Video Recording of House Special Committee on Certificate of Need, Feb. 13, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing only HB 249); Video Recording of House Special Committee on Certificate of Need, Feb. 16, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing only HB 337).

34. See Video Recording of House Special Committee on Certificate of Need, Feb. 19, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing HB 210); Video Recording of House Special Committee on Certificate of Need, Feb. 20, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (same); Video Recording of House Special Committee on Certificate of Need, Feb. 26, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing only HB 581); Video Recording of House Special Committee on Certificate of Need, Feb. 19, 2007, [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm) (discussing HB 568).

35. State of Georgia Final Composite Status Sheet, June 5, 2007.

36. *Id.*

37. See HB 249, as introduced, 2007 Ga. Gen. Assem.

38. State of Georgia Final Composite Status Sheet, June 5, 2007.

39. *Id.*

40. *Id.*



and have 65% of their patients coming from outside of Georgia.<sup>41</sup> To benefit from the exemption, a cancer treatment hospital would be required to show that it provides “uncompensated indigent care which meets or exceeds 3 percent” of its annual gross revenues.<sup>42</sup>

The committee substitute would require cancer specialty hospitals to obtain a CON but would ease the requirements for these hospitals.<sup>43</sup> It defines a “destination acute care cancer specialty hospital,” to be a cancer hospital with less than fifty-one beds and “whose annual patient base is composed of a minimum of 65 percent of patients who reside outside” of Georgia.<sup>44</sup> The committee substitute would allow the cancer center’s CON to be revoked if it could not show it is providing at least 3% of its adjusted annual gross revenues to “uncompensated indigent or charity care” or if it failed to maintain a patient base composed of at least 65% out-of-state residents.<sup>45</sup>

### *HB 337*

Representatives Butler, Tom Graves (R-12th), Earl Ehrhart (R-36th), Mike Coan (R-101st), and Tom Knox (R-24th) sponsored the bill.<sup>46</sup> The House first read the bill on February 9, 2007, and again on February 10, 2007, when it referred it to the Special Committee on Certificate of Need.<sup>47</sup> The House Committee on Rules offered a substitute on March 19, 2007, and it was recommitted to the Special Committee on March 27.<sup>48</sup>

The purpose of the bill was to revise the definition of “new institutional health service” in Code section 31-6-2, relating to definitions relative to state health planning and development.<sup>49</sup> The new definition would add to subsection (14)(G)(iii) that “general surgery shall be treated in all respects in the same manner as a single

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41. HB 249, as introduced, 2007 Ga. Gen. Assem.

42. *Id.*

43. HB 249 (HCS), 2007 Ga. Gen. Assem.

44. *Id.*

45. *Id.*

46. See HB 337, as introduced, 2007 Ga. Gen. Assem.

47. State of Georgia Final Composite Status Sheet, HB 337, June 5, 2007.

48. *Id.*

49. See HB 337, as introduced, 2007 Ga. Gen. Assem.

specialty, including applicable rules and regulations of the department as they relate to this division and to single specialties . . . .”<sup>50</sup> The Rules Committee substitute would add that “if the general surgery practice is located in a rural county . . . this provision shall only apply if the facility is a joint venture between the general surgeon or surgeons and an acute care hospital located within the same rural county . . . .”<sup>51</sup>

### *HB 568*

Representatives Rich Golick (R-34th), Sharon Cooper (R-41st), Austin Scott (R-153rd), Vance Smith (R-129th), and Jim Cole (R-125th) sponsored HB 568.<sup>52</sup> The House first read the bill on February 22, 2007, read it for the second time on February 27, 2007, and referred it to the Special Committee on Certificate of Need.<sup>53</sup> The Committee discussed the bill and voted on a committee substitute on March 27, 2007.<sup>54</sup> The House recommitted the bill on April 20, the last day of the session.<sup>55</sup>

