

1 SB389
2 165158-2
3 By Senators Reed, Waggoner, Bussman, Albritton, Stutts,
4 McClendon, Allen, Hightower, Pittman, Ward, Glover, Williams,
5 Whatley, Shelnutt, Scofield, Melson, Beasley and Figures
6 RFD: Health and Human Services
7 First Read: 16-APR-15

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8 SYNOPSIS: This bill would revise the definition of a
9 health care facility under the certificate of need
10 law to encompass psychiatric residential treatment
11 facilities providing psychiatric and other
12 therapeutic and clinically informed services to
13 individuals under the age of 21 outside of an acute
14 care hospital setting, and to provide for a
15 streamlined procedure for providers to obtain a
16 certificate of need for existing facilities in the
17 state.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 To amend Section 22-21-260, Code of Alabama 1975, to
24 revise the definition of a health care facility under the
25 certificate of need law to include psychiatric residential
26 treatment facilities providing psychiatric and other
27 therapeutic and clinically informed services to individuals

1 under the age of 21 outside of an acute care hospital setting;
2 and to provide a streamlined procedure for providers to obtain
3 a certificate of need for existing facilities in the state.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 22-21-260 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§22-21-260.

8 "As used in this article, the following words and
9 terms, and the plurals thereof, shall have the meanings
10 ascribed to them in this section, unless otherwise required by
11 their respective context:

12 "(1) ACQUISITION. Obtaining the legal equitable
13 title to a freehold or leasehold estate or otherwise obtaining
14 the substantial benefit of such titles or estates, whether by
15 purchase, lease, loan or suffrage, gift, devise, legacy,
16 settlement of a trust or means whatever, and shall include any
17 act of acquisition. The term "acquisition" shall not mean or
18 include any conveyance, or creation of any lien or security
19 interest by mortgage, deed of trust, security agreement, or
20 similar financing instrument, nor shall it mean or include any
21 transfer of title or rights as a result of the foreclosure, or
22 conveyance or transfer in lieu of the foreclosure, of any such
23 mortgage, deed of trust, security agreement, or similar
24 financing instrument, nor shall it mean or include any gift,
25 devise, legacy, settlement of trust, or other transfer of