Georgia Legislature Changes Requirements For Exemption From CON Review for “Single Specialty” Ambulatory Surgery Centers

Q. What is Senate Bill 433?
A. Senate Bill 433 is legislation substantially amending the Certificate of Need (“CON”) statute which was passed by the Georgia legislature during the 2008 session. It was signed into law in April and will be effective on July 1, 2008.

Q. In general, what was the impact of this legislation on surgeons who want to develop an ambulatory surgery center (“ASC”) without going through the CON process?
A. The ability to develop a “single specialty” ASC was expanded through this legislation. General surgeons were added to the list of eligible specialties. In addition, the CON cost threshold increased to $2.5 million.

Q. Is it possible to develop an ASC without going through the CON process regardless of cost?
A. Yes, there is a new exemption created for a “single specialty” ASC in a county owned by a group practice if it will be the only ASC in the county. To qualify for the exemption, such an ASC can have no more than two operating rooms. In the event the ASC later tries to add any additional operating rooms, it will have to go through the CON process.

Q. Are there any other ways to develop an ASC without going through the formal CON application process?
A. Yes. There is also a newly-created exemption for a “joint venture ambulatory surgery center” that has capital expenditures which do not exceed $5 million. A joint venture ASC is a freestanding ASC jointly owned by a hospital in the same county as the center (or a hospital in an adjacent county if there is no hospital in the same county as the center) and a single group of physicians that provides surgery in a single specialty. The ownership interest of the hospital is required to be no less than 30% and the collective ownership of the physicians or group of physicians is required to be no less than 30%.

Q. Are there any other requirements to meet these exemptions?
A. Yes. All categories of exempt ASCs are required to have a hospital affiliation agreement to insure necessary backup for medical complications and are also required to comply with certain indigent care requirements which vary depending on whether the ASC provides care to Medicaid.
beneficiaries and participates in Peach Care for Kids program. Ophthalmologists are exempt from the indigent care requirements.

Q. As a surgeon, if I want to develop an ASC can I just do it, or do I have to ask permission of the Department of Community Health?
A. The legislation mandates that the Department of Community Health shall require prior notice from a new healthcare facility for approval of any activity which is believed to be exempt pursuant to the CON statute. It is expected that the Department will soon promulgate new regulations to establish timeframes, forms and criteria relating to the manner in which this will occur.

Q. Will a competitor have a right to contest whether or not an ASC is exempt from CON review?
A. Yes. Under the new legislation an opposing party has the right to file opposition papers with the Department of Community Health. In the event the project is granted the exemption, the opposing party also has the right to request an evidentiary hearing pursuant to the Georgia Administrative Procedure Act. Previously, an opponent had the right to file opposition papers but did not have a right to an administrative appeal of the Department’s decision.

Q. Are there other changes to the CON laws in SB 433?
A. Yes. The changes are extensive. There are some additional general considerations, several changes to regulation of specific services, new time tables and procedures for review of applications, numerous changes to the administrative appeals process, changes relating to cost thresholds for equipment, changes relating to relocating certain healthcare facilities and numerous other changes. Almost any activity that one undertakes that might involve CON will need to be reviewed in light of SB 433.