HB 568 would provide for a comprehensive overhaul of Georgia’s CON process.<sup>56</sup> The bill incorporates many of the suggestions made by the Governor’s Commission on the Efficacy of the Certificate of Need Program and was supported by Governor Sonny Perdue.<sup>57</sup>

The first major change HB 568 would make to the current CON scheme is to replace the Health Strategies Council with the Health Strategies Advisory Council.<sup>58</sup> As the name change implies, HB 568 would create a new council with greatly reduced powers.<sup>59</sup> Whereas the Health Strategies Council currently adopts a state health plan that is then subject to the approval of the Board of Community Health,

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50. *Id.*

51. HB 337 (HCS), 2007 Ga. Gen. Assem.

52. See HB 568, as introduced, 2007 Ga. Gen. Assem.

53. State of Georgia Final Composite Status Sheet, HB 568, June 5, 2007.

54. *Id.*

55. *Id.*

56. See HB 568, as introduced, 2007 Ga. Gen. Assem.

57. Compare HB 568, as introduced, 2007 Ga. Gen. Assem., with COMMISSION REPORT, *supra* note 5. See also Bill Hendrick, *Legislature 2007: Panel OKs Medical Facilities Bill Over Hospitals' Objections*, ATLANTA J.-CONST., Mar. 23, 2007, at D5, available at 2007 WLNR 5493249.

58. See HB 568 (LC 33 2059S), 2007 Ga. Gen. Assem.

59. *Id.*

HB 568 calls for the Health Strategies Advisory Council merely to recommend a state health plan that is then subject to the approval of the Governor.<sup>60</sup> Under HB 568, the Health Strategies Advisory Council would also have a markedly different composition than the current Health Strategies Council.<sup>61</sup>

HB 568 would also alter the amount of clinical health services that an entity is required to provide to indigent and charity patients.<sup>62</sup> HB 568 would condition the issuance of a CON on an entity's "agreement to provide a specified amount of clinical health services to indigent and charity care patients the amount of which may range from 1 percent to 6 percent of adjusted gross revenue of the applicant as may be specified by rule by the department."<sup>63</sup> During committee hearings, this provision was vigorously debated, most notably by Representatives Allen Peake (R-137th) and Penny Houston (R-170th).<sup>64</sup> Representative Peake noted that, "[w]e don't have good numbers to determine what percentages should be allocated to specialties at this point," and submitted that 6% was too high a requirement to be placed on CON applicants.<sup>65</sup>

Another major provision of HB 568 would provide an exemption for certain diagnostic imaging services.<sup>66</sup> As originally introduced, HB 568 would allow an exemption for any "provision of diagnostic imaging services utilizing equipment that includes, but is not limited to, magnetic resonance imaging, computed tomography, positron emission tomography, nuclear imaging, and X-rays," regardless of the cost of the provisions or location of the facility.<sup>67</sup> However, the committee substitute would limit the reach of the exemption to facilities located in urban counties and only "so long as the expenditure to obtain such equipment is less than \$1,000,000.00."<sup>68</sup> The one million dollar threshold was chosen to prevent the

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60. *Id.*

61. *Id.*

62. *Id.*

63. HB 568 (LC 33 2059S), § 2-1, art. 3, 2007 Ga. Gen. Assem.

64. See Video Recording of House Special Committee on Certificate of Need, Mar. 22, 2007 at 1 hr., 35 min., 35 sec., [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/sconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/sconArchives.htm) [hereinafter Committee Meeting Video].

65. *Id.* at 1 hr., 38 min., 2 sec. (remarks by Rep. Allen Peake (R-137th)).

66. See HB 568, as introduced, 2007 Ga. Gen. Assem.

67. *Id.* § 31-6-47(c).

