

1 SB151
2 147908-5
3 By Senators Whatley and Ward
4 RFD: Judiciary
5 First Read: 07-FEB-13

1 SB151

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4 ENROLLED, An Act,

5 To amend Sections 22-21-260, 22-21-263, and
6 22-21-270, Code of Alabama 1975, relating to the issuance of a
7 certificates of need for health care facilities, health
8 maintenance organizations, and the institutional health
9 services; to specify that health care facilities and health
10 maintenance organizations may be organized in limited
11 liability companies and other legal entities; and to provide
12 that this act would be retroactive to July 30, 1979.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 22-21-260, 22-21-263, and
15 22-21-270, Code of Alabama 1975, are amended to read as
16 follows:

17 "§22-21-260.

18 "As used in this article, the following words and
19 terms, and the plurals thereof, shall have the meanings
20 ascribed to them in this section, unless otherwise required by
21 their respective context:

22 "(1) ACQUISITION. Obtaining the legal equitable
23 title to a freehold or leasehold estate or otherwise obtaining
24 the substantial benefit of such titles or estates, whether by
25 purchase, lease, loan or suffrage, gift, devise, legacy,

1 settlement of a trust or means whatever, and shall include any
2 act of acquisition. The term "acquisition" shall not mean or
3 include any conveyance, or creation of any lien or security
4 interest by mortgage, deed of trust, security agreement, or
5 similar financing instrument, nor shall it mean or include any
6 transfer of title or rights as a result of the foreclosure, or
7 conveyance or transfer in lieu of the foreclosure, of any such
8 mortgage, deed of trust, security agreement, or similar
9 financing instrument, nor shall it mean or include any gift,
10 devise, legacy, settlement of trust, or other transfer of the
11 legal or equitable title of an interest specified hereinabove
12 by a natural person to any member of such person's immediate
13 family. For the purposes of this section "immediate family"
14 shall mean the spouse of the grantor or transferor and any
15 other person related to the grantor or transferor to the
16 fourth degree of kindred as such degrees are computed
17 according to law.

18 "(2) APPLICANT. Any person, as defined in this
19 section, who files an application for a certificate of need.

20 "(2.1) CAMPUS. The contiguous real property,
21 contained within a single county, which is owned or leased by
22 a health care facility and upon which is located the buildings
23 and any other real property used by the health care facility
24 to provide existing institutional health services which are
25 subject to review.

1 "(3) CAPITAL EXPENDITURE. An expenditure, including
2 a force account expenditure (i.e., an expenditure for a
3 construction project undertaken by the health care facility as
4 its own contractor), which, under generally accepted
5 accounting principles, is not properly chargeable as an
6 expense of operation and maintenance and which satisfies any
7 of the following:

8 "a. Exceeds two million dollars (\$2,000,000) indexed
9 annually for inflation for major medical equipment; eight
10 hundred thousand dollars (\$800,000) for new annual operating
11 costs indexed annually for inflation; four million dollars
12 (\$4,000,000) indexed annually for inflation for any other
13 capital expenditure. The index referenced in this paragraph
14 shall be the Consumer Price Index Market Basket Professional
15 Medical Services index as published by the U.S. Department of
16 Labor, Bureau of Labor Statistics. The SHPDA shall publish
17 this index information to the general public.

18 "b. Changes the bed capacity of the facility with
19 respect to which such expenditure is made.

20 "c. Substantially changes the health services of the
21 facility with respect to which such expenditure is made.

22 "(4) CONSTRUCTION. Actual commencement, with bona
23 fide intention of completing the construction, or completion
24 of the construction, erection, remodeling, relocation,
25 excavation, or fabrication of any real property constituting a

1 facility under this article, and the term construct shall mean
2 and include any act of construction. "Ground breaking
3 ceremony," "receipt of bids," "receipt of quotation," or
4 similar action that will permit unilateral termination without
5 penalty shall not be considered construction.

6 "(5) FIRM COMMITMENT or OBLIGATION. Any of the
7 following:

8 "a. Any executed, enforceable, unconditional written
9 agreement or contract not subject to unilateral cancellation
10 for the acquisition or construction of a health care facility
11 or purchase of equipment therefor.

