

House Bill 464

By: Representatives Willard of the 51st, Pruett of the 149th, Hatchett of the 150th, Martin of the 49th, Stephens of the 164th, 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 provide for a five-year phase-in decrease in the
3 percentage of out-of-state patients required to compose the patient base; to eliminate the
4 licensed bed capacity maximum for destination cancer hospitals in two years; to increase the
5 required charity care of a destination cancer hospital for purposes of certificate of need for
6 the next five years; to provide for a five-year delayed repeal of provisions relating to the
7 differentiated requirements for destination cancer hospitals; to amend other provisions for
8 purposes of conformity; to provide for related matters; to provide for effective dates; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 PART I

12 SECTION 1-1.

13 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health
14 planning and development, is amended by revising paragraph (13) of and adding a new
15 paragraph to Code Section 31-6-2, relating to definitions, as follows:

16 "(13) 'Destination cancer hospital' means an institution with a licensed bed capacity of
17 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care
18 services to cancer inpatients and outpatients, by or under the supervision of physicians,
19 and whose proposed annual patient base is composed of a the required minimum of 65
20 percent of patients who reside outside of the State of Georgia; provided, however, that
21 on and after July 1, 2019, there shall be no 50 or less licensed bed capacity maximum."

22 "(31.1) 'Required minimum percent' means:

23 (A) At least 65 percent out-of-state patients from January 1, 2017, through
24 December 31, 2017;

- 25 (B) At least 40 percent out-of-state patients from January 1, 2018, through
 26 December 31, 2018;
 27 (C) At least 30 percent out-of-state patients from January 1, 2019, through
 28 December 31, 2019;
 29 (D) At least 20 percent out-of-state patients from January 1, 2020, through
 30 December 31, 2020;
 31 (E) At least 10 percent out-of-state patients from January 1, 2021, through
 32 December 31, 2021; and
 33 (F) No minimum out-of-state patients from January 1, 2022, through June 30, 2022.
 34 The required minimum percent shall not include firefighters or veterans who served on
 35 active duty in the armed forces of the United States for at least three years and were
 36 honorably discharged from such service."

37 SECTION 1-2.

38 Said chapter is further amended by revising subsection (d) of Code Section 31-6-40, relating
 39 to the requirement of a certificate of need for new institutional health services, as follows:
 40 "(d) A certificate of need issued to a destination cancer hospital shall authorize the beds
 41 and all new institutional health services of such destination cancer hospital. As used in this
 42 subsection, the term 'new institutional health service' shall have the same meaning provided
 43 for in subsection (a) of this Code section. A certificate of need shall only be issued to a
 44 destination cancer hospital that locates itself and all affiliated facilities within 25 miles of
 45 a commercial airport in this state with five or more runways. Such destination cancer
 46 hospital shall not be required to apply for or obtain additional certificates of need for new
 47 institutional health services related to the treatment of cancer patients, and such new
 48 institutional health services related to the treatment of cancer patients offered by the
 49 destination cancer hospital shall not be reviewed under any service-specific need
 50 methodology or rules except for those promulgated by the department for destination
 51 cancer hospitals. After commencing operations, in order to add an additional new
 52 institutional health service, a destination cancer hospital shall apply for and obtain an
 53 additional certificate of need under the applicable statutory provisions and any rules
 54 promulgated by the department for destination cancer hospitals, and such applications shall
 55 only be granted if the patient base of such destination cancer hospital is composed of at
 56 ~~least 65~~ the required minimum percent of out-of-state patients ~~for two consecutive years.~~
 57 The department may apply rules for a destination cancer hospital only for those services
 58 that the department determines are to be used by the destination cancer hospital in
 59 connection with the treatment of cancer. In no case shall destination cancer hospital
 60 specific rules be used in the case of an application for open heart surgery, perinatal

61 services, cardiac catheterization, and other services deemed by the department to be not
 62 reasonably related to the diagnosis and treatment of cancer; provided, however, that the
 63 department shall apply the destination cancer hospital specific rules if a destination cancer
 64 hospital applies for services and equipment required for it to meet federal or state laws
 65 applicable to a hospital. If such destination cancer hospital cannot show a patient base of
 66 ~~a the required~~ minimum of 65 percent from outside of this state, then its application for any
 67 new institutional health service shall be evaluated under the specific statutes and rules
 68 applicable to that particular service. If such destination cancer hospital applies for a
 69 certificate of need to add an additional new institutional health service before commencing
 70 operations or completing two consecutive years of operation, such applicant may rely on
 71 historical data from its affiliated entities, as set forth in paragraph (2) of subsection (b.1)
 72 of Code Section 31-6-42. ~~Because destination cancer hospitals provide services primarily~~
 73 ~~to out-of-state residents, the~~ The number of beds, services, and equipment destination
 74 cancer hospitals use shall not be counted as part of the department's inventory when
 75 determining the need for those items by other providers. No person shall be issued more
 76 than one certificate of need for a destination cancer hospital. Nothing in this Code section
 77 shall in any way require a destination cancer hospital to obtain a certificate of need for any
 78 purpose that is otherwise exempt from the certificate of need requirement. Beginning
 79 January 1, 2010, the department shall not accept any application for a certificate of need
 80 for a new destination cancer hospital; provided, however, that all other provisions
 81 regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic equipment
 82 shall be applicable to an existing destination cancer hospital."