68. See HB 568 (LC 33 2059S), § 2-1, art. 3, 2007 Ga. Gen. Assem.

proliferation of imaging centers with the most technologically advanced equipment, which would threaten the viability of nearby hospitals.<sup>69</sup>

As originally introduced, HB 568 provided an exemption from CON requirements for “[s]pecialty hospitals that demonstrate to the department that not less than 75 percent of its patient volume shall be derived from patients outside the state.”<sup>70</sup> However, this provision was removed from the bill after the committee considered HB 249, which provides a similar exemption.<sup>71</sup>

### *Analysis*

Hospitals, doctors, and legislators have different views on how to improve, or whether to keep, Georgia’s CON program.<sup>72</sup> This section presents a broad overview of Georgia’s CON program, and discusses the major CON-related issues that the 2007 Georgia General Assembly addressed.

### *Abolishing the CON Requirement Completely: HB 263*

Representative Jill Chambers (R-81st), who introduced HB 263, which would effectively repeal the CON program, believes that patients would benefit if the healthcare industry were open to competition.<sup>73</sup> Although hospitals contend that repealing the CON requirement would decrease their ability to provide cost-effective services, proponents of HB 263 believe the resulting competition would drive down the cost of healthcare.<sup>74</sup> Further, proponents claim that abolishing CON would lead to additional cost savings for consumers because hospitals, as well as the state of Georgia, would no longer have to pay for the CON application review and appeals

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69. Committee Meeting Video, *supra* note 64, at 1 hr., 3 min., and 12 sec. (remarks by Josh Belinfante, Deputy Executive Counsel, Office of the Governor).

70. See HB 568, as introduced, Part II, § 2-1, art. 3, 2007 Ga. Gen. Assem.

71. See HB 568 (LC 33 2059S), 2007 Ga. Gen. Assem.

72. See Maister, *supra* note 30; Fain, *supra* note 30.

73. Travis Fain, *Rules that Regulate Hospitals Debated*, MACON TELEGRAPH, Feb. 10, 2007, § D, available at 2007 WLNR 2623547.

74. See David Cook, Editorial, *Hospital Competition Benefits Patients*, ATLANTA J.-CONST., Jan. 9, 2007, at A11, available at 2007 WLNR 374993.

process.<sup>75</sup> Representative Chambers says that, since 1999, over 10,000 man-hours have been dedicated to appeals by the Georgia Attorney General's Office.<sup>76</sup>

The Department of Community Health (DCH) has not taken an official position on whether the state should continue its CON program or abandon it completely.<sup>77</sup> However, Robert Rozier, executive director of Health Planning for DCH does note that Georgia spends a lot of time and money on the appeals process.<sup>78</sup> Rozier explained that although CON decisions are often appealed, DCH's decisions are rarely overruled.<sup>79</sup> Changes to the application review and appeals process would allow DCH to direct more of its resources toward providing services, rather than defending its CON-related decisions against frivolous appeals.<sup>80</sup>

In support of amending, rather than abolishing, the CON program, Representative Rich Golick (R-34th) asserted that securing adequate access to healthcare is a basic responsibility of the state and insisted that Georgia must "have some sort of system so the state can know where healthcare procedures are available and where they're not."<sup>81</sup> Instead of abolishing CON completely, Representative Golick believes the state should modernize the CON process and make it more efficient.<sup>82</sup> His view echoes that of the State Commission on the Efficacy of the Certificate of Need Program, whose recommendations served as the basis for several bills,<sup>83</sup> including HB 568<sup>84</sup> and HB 210.<sup>85</sup>

75. See Fain, *supra* note 73.

76. Fain, *supra* note 73.

77. Interview with Robert Rozier, JD, MHA, Executive Director of Health Planning for the Department of Community Health (May 23, 2007) [hereinafter Rozier Interview].

78. *Id.*

79. *Id.* Pursuant to the recommendations of the Commission on the Efficacy of the Certificate of Need Program, several bills (including, as introduced, HB 210, HB 568, HB 581, and SB 164) would make changes to the CON application review and appeals process. See SB 164, as introduced, 2007 Ga. Gen. Assem.; HB 210, as introduced, 2007 Ga. Gen. Assem.; HB 568, as introduced, 2007 Ga. Gen. Assem.; HB 581, as introduced, 2007 Ga. Gen. Assem.