12 "b. Actual construction of facilities peculiarly
13 adapted to the furnishing of one or more particular services
14 and with the bona fide intention of furnishing such service or
15 services.

16 "c. Any executed, unconditional written agreement
17 not subject to unilateral cancellation for the bona fide
18 purpose of furnishing one or more services.

19 "(6) HEALTH CARE FACILITY. General and specialized
20 hospitals, including tuberculosis, psychiatric, long-term
21 care, and other types of hospitals, and related facilities
22 such as, laboratories, out-patient clinics, and central
23 service facilities operated in connection with hospitals;
24 skilled nursing facilities; intermediate care facilities;
25 skilled or intermediate care units operated in veterans'

1 nursing homes and veterans' homes, owned or operated by the
2 State Department of Veterans' Affairs, as these terms are
3 described in Chapter 5A (commencing with Section 31-5A-1) of
4 Title 31, rehabilitation centers; public health centers;
5 facilities for surgical treatment of patients not requiring
6 hospitalization; kidney disease treatment centers, including
7 free-standing hemodialysis units; community mental health
8 centers and related facilities; alcohol and drug abuse
9 facilities; facilities for the developmentally disabled;
10 hospice service providers; and home health agencies and health
11 maintenance organizations. The term health care facility shall
12 not include the offices of private physicians or dentists,
13 whether for individual or group practices and regardless of
14 ownership, or Christian Science sanatoriums operated or listed
15 and certified by the First Church of Christ, Scientist,
16 Boston, Massachusetts, or a veterans' nursing home or
17 veterans' home owned or operated by the State Department of
18 Veterans' Affairs, not to exceed 150 beds to be built in Bay
19 Minette, Alabama, and a veterans' nursing home or veterans'
20 home owned or operated by the State Department of Veterans'
21 Affairs not to exceed 150 beds to be built in Huntsville,
22 Alabama, for which applications for federal funds under
23 federal law are being considered by the U.S. Department of
24 Veterans' Affairs prior to March 18, 1993.

1 "(7) HEALTH SERVICE AREA. A geographical area
2 designated by the Governor, as being appropriate for effective
3 planning and development of health services.

4 "(8) HEALTH SERVICES. Clinically related (i.e.,
5 diagnostic, curative, or rehabilitative) services, including
6 alcohol, drug abuse, and mental health services customarily
7 furnished on either an in-patient or out-patient basis by
8 health care facilities, but not including the lawful practice
9 of any profession or vocation conducted independently of a
10 health care facility and in accordance with applicable
11 licensing laws of this state.

12 "(9) INSTITUTIONAL HEALTH SERVICES. Health services
13 provided in or through health care facilities or health
14 maintenance organizations, including the entities in or
15 through which such services are provided.

16 "(9.1) MAJOR MEDICAL EQUIPMENT. Medical clinical
17 equipment intended for use in the diagnosis or treatment of
18 medical conditions, which is used to provide institutional
19 health services of a health care facility which are subject to
20 review, and which expenditure exceeds the thresholds
21 referenced in this section and in Section 22-21-263.

22 "(10) MODERNIZATION. The alteration, repair,
23 remodeling, and renovation of existing buildings, including
24 equipment within the existing buildings. Modernization does
25 not include the replacement of existing buildings which are

1 used by a health care facility to provide institutional health
2 services which are subject to review and does not include the
3 replacement of major medical equipment.

4 "(11) PERSON. Any person, firm, partnership,
5 association, joint venture, ~~or~~ corporation, limited liability
6 company, or other legal entity, the State of Alabama and its
7 political subdivisions or parts thereof, and any agencies or
8 instrumentalities and any combination of persons herein
9 specified, but person shall not include the United States or
10 any agency or instrumentality thereof, except in the case of
11 voluntary submission to the regulations established by this
12 article.

13 "(12) RURAL HEALTH CARE PROVIDER/APPLICANT/HOSPITAL.
14 A provider or applicant or hospital which is designated by the
15 United States government Health Care Financing Administration
16 as rural.