83 **SECTION 1-3.**

84 Said chapter is further amended by revising subsections (c) and (c.1) of Code Section
 85 31-6-40.1, relating to acquisition of health care facilities, penalty for failure to notify the
 86 department, limitation on applications, agreement to care for indigent patients, requirements
 87 for destination cancer hospitals, and notice and hearing provisions for penalties, as follows:
 88 "(c) The department may require that any applicant for a certificate of need agree to
 89 provide a specified amount of clinical health services to indigent patients as a condition for
 90 the grant of a certificate of need; provided, however, that each facility granted a certificate
 91 of need by the department as a destination cancer hospital shall be required to provide
 92 uncompensated indigent or charity care for residents of Georgia which meets or exceeds
 93 ~~3~~ 4 percent of such destination cancer hospital's adjusted gross revenues and provide care
 94 to Medicaid beneficiaries. A grantee or successor in interest of a certificate of need or an
 95 authorization to operate under this chapter which violates such an agreement or violates
 96 any conditions imposed by the department relating to such services, whether made before

97 or after July 1, 2008, shall be liable to the department for a monetary penalty in the amount
 98 of the difference between the amount of services so agreed to be provided and the amount
 99 actually provided and may be subject to revocation of its certificate of need, in whole or
 100 in part, by the department pursuant to Code Section 31-6-45. Any penalty so recovered
 101 shall be paid into the state treasury.

102 (c.1)(1) A destination cancer hospital that does not meet an annual patient base
 103 composed of a the required minimum ~~of 65~~ percent of patients who reside outside this
 104 state in a calendar year shall be fined \$2 million for the first year of noncompliance, \$4
 105 million for the second consecutive year of noncompliance, and \$6 million for the third
 106 consecutive year of noncompliance. Such fine amount shall reset to \$2 million after any
 107 year of compliance. In the event that a destination cancer hospital does not meet an
 108 annual patient base composed of a the required minimum ~~of 65~~ percent of patients who
 109 reside outside this state for three calendar years in any five-year period, such hospital
 110 shall be fined an additional amount of \$8 million. It is the intent of the General Assembly
 111 that all revenues collected from any such fines shall be dedicated and deposited by the
 112 department into the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

113 (2) In the event a certificate of need for a destination cancer hospital is revoked pursuant
 114 to this subsection, such hospital shall be subject to fines pursuant to subsection (c) of
 115 Code Section 31-6-45 for operating without a certificate of need.

116 (3) In addition to the annual report required pursuant to Code Section 31-6-70, a
 117 destination cancer hospital shall submit an annual statement, in accordance with
 118 timeframes and a format specified by the department, affirming that the hospital has met
 119 an annual patient base composed of a the required minimum ~~of 65~~ percent of patients
 120 who reside outside this state. The chief executive officer of the destination cancer
 121 hospital shall certify under penalties of perjury that the statement as prepared accurately
 122 reflects the composition of the annual patient base. The department shall have the
 123 authority to inspect any books, records, papers, or other information pursuant to
 124 subsection (e) of Code Section 31-6-45 of the destination cancer hospital to confirm the
 125 information provided on such statement or any other information required of the
 126 destination cancer hospital. Nothing in this paragraph shall be construed to require the
 127 release of any information which would violate the Health Insurance Portability and
 128 Accountability Act of 1996, P.L. 104-191."