80. *Id.*

81. See Interview with Rep. Rich Golick (R-34th) (May 10, 2007) [hereinafter Golick Interview].

82. See *Id.*

83. See Maister, *supra* note 30.

84. See Golick Interview, *supra* note 81.

85. See Maister, *supra* note 30.

### *Comprehensive Overhaul of Current CON Requirements*

Several bills introduced in the 2007 session, including SB 164, HB 210, HB 568, and HB 581, sought to extensively revise the state's CON laws.<sup>86</sup> The Senate bill was assigned to committee, but was not discussed in committee meetings.<sup>87</sup> The House Special Committee on CON considered the provisions of the three House bills as it drafted its substitute to HB 568.<sup>88</sup> The committee substitute to HB 568 was the only comprehensive revision bill that was passed out of committee this session.<sup>89</sup>

Although a comprehensive revision would make many needed changes to Georgia's CON program, Representative Golick believes there are two major points of controversy: how to treat ambulatory surgical centers and how to pay for indigent care.<sup>90</sup> Indeed, these issues, as well as how to treat imaging centers, are the topics about which the Commission on the Efficacy of the CON Program had the most disagreement.<sup>91</sup>

### *Exemption for Ambulatory Surgery Centers*

Currently, Georgia allows physician-owned, single-specialty ambulatory surgical centers (ASCs) to provide surgical services without first obtaining a CON license, so long as they do not cross a capital expenditure threshold.<sup>92</sup> Hospitals want this exemption to be removed, or at least narrowly construed.<sup>93</sup> They stress that the services most commonly provided by these centers are those that generate revenue for hospitals, and contend that the exemption jeopardizes their ability to stay in business and to provide treatment

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86. See SB 164, as introduced, 2007 Ga. Gen. Assem.; HB 210, as introduced, 2007 Ga. Gen. Assem.; HB 568, as introduced, 2007 Ga. Gen. Assem.; HB 581, as introduced, 2007 Ga. Gen. Assem.

87. See State of Georgia Final Composite Status Sheet, June 5, 2007.

88. See generally Committee Meeting Video, *supra* note 64.

89. State of Georgia Final Composite Status Sheet, HB 568, June 5, 2007.

90. See Golick Interview, *supra* note 81.

91. See COMMISSION REPORT, *supra* note 5, at ES-21 to ES-25. Of the Commission's fifty-one recommendations, eleven were non-unanimous. *Id.* Five of those recommendations concerned ambulatory surgery or imaging services. *Id.*

92. O.C.G.A. § 31-6-2(14)(G)(iii) (Supp. 2007).

93. See Travis Fain, *Medical Regulations Overhauled, but They Still Face Long Road*, MACON TELEGRAPH, Mar. 27, 2007, § A, available at 2007 WLNR 5764500.

for patients who cannot afford to pay.<sup>94</sup> Physicians, on the other hand, would like to continue or expand the exemption, and point out that insured patients typically pay less out-of-pocket when they receive services in a clinic instead of a hospital.<sup>95</sup>

The Commission on the Efficacy of CON was “sharply divided” on how to treat ambulatory surgical centers.<sup>96</sup> However, the Commission was unanimous in its recommendation that the state require all ASCs, even those that are exempt from CON requirements, to make indigent care commitments, accept Medicaid, supply data to DCH, and verify that its physicians are members of a hospital staff.<sup>97</sup>

HB 581 would require all ambulatory surgical centers to obtain a CON, regardless of whether they were physician-owned, were single-specialty, or accepted Medicaid.<sup>98</sup> Under the bill, a physician-owned ambulatory surgery center would be subject to the same CON requirements as a hospital-owned clinic.<sup>99</sup>