17 "(13) STATE HEALTH PLAN. A comprehensive plan which
18 is prepared triennially and reviewed at least annually and
19 revised as necessary by the Statewide Health Coordinating
20 Council, with the assistance of the State Health Planning and
21 Development Agency, and approved by the Governor.

22 "The Statewide Health Coordinating Council shall
23 meet at least annually to determine whether revisions for the
24 State Health Plan are necessary. If the Statewide Health
25 Coordinating Council fails to meet and to review or revise the

1 State Health Plan on an annual basis, there shall be no fees
2 required on all certificate of need applications filed with
3 the Certificate of Need Review Board until the Statewide
4 Health Coordinating Council meets and reviews or revises the
5 State Health Plan. For purposes of this paragraph, the annual
6 meeting of the Statewide Health Coordinating Council shall
7 occur on or before August 1 of each calendar year.

8 "The State Health Plan shall provide for the
9 development of health programs and resources to assure that
10 quality health services will be available and accessible in a
11 manner which assures continuity of care, at reasonable costs,
12 for all residents of the state. Nothing in this section should
13 be construed as permitting expenditures for facilities,
14 services, or equipment which are inconsistent with the State
15 Health Plan.

16 "(14) STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
17 (SHPDA). An agency of the State of Alabama which is designated
18 by the Governor as the sole State Health Planning and
19 Development Agency, which shall consist of three consumers,
20 three providers, and three representatives of the Governor who
21 all shall serve staggered terms and all be appointed by the
22 Governor. Where used in this article, the terms, "state
23 agency," and the "SHPDA," shall be synonymous and may be used
24 interchangeably.

1 "(15) STATEWIDE HEALTH COORDINATING COUNCIL. A
2 council, appointed by the Governor, established pursuant to
3 Sections 22-4-7 and 22-4-8 to advise the State Health Planning
4 and Development Agency on matters relating to health planning
5 and resource development and to perform other functions as may
6 be delegated to it, to include an annual review of the State
7 Health Plan.

8 "(16) TO OFFER. When used in connection with health
9 services, a health care facility or health maintenance
10 organization that holds itself out as capable of providing, or
11 as having the means for the provision of, specified health
12 services.

13 "§22-21-263.

14 "(a) All new institutional health services which are
15 subject to this article and which are proposed to be offered
16 or developed within the state shall be subject to review under
17 this article. No institutional health services which are
18 subject to this article shall be permitted which are
19 inconsistent with the State Health Plan. For the purposes of
20 this article, new institutional health services shall include
21 any of the following:

22 "(1) The construction, development, acquisition
23 through lease or purchase, or other establishment of a new
24 health care facility or health maintenance organization. A
25 transaction involving the sale, lease, or other transfer or

1 change of control of an existing health care facility,
2 existing health maintenance organization, or existing
3 institutional health service is not subject to certificate of
4 need review or approval under this article unless the
5 transaction also involves implementing one or more of the new
6 institutional health services described in subdivision (2),
7 (3), or (4). The two immediately preceding sentences are
8 applicable to all transactions occurring on or after July 30,
9 1979. Notwithstanding anything to the contrary in this
10 article, expenditures incurred in the sale, lease, or other
11 transfer of an existing health care facility or existing
12 health maintenance organization or existing institutional
13 health service shall not be subject to subdivision (2).

14 "(2) Any expenditure by or on behalf of a health
15 care facility or health maintenance organization which, under
16 generally accepted accounting principles consistently applied,
17 is a capital expenditure in excess of two million dollars
18 (\$2,000,000) indexed annually for inflation for major medical
19 equipment; in excess of eight hundred thousand dollars
20 (\$800,000) for new annual operating costs indexed annually for
21 inflation; in excess of four million dollars (\$4,000,000)
22 indexed annually for inflation for any other capital
23 expenditure by or on behalf of a health care facility or a
24 health maintenance organization. The index referenced in this
25 subdivision shall be the Consumer Price Index Market Basket

1 Professional Medical Services index as published by the U.S.
2 Department of Labor, Bureau of Labor Statistics. The SHPDA
3 shall publish this index information to the general public.