129 **SECTION 1-4.**

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

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

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

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

142 (3) That the proposed new destination cancer hospital states its intent to provide
143 uncompensated indigent or charity care which shall meet or exceed ~~3~~ 4 percent of its
144 adjusted gross revenues and provide care to Medicaid beneficiaries;

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

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

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

152 (6.1) That the proposed new destination cancer hospital shall enter into a hospital
153 transfer agreement with one or more hospitals within a reasonable distance from the
154 destination cancer hospital or the medical staff at the destination cancer hospital has
155 admitting privileges or other acceptable documented arrangements with such hospital or
156 hospitals to ensure the necessary backup for the destination cancer hospital for medical
157 complications. The destination cancer hospital shall have the capability to transfer a
158 patient immediately to a hospital within a reasonable distance from the destination cancer
159 hospital with adequate emergency room services. Hospitals shall not unreasonably deny
160 a transfer agreement with the destination cancer hospital. In the event that a destination
161 cancer hospital and another hospital cannot agree to the terms of a transfer agreement as
162 required by this paragraph, the department shall mediate between such parties for a period
163 of no more than 45 days. If an agreement is still not reached within such 45 day period,
164 the parties shall enter into binding arbitration conducted by the department;

165 (7) That an applicant for a new destination cancer hospital shall document in its
166 application that the new facility is not predicted to be detrimental to existing hospitals
167 within the planning area. Such demonstration shall be made by providing an analysis in
168 such application that compares current and projected changes in market share and payor

169 mix for such applicant and such existing hospitals within the planning area. Impact on
 170 an existing hospital shall be determined to be adverse if, based on the utilization projected
 171 by the applicant, such existing hospital would have a total decrease of 10 percent or more
 172 in its average annual utilization, as measured by patient days for the two most recent and
 173 available preceding calendar years of data; and
 174 (8) That the destination cancer hospital shall express its intent to participate in medical
 175 staffing work force development activities."

176 SECTION 1-5.

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

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

- 183 (1) Failure to comply with the provisions of Code Section 31-6-41;
- 184 (2) The intentional provision of false information to the department by an applicant in
 185 that applicant's application;
- 186 (3) Repeated failure to pay any fines or moneys due to the department;
- 187 (4) Failure to maintain minimum quality of care standards that may be established by the
 188 department;
- 189 (5) Failure to participate as a provider of medical assistance for Medicaid purposes
 190 pursuant to Code Section 31-6-45.2 or any other applicable Code section;
- 191 (6) The failure to submit a timely or complete report within 180 days following the date
 192 the report is due pursuant to Code Section 31-6-70; or
- 193 (7) Failure of a destination cancer hospital to meet an annual patient base composed of
 194 a the required minimum of ~~65~~ percent of patients who reside outside this state for three
 195 calendar years in any five-year period.

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

203

PART II

204

SECTION 2-1.

205 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health
 206 planning and development, is amended by revising paragraph (13) of Code Section 31-6-2,
 207 relating to definitions, as follows:

208 "(13) 'Destination cancer hospital' means an institution ~~with a licensed bed capacity of~~
 209 ~~50 or less~~ which provides diagnostic, therapeutic, treatment, and rehabilitative care
 210 services to cancer inpatients and outpatients, by or under the supervision of physicians;
 211 ~~and whose proposed annual patient base is composed of a minimum of 65 percent of~~
 212 ~~patients who reside outside of the State of Georgia."~~

213

SECTION 2-2.

214 Said chapter is further amended by repealing and reserving subsection (d) of Code Section
 215 31-6-40, relating to the requirement of a certificate of need for new institutional health
 216 services.

217

SECTION 2-3.

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

223 "(c) The department may require that any applicant for a certificate of need agree to
 224 provide a specified amount of clinical health services to indigent patients as a condition for
 225 the grant of a certificate of need; provided, however, that ~~each facility granted a certificate~~
 226 ~~of need by the department as a destination cancer hospital~~ that is an applicant for a
 227 certificate of need shall be required to provide uncompensated indigent or charity care for
 228 residents of Georgia which meets or exceeds ~~3~~ 4 percent of such destination cancer
 229 hospital's adjusted gross revenues and provide care to Medicaid beneficiaries. A grantee
 230 or successor in interest of a certificate of need or an authorization to operate under this
 231 chapter which violates such an agreement or violates any conditions imposed by the
 232 department relating to such services, whether made before or after July 1, 2008, shall be
 233 liable to the department for a monetary penalty in the amount of the difference between the
 234 amount of services so agreed to be provided and the amount actually provided and may be
 235 subject to revocation of its certificate of need, in whole or in part, by the department

236 pursuant to Code Section 31-6-45. Any penalty so recovered shall be paid into the state
237 treasury."

238 **SECTION 2-4.**

239 Said chapter is further amended by repealing and reserving subsection (b.1) of Code Section
240 31-6-42, relating to qualifications for issuance of a certificate of need.

241 **SECTION 2-5.**

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

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

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

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

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

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

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

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

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

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

268

PART III

269

SECTION 3-1.

270 (a) Parts I and III of this Act shall become effective on July 1, 2017.

271 (b) On July 1, 2022, Part I of this Act shall stand repealed and Part II of this Act shall
272 become effective.

273

SECTION 3-2.

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