In contrast, HB 210 and HB 568 would allow some ambulatory surgical centers to apply for a written exemption if they (1) make indigent care commitments, (2) supply data to DCH, and (3) verify that its physicians are members of a hospital staff.<sup>100</sup> As introduced, HB 568 would make no distinction between ASCs that are physician-owned or not, or that are single-specialty or not.<sup>101</sup> With respect to indigent care, HB 568 would grant an exemption to an ASC that agrees to either: (1) accept Medicaid and PeachCare for Kids recipients and provide indigent care that totals up to 6% of the facility’s adjusted gross revenue, or (2) provide indigent care that totals up to 10% of the facility’s adjusted gross revenue.<sup>102</sup> Throughout the session, this was known as the “civic rent” requirement.<sup>103</sup>

94. See Wahlberg, *supra* note 30; Maister, *supra* note 30; Fain, *supra* note 30.

95. See Maister, *supra* note 30.

96. See COMMISSION REPORT, *supra* note 5, at 194.

97. *Id.* at ES-17.

98. HB 581, as introduced, 2007 Ga. Gen. Assem.

99. See HB 581, Part II, § 1-1, as introduced, 2007 Ga. Gen. Assem.

100. See HB 210, as introduced, 2007 Ga. Gen. Assem.; HB 568, as introduced, 2007 Ga. Gen. Assem.

101. See HB 568, Part II, § 2-1, as introduced, 2007 Ga. Gen. Assem.

102. See *id.*

103. See Rozier Interview, *supra* note 77.

The committee substitute to HB 568 would extend the exemption to hospital-owned or joint venture ASCs, if they made the same commitment and if the facility was located in the same county as the hospital.<sup>104</sup> However, the committee substitute would only have exempted ASCs that qualified as “limited purpose” facilities.<sup>105</sup>

Representative Golick described the civic rent qualification to the ASC exemption as an effort to allow for more competition, but with an “understanding that indigent care must be addressed.”<sup>106</sup> However, a spokesperson for the Georgia Hospital Association said this provision “will foster a proliferation of ambulatory surgery centers,” and will “greatly diminish” the opportunities for Georgia’s hospitals to grow.<sup>107</sup>

The civic rent requirement is very important to DCH.<sup>108</sup> The Department wants ambulatory surgical centers to accept a share of the state’s indigent and Medicaid patients.<sup>109</sup> Since Georgia switched to managed-care Medicaid, it has been increasingly difficult for DCH to find providers for Medicaid recipients.<sup>110</sup> Currently, only about 17% of the state’s ambulatory surgery centers accept Medicaid.<sup>111</sup> To secure a greater supply of providers for the state’s Medicaid population, DCH supported the proposal to apply new civic rent requirements to all ASCs, as opposed to just new facilities. In recognition of the associated administrative burdens, it also supported the proposal to allow a period of five years for existing facilities to “ramp up” to the new civic rent requirements.<sup>112</sup>

### *Imaging Centers*

Another major issue in Georgia’s CON debate is how to treat imaging centers.<sup>113</sup> Currently, freestanding imaging centers are not specifically regulated, “although many come under CON review due

104. See HB 568 (HCS), Part II, § 2-1, 2007 Ga. Gen. Assem.

105. See *Id.*

106. Golick Interview, *supra* note 81.

107. Hendrick, *supra* note 57 (quoting Earl Rogers of the Georgia Hospital Association).

108. Rozier Interview, *supra* note 77.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*



to the total cost exceeding the capital expenditure threshold.”<sup>114</sup> Like ambulatory surgical centers, freestanding imaging centers are becoming more popular, and the services they provide are services that typically generate revenue for hospitals. Further, freestanding imaging centers, like ambulatory surgical centers, usually charge less than hospitals for the same service.<sup>115</sup>