4 "(3) A change in the existing bed capacity of a
5 health care facility or health maintenance organization
6 through the addition of new beds, the relocation of one or
7 more beds from one physical facility to another, or
8 reallocation among services of existing beds through the
9 conversion of one or more beds from one category to another
10 within the following bed categories: general medical surgical,
11 inpatient psychiatric, inpatient/residential alcohol and drug
12 abuse or inpatient rehabilitation beds, or long-term care beds
13 including skilled nursing care, intermediate care,
14 transitional care, and swing beds. Notwithstanding any
15 provision of this subdivision to the contrary, any health care
16 facility or health maintenance organization in which at least
17 65 percent of the beds are dedicated or used exclusively for
18 acute care services, general medical surgical, or
19 nonspecialized services may reallocate existing beds within
20 the following specialized bed categories: inpatient
21 psychiatric, inpatient/residential alcohol and drug
22 rehabilitation beds, to acute care services, or general
23 medical surgical beds without first obtaining a certificate of
24 need from the SHPDA.

1 "(4) Health services proposed to be offered in or
2 through a health care facility or health maintenance
3 organization, and which were not offered on a regular basis in
4 or through such health care facility or health maintenance
5 organization within the 12 month period prior to the time such
6 services would be offered. Health services, other than those
7 health services involving long-term care services, including
8 without limitation, skilled and intermediate nursing home
9 care, swing beds services, or transitional care services,
10 provided directly by acute care hospitals classified as rural
11 by the U.S. Bureau of Census/Office of Management and Budget,
12 United States government Health Care Financing Administration
13 or acute care hospitals with less than 105 beds that are
14 located over 20 miles from the nearest acute health care
15 facility located within Alabama shall not be subject to this
16 subdivision but shall be subject to the other subdivisions of
17 this subsection. Provided, however, that the exemption from
18 this subdivision herein established shall not apply to home
19 health services provided outside of the county in which the
20 hospital is located.

21 "(b) The four conditions of new institutional health
22 services listed in this section shall be mutually exclusive.

23 "(c) Notwithstanding all other provisions of this
24 article to the contrary, those facilities and distinct units
25 operated by the Department of Mental Health and Mental

1 Retardation and those facilities and distinct units operating
2 under contract or subcontract with the Department of Mental
3 Health and Mental Retardation where the contract constitutes
4 the primary source of income to the facility shall not be
5 subject to review under this article.

6 "(d) For the purposes of this article, and
7 notwithstanding all other provisions of this article to the
8 contrary and notwithstanding any and all provisions of the
9 State Health Plan on September 1, 2003, relating to
10 lithotripsy, magnetic resonance imaging, and positron emission
11 tomography, new institutional health services, which are
12 subject to this article, shall not include any health services
13 provided by a mobile or fixed-based extracorporeal shock wave
14 lithotripter, mobile or fixed-based magnetic resonance
15 imaging, or positron emission tomography proposed to be
16 offered in or through a health care facility or health
17 maintenance organization. The SHPDA, after consultation with
18 and the advice of the Statewide Health Coordinating Council,
19 in accordance with the Alabama Administrative Procedure Act
20 and within 60 days of September 1, 2003, shall cause the State
21 Health Plan to be amended to repeal and delete all sections of
22 the Alabama State Health Plan relating to mobile and
23 fixed-based lithotripters, mobile and fixed-based magnetic
24 resonance imaging, and positron emission tomography, and cause

1 the amendment and repeal of any other SHPDA rules and
2 regulations inconsistent with this article.

3 "§22-21-270.

4 "(a) A certificate of need issued under subsection
5 (a) of Section 22-21-265 and Section 22-21-268 shall be valid
6 for a period not to exceed 12 months and may be subject to one
7 extension not to exceed 12 months, provided the criteria for
8 extension as set forth in the rules and regulations of the
9 SHPDA are met. Applications for an extension filed under this
10 section shall be accompanied by a filing fee to be established
11 by rule, not to exceed 25 percent of the original CON
12 application fee. If no obligation has occurred within such
13 period, the certificate of need shall be considered terminated
14 and shall be null and void. Should the obligation be incurred
15 within such valid period, the certificate of need shall be
16 continued in effect for a period not to exceed one year or the
17 completion of the construction project, whichever shall be
18 later, or the inauguration of the service or the actual
19 purchase of equipment.

