

1 SB505
2 66072-2
3 By Senator Sanders
4 RFD: Health
5 First Read: 08-APR-04

1
2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a certificate of need
9 is required under certain conditions in accordance
10 with the State Health Plan. Certain health care
11 facilities are not deemed to be subject to the
12 requirement of certificate of need.

13 This bill would provide further for the
14 exemption from the definition of the term health
15 care facility to make subject to review magnetic
16 resonance imaging, extracorporeal lithotripsy, and
17 positron emission tomography in medical offices in
18 rural counties.

19 Currently, magnetic resonance imaging,
20 extracorporeal lithotripsy, and positron emission
21 tomography are exempt from review.

22 This bill would provide further for the
23 exemption from review for magnetic resonance
24 imaging, extracorporeal lithotripsy, and positron
25 emission tomography and would remove the exemption
26 in rural counties.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Sections 22-21-260 and 22-21-263, Code of
6 Alabama 1975, as amended by Act 2003-331, 2003 Regular Session
7 (Acts 2003, p. 810), to provide further for the exemption from
8 the definition of the term health care facility in certain
9 medical offices to make subject to review magnetic resonance
10 imaging, extracorporeal lithotripsy, and positron emission
11 tomography in rural counties; and to remove the exemption for
12 magnetic resonance imaging, extracorporeal lithotripsy, and
13 positron emission tomography from institutional health
14 services subject to review in rural counties.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 22-21-260 and 22-21-263, Code of
17 Alabama 1975, as amended by Act 2003-331, 2003 Regular Session
18 (Acts 2003, p. 810), are amended to read as follows:

19 "§22-21-260.

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

24 "(1) ACQUISITION. Obtaining the legal equitable
25 title to a freehold or leasehold estate or otherwise obtaining
26 the substantial benefit of such titles or estates, whether by
27 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.

26 "(3) CAPITAL EXPENDITURE. An expenditure, including
27 a force account expenditure (i.e., an expenditure for a

1 construction project undertaken by the health care facility as
2 its own contractor), which, under generally accepted
3 accounting principles, is not properly chargeable as an
4 expense of operation and maintenance and which satisfies any
5 of the following:

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

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

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

20 "(4) CONSTRUCTION. Actual commencement, with bona
21 fide intention of completing the construction, or completion
22 of the construction, erection, remodeling, relocation,
23 excavation, or fabrication of any real property constituting a
24 facility under this article, and the term construct shall mean
25 and include any act of construction. "Ground breaking
26 ceremony," "receipt of bids," "receipt of quotation," or

1 similar action that will permit unilateral termination without
2 penalty shall not be considered construction.

3 "(5) FIRM COMMITMENT or OBLIGATION. Any of the
4 following:

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

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

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

16 "(6) HEALTH CARE FACILITY. General and specialized
17 hospitals, including tuberculosis, psychiatric, long-term
18 care, and other types of hospitals, and related facilities
19 such as, laboratories, out-patient clinics, and central
20 service facilities operated in connection with hospitals;
21 skilled nursing facilities; intermediate care facilities;
22 skilled or intermediate care units operated in veterans'
23 nursing homes and veterans' homes, owned or operated by the
24 State Department of Veterans' Affairs, as these terms are
25 described in Chapter 5A (commencing with Section 31-5A-1) of
26 Title 31, rehabilitation centers; public health centers;
27 facilities for surgical treatment of patients not requiring

1 hospitalization; kidney disease treatment centers, including
2 free-standing hemodialysis units; community mental health
3 centers and related facilities; alcohol and drug abuse
4 facilities; facilities for the developmentally disabled; any
5 person or organization located in an area designated as rural
6 or micropolitan by the United States Bureau of the Census or
7 the State Health Planning and Development Agency if such
8 person or organization seeks reimbursement, from any source,
9 for technical fees, facility fees, or global fees for the
10 offering of mobile or fixed-base extracorporeal shock wave
11 lithotripter services, mobile or fixed-base magnetic resonance
12 service, or positron emission tomography services; and home
13 health agencies and health maintenance organizations. The term
14 health care facility shall not include the offices of private
15 physicians or dentists, whether for individual or group
16 practices and regardless of ownership, unless such offices are
17 located in an area designated as rural or micropolitan by the
18 United States Bureau of the Census or the State Health
19 Planning and Development Agency and seek reimbursement, from
20 any source, for technical fees, facility fees, or global fees
21 for the offering of mobile or fixed-base extracorporeal shock
22 wave lithotripter services, mobile or fixed-base magnetic
23 resonance service, or positron emission tomography services,
24 or Christian Science sanatoriums operated or listed and
25 certified by the First Church of Christ, Scientist, Boston,
26 Massachusetts, or a veterans' nursing home or veterans' home
27 owned or operated by the State Department of Veterans'

1 Affairs, not to exceed 150 beds to be built in Bay Minette,
2 Alabama, and a veterans' nursing home or veterans' home owned
3 or operated by the State Department of Veterans' Affairs not
4 to exceed 150 beds to be built in Huntsville, Alabama, for
5 which applications for federal funds under federal law are
6 being considered by the U.S. Department of Veterans' Affairs
7 prior to March 18, 1993.

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

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

19 "(9) INSTITUTIONAL HEALTH SERVICES. Health services
20 provided in or through health care facilities or health
21 maintenance organizations, including the entities in or
22 through which such services are provided.

23 "(9.1) MAJOR MEDICAL EQUIPMENT. Medical clinical
24 equipment intended for use in the diagnosis or treatment of
25 medical conditions, which is used to provide institutional
26 health services of a health care facility which are subject to

1 review, and which expenditure exceeds the thresholds
2 referenced in this section and in Section 22-21-263.