The Commission on the Efficacy of the CON Program recommended, in a 4 to 3 vote (with three ex-officio members abstaining), that Georgia maintain existing CON regulation of positron emission tomography (PET).<sup>116</sup> Those who voted in support of this recommendation found that “the high cost of PET equipment necessitates a higher degree of regulation.”<sup>117</sup> Members who voted to deregulate PET services pointed out that “PET services have great potential in saving lives and that deregulation of the service would improve access to the citizens of the state.”<sup>118</sup>

The commission also recommended that all freestanding imaging centers be required to obtain a CON, regardless of the cost of the equipment, except for *de minimus* X-ray equipment.<sup>119</sup> In contrast, under the commission’s recommendations, physicians’ offices and hospitals would need a CON only if the cost of the equipment exceeds a given threshold.<sup>120</sup> The commission recommended that this threshold not apply to freestanding imaging centers because of “concerns over the quality of freestanding imaging centers and the potential for over-utilization of imaging services at freestanding imaging centers . . . .”<sup>121</sup>

In lieu of an expenditure threshold, HB 581 would impose a CON requirement for freestanding imaging centers that offer “advanced imaging services,” including magnetic resonance imaging, computed tomography scanning, and positron emission tomography, but it

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114. COMMISSION REPORT, *supra* note 5, at 218.

115. See generally Hendrick, *supra* note 57.

116. COMMISSION REPORT, *supra* note 5, at ES-19.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* at ES-20.

121. *Id.*

would not impose a CON requirement for the provision of “X-rays, fluoroscopy, or ultrasound services.”<sup>122</sup>

As introduced, HB 568 would provide a CON exemption for the provision of “diagnostic imaging services utilizing equipment that includes, but is not limited to, magnetic resonance imaging, computed tomography, positron emission tomography, nuclear imaging, and X-rays,” if the facility commits to the bill’s civic rent requirements and complies with DCH’s reporting requirements.<sup>123</sup> The House Special Committee on CON modified this provision, and created different qualifications for an exemption, depending on the type of service and whether the hospital was in an urban or rural location.<sup>124</sup> The committee substitute would require a facility to make a civic rent commitment to qualify for an exemption, and all facilities that make commitments are provided an exemption for the provision of fluoroscopy, X-ray, and ultrasound services.<sup>125</sup>

The committee substitute to HB 568 would also provide an exemption to facilities in urban counties for the provision of magnetic resonance imaging, computed tomography, and nuclear imaging, so long as “the expenditure to obtain such equipment” is less than one million dollars.<sup>126</sup> This threshold would be adjusted annually.<sup>127</sup> The committee substitute would not provide an exemption for facilities in rural areas.<sup>128</sup> Because the committee clearly identified which counties are rural and which are urban, the Department of Community Health believes it would be able to enforce this provision.<sup>129</sup>

Finally, the committee substitute to HB 568 would provide an exemption for “diagnostic imaging services utilizing positron emission tomography, regardless of cost, in a hospital that provides

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122. HB 581, as introduced, Part II, § 2-7, 2007 Ga. Gen. Assem.

123. HB 568, as introduced, Part II, § 2-1, 2007 Ga. Gen. Assem.

124. HB 568 (HCS), Part II, § 2-1, 2007 Ga. Gen. Assem.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Rozier Interview, *supra* note 77. Rozier stated that counties with a population under 35,000 are considered rural, and that DCH is capable of applying different standards based on a facility’s location.

*Id.*

treatment for patients with cancer.”<sup>130</sup> The most common use of PET technology is to detect cancer.<sup>131</sup>

### *Amending Particular Provisions of the CON Program*

#### *Proposed Exemption for Cancer Treatment Centers: HB 249 and SB 53*

Under SB 53 and HB 249, as introduced, a cancer treatment center that has fifty or fewer beds, specializes in advanced cancer treatment, and serves a majority of out-of-state patients would not have to obtain a CON license.<sup>132</sup> To benefit from this exemption, 65% of the center’s patients would need to be from out-of-state, and the facility would need to dedicate the equivalent of 3% of its annual gross revenues to charity or indigent care.<sup>133</sup> Sponsor Ron Stephens (R-164th) felt these two requirements should eliminate concerns about cancer center specialty hospitals competing with existing hospitals.<sup>134</sup>