20 "(b) Failure to commence the construction project
21 within the time period stated in the construction contract or
22 to complete the construction project within the time period
23 specified in the construction contract, which may be extended
24 by mutual agreement of the parties to the contract, shall
25 render the certificate of need null and void, unless tolled or

1 extended pursuant to statute or SHPDA rule or regulation.
2 Provided, the SHPDA, or an administrative law judge appointed
3 by the Governor on appeal for a fair hearing, may for causes
4 beyond the control of the applicant, continue the certificate
5 of need in force if commencement of the construction project
6 is delayed for a period not to exceed 60 days or if during the
7 specified construction period the construction work should
8 cease for not more than six months, or in the event of default
9 in the construction contract by the contractor, or if, for any
10 cause, the construction work has not ceased or otherwise been
11 stopped for a period exceeding 60 consecutive days.

12 "(c) Applicants who held valid certificates of need
13 which were terminated under this section may file a new
14 application for a certificate pursuant to and subject to the
15 provisions of this article.

16 "(d) Upon completion of the construction and
17 issuance of a certificate of completion or the receipt of
18 proof of purchase of equipment or inauguration of a new health
19 service, the certificate of need shall be vested in and
20 continued in force and effect as a part of the health care
21 facility and shall survive changes of control and changes of
22 ownership of the health care facility without further
23 certificate of need approval by this agency.

24 "(e) ~~A~~ Prior to becoming vested under subsection
25 (d), a certificate of need shall not be transferable,

1 assignable, or convertible other than ~~between members of a~~
2 ~~parent-subsidary controlled corporate group as defined in~~
3 ~~Internal Revenue Code, 26 U.S.C. §1563 (a) (1), and shall be~~
4 ~~valid solely to the person and purpose named thereon, except~~
5 ~~to such other member of the controlled group, or by change of~~
6 ~~name or merger with another corporation~~ to an entity under
7 common ownership and control. As used in this subsection only,
8 "ownership and control" means ownership, directly or through
9 one or more affiliates, of 50 percent or more of the shares of
10 stock entitled to vote for the election of directors, in the
11 case of a corporation, or 50 percent or more of the voting
12 equity interests in the case of any other type of legal
13 entity, or status as a general partner in any partnership, or
14 any other arrangement whereby an entity including, without
15 limitation, any governmental entity, controls has the right to
16 control the selection of 50 percent or more of the board of
17 directors, managing members, or equivalent governing body of a
18 legal entity. An "affiliate" under the preceding sentence
19 means any corporation, limited liability company, partnership,
20 or other legal entity that directly or indirectly controls or
21 is controlled by or is under common control with such entity.
22 Any agreement entered into by an applicant, prior to the
23 issuance of a certificate of need, to transfer ownership or
24 control of such health care facility to another person after
25 the certificate becomes vested shall be disclosed to SHPDA

1 prior to a decision by the Certificate of Need Review Board to
2 grant or deny such certificate.

3 "(f) ~~The~~ Notwithstanding any other provisions of
4 this article, the transfer of ~~stock~~ equity interests in, or
5 change of name or merger of, ~~a corporation~~ any legal entity
6 which holds a certificate of need shall not constitute a
7 transfer, assignment, or conversion of the certificate of
8 need. The transaction is not subject to certificate of need
9 approval under this article unless the transaction also
10 involves implementing one or more of the new institutional
11 health services or a new health care facility or health
12 maintenance organization described in subdivisions (2), (3),
13 or (4) of Section 22-21-263(a). The preceding sentence is
14 applicable to all transactions occurring on or after July 30,
15 1979.

16 "(g) SHPDA may adopt rules requiring the submission
17 of informational filings relating to a transfer of control or
18 ownership interests under subsections (d), (e), and (f).

19 "(h) The provisions of this section are applicable
20 to all transactions occurring on or after July 30, 1979.

21 Section 2. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB151

Senate 26-FEB-13

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 07-MAY-13

By: Senator Whatley