3 "(10) MODERNIZATION. The alteration, repair,
4 remodeling, and renovation of existing buildings, including
5 equipment within the existing buildings. Modernization does
6 not include the replacement of existing buildings which are
7 used by a health care facility to provide institutional health
8 services which are subject to review and does not include the
9 replacement of major medical equipment.

10 "(11) PERSON. Any person, firm, partnership,
11 association, joint venture, or corporation, the State of
12 Alabama and its political subdivisions or parts thereof, and
13 any agencies or instrumentalities and any combination of
14 persons herein specified, but person shall not include the
15 United States or any agency or instrumentality thereof, except
16 in the case of voluntary submission to the regulations
17 established by this article.

18 "(12) RURAL HEALTH CARE PROVIDER/APPLICANT/HOSPITAL.
19 A provider or applicant or hospital which is designated by the
20 United States Government Health Care Financing Administration
21 as rural.

22 "(13) STATE HEALTH PLAN. A comprehensive plan which
23 is prepared triennially and reviewed at least annually and
24 revised as necessary by the Statewide Health Coordinating
25 Council, with the assistance of the State Health Planning and
26 Development Agency, and approved by the Governor.

1 "The Statewide Health Coordinating Council shall
2 meet at least annually to determine whether revisions for the
3 State Health Plan are necessary. If the Statewide Health
4 Coordinating Council fails to meet and to review or revise the
5 State Health Plan on an annual basis, there shall be no fees
6 required on all certificate of need applications filed with
7 the Certificate of Need Review Board until the Statewide
8 Health Coordinating Council meets and reviews or revises the
9 State Health Plan. For purposes of this paragraph, the annual
10 meeting of the Statewide Health Coordinating Council shall
11 occur on or before August 1 of each calendar year.

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

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

1 agency," and the "SHPDA," shall be synonymous and may be used
2 interchangeably.

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

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

15 "§22-21-263.

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

24 "(1) The construction, development, acquisition
25 through lease or purchase, or other establishment of a new
26 health care facility or health maintenance organization.

1 "(2) Any expenditure by or on behalf of a health
2 care facility or health maintenance organization which, under
3 generally accepted accounting principles consistently applied,
4 is a capital expenditure in excess of two million dollars
5 (\$2,000,000) indexed annually for inflation for major medical
6 equipment; in excess of eight hundred thousand dollars
7 (\$800,000) for new annual operating costs indexed annually for
8 inflation; in excess of four million dollars (\$4,000,000)
9 indexed annually for inflation for any other capital
10 expenditure by or on behalf of a health care facility or a
11 health maintenance organization. The index referenced in this
12 subdivision shall be the Consumer Price Index Market Basket
13 Professional Medical Services index as published by the U.S.
14 Department of Labor, Bureau of Labor Statistics. The SHPDA
15 shall publish this index information to the general public.

16 "(3) A change in the existing bed capacity of a
17 health care facility or health maintenance organization
18 through the addition of new beds, the relocation of one or
19 more beds from one physical facility to another, or
20 reallocation among services of existing beds through the
21 conversion of one or more beds from one category to another
22 within the following bed categories: general medical surgical,
23 inpatient psychiatric, inpatient/residential alcohol and drug
24 abuse or inpatient rehabilitation beds, or long-term care beds
25 including skilled nursing care, intermediate care,
26 transitional care, and swing beds. Notwithstanding any
27 provision of this subdivision to the contrary, any health care

1 facility or health maintenance organization in which at least
2 65 percent of the beds are dedicated or used exclusively for
3 acute care services, general medical surgical, or
4 nonspecialized services may reallocate existing beds within
5 the following specialized bed categories: inpatient
6 psychiatric, inpatient/residential alcohol and drug
7 rehabilitation beds, to acute care services, or general
8 medical surgical beds without first obtaining a certificate of
9 need from the SHPDA.

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

1 health services provided outside of the county in which the
2 hospital is located.

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

5 "(c) Notwithstanding all other provisions of this
6 article to the contrary, those facilities and distinct units
7 operated by the Department of Mental Health and Mental
8 Retardation and those facilities and distinct units operating
9 under contract or subcontract with the Department of Mental
10 Health and Mental Retardation where the contract constitutes
11 the primary source of income to the facility shall not be
12 subject to review under this article.

13 "(d) For the purposes of this article, except for
14 any person or organization located in an area designated as
15 rural or micropolitan by the United States Bureau of the
16 Census or the State Health Planning and Development Agency if
17 such person or organization seeks reimbursement, from any
18 source, for technical fees, facility fees, or global fees for
19 the offering of mobile or fixed-base extracorporeal shock wave
20 lithotripter services, mobile or fixed-base magnetic resonance
21 service, or positron emission tomography services, and
22 notwithstanding all other provisions of this article to the
23 contrary and notwithstanding any and all provisions of the
24 State Health Plan on September 1, 2003, relating to
25 lithotripsy, magnetic resonance imaging, and positron emission
26 tomography, new institutional health services, which are
27 subject to this article, shall not include any health services

1 provided by a mobile or fixed-based extracorporeal shock wave
2 lithotripter, mobile or fixed-based magnetic resonance
3 imaging, or positron emission tomography proposed to be
4 offered in or through a health care facility or health
5 maintenance organization. ~~The SHPDA, after consultation with
6 and the advice of the Statewide Health Coordinating Council,
7 in accordance with the Alabama Administrative Procedure Act
8 and within 60 days of September 1, 2003, shall cause the State
9 Health Plan to be amended to repeal and delete all sections of
10 the Alabama State Health Plan relating to mobile and
11 fixed-based lithotripters, mobile and fixed-based magnetic
12 resonance imaging, and positron emission tomography, and cause
13 the amendment and repeal of any other SHPDA rules and
14 regulations inconsistent with this article."~~

15 Section 2. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.