As introduced, HB 568 included a similar provision, and would exempt a “specialty hospital” from CON requirements if 75% of its patients were from out-of-state, the hospital participated in Medicaid, and the hospital provided indigent care equal to 3% of its adjusted gross revenue.<sup>135</sup> However, because the Special Committee on CON had already favorably reported on HB 249, it deleted this provision from its committee substitute to HB 568.<sup>136</sup>

The exemptions proposed by these bills are designed to allow the Chicago-based Cancer Treatment Center of America to move forward with its plan to open a \$150 million treatment center near the Atlanta airport.<sup>137</sup> Local hospitals oppose this initiative.<sup>138</sup> A WellStar Health System spokesperson told the Atlanta Journal-Constitution that

130. See HB 568 (HCS), Part II, § 2-1, 2007 Ga. Gen. Assem.

131. See COMMITTEE REPORT, *supra* note 5, at 207.

132. HB 249, as introduced, 2007 Ga. Gen. Assem.; SB 53, as introduced, 2007 Ga. Gen. Assem.

133. HB 249, as introduced, 2007 Ga. Gen. Assem.

134. Video Recording of House Special Committee on Certificate of Need, Mar. 19, 2007 at 8 min., 55 sec. (remarks by Rep. Ron Stephens (R-164th)), [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm).

135. HB 568, as introduced, Part II, § 2-1, 2007 Ga. Gen. Assem.

136. See HB 568 (HCS), 2007 Ga. Gen. Assem.; Hendrick, *supra* note 57.

137. Hendrick, *supra* note 57.

138. See *id.*

hospitals see the provision as “an insult to those doctors who have worked for years to bring the best cancer care available anywhere to patients all over Georgia.”<sup>139</sup> In its defense, the Cancer Treatment Center of America emphasized the high patient demand for its treatments.<sup>140</sup>

Although DCH did not take a position on whether the General Assembly should exempt this particular facility from the state’s CON requirements, the Department does support the creation of “Regional Centers of Excellence.”<sup>141</sup> These facilities would treat not only Georgia residents, but also patients from nearby states.<sup>142</sup> However, the current CON process evaluates only the need for a particular service within Georgia; it does not consider the need in surrounding states.<sup>143</sup> To allow for the development of these centers, the General Assembly could opt to exempt them from the CON requirement or it could use other methods such as modifying the criteria under which their CON applications would be reviewed.<sup>144</sup> The committee substitute to HB 249 would require cancer treatment centers to obtain a CON, just like other types of hospitals must do.<sup>145</sup> DCH does not have a stated position on what methods the General Assembly should use to encourage the development of these types of facilities.<sup>146</sup>

*General Surgery as a Single Specialty: HB 337, HB 376, and SB 189*<sup>147</sup>

Currently, Georgia has a CON exemption that allows physician-owned, single-specialty ambulatory surgical centers (ASCs) to

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139. *Id.* (quoting Dr. Don Campbell, Vice President of Physician Services for WellStar Health System).

140. *See Id.*

141. Rozier Interview, *supra* note 77.

142. *Id.*

143. *Id.*

144. *See, e.g.*, HB 249, as introduced, 2007 Ga. Gen. Assem. (exempting advanced cancer treatment centers from CON requirements when they meet certain requirements); SB 53, as introduced, 2007 Ga. Gen. Assem. (same); HB 568, as introduced, 2007 Ga. Gen. Assem. (same).

145. HB 249 (HCS), 2007 Ga. Gen. Assem.

146. *Id.*

147. As introduced, HB 210, HB 568, and HB 510 would also treat general surgery as a single specialty, but those bills would change the licensing requirements for all ambulatory surgical centers. *See* HB 210, as introduced, 2007 Ga. Gen. Assem.; HB 568, as introduced, 2007 Ga. Gen. Assem.; HB 510, as introduced, 2007 Ga. Gen. Assem.

perform surgeries without first obtaining a CON license.<sup>148</sup> In a 5 to 1 vote (with four abstentions), the Commission on the Efficacy of the CON Program recommended that the state “[t]reat General Surgery in a consistent manner as all other single specialties.”<sup>149</sup> The Commission member who disagreed with this recommendation believed that “general surgery should be treated as a multi-specialty because of the complex nature of the cases that a general surgeon may perform.”<sup>150</sup>

HB 337 would provide for general surgery to be a “single specialty.”<sup>151</sup> HB 376, and the identical SB 189, would have the same effect, as they would modify the current exemption to cover facilities “owned . . . by physicians . . . of a single specialty, including general surgery.”<sup>152</sup> Therefore, these bills would allow general surgeons to operate outpatient surgical centers without first obtaining a CON license.

Every state except Georgia recognizes general surgery as a single specialty.<sup>153</sup> Because general surgery is considered multi-specialty in Georgia, general surgeons cannot open ambulatory surgery centers without a CON.<sup>154</sup>

The Rules Committee’s substitute to HB 337 provided that general surgeons in rural counties would not be considered single specialty, and therefore would not be eligible for the exemption, unless their facility is a joint venture with a local acute care hospital.<sup>155</sup> This seems to be an effort to mitigate the bill’s effect on Georgia’s rural hospitals, who have warned that expanding the exemption to general surgeons would be devastating for small hospitals.<sup>156</sup> A spokesman for rural hospitals explained that, if the exemption is extended, “[w]e’re going to see profitable services in our hospitals being pulled away . . . [and] this means the only way rural hospitals can stay in

148. O.C.G.A. § 31-6-2(14)(G)(iii) (Supp. 2007).

149. COMMISSION REPORT, *supra* note 5, at ES -17.

150. *Id.*

151. HB 337, as introduced, 2007 Ga. Gen. Assem.

152. HB 376, as introduced, 2007 Ga. Gen. Assem.; SB 189, as introduced, 2007 Ga. Gen. Assem.

153. Thomas R. Gadacz, Editorial, ATLANTA J.-CONST, Apr. 6, 2007, at A12. Gadacz is the governor of the Georgia Chapter of the American College of Surgeons.

154. See O.C.G.A. § 31-6-2(14)(G)(iii) (Supp. 2007).

155. HB 337 (HCS), 2007 Ga. Gen. Assem.

156. See Hendrick, *supra* note 57 (quoting Jimmy Lewis, CEO of Hometown Health, an organization which represents fifty-five rural hospitals).

business is for local citizens to levy taxes against themselves to pay for the losses.”<sup>157</sup>

### *Conclusion*

House Speaker Glenn Richardson (R-19th) wanted certificate of need reform to happen in the 2007 session.<sup>158</sup> HB 337, which makes general surgery a single specialty, and HB 568, which contains comprehensive revisions based on the Commission’s recommendations, are likely to be revisited in 2008 and sent to the floor for a vote. Even if they make it to the Senate, however, Lieutenant Governor Casey Cagle has said he will only support a bill that has the approval of both hospitals and doctors.<sup>159</sup>

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157. *See id.* (quoting Jimmy Lewis, CEO of Hometown Health).

158. Video Recording of House Special Committee on Certificate of Need, Feb. 9, 2007 at 3 min., 5 sec. (remarks by Special Committee on Certificate of Need Chairman Sharon Cooper (R-41st)), [http://www.legis.state.ga.us/legis/2007\\_08/house/Committees/certificateofNeed/scconArchives.htm](http://www.legis.state.ga.us/legis/2007_08/house/Committees/certificateofNeed/scconArchives.htm).

159. Fain, *supra* note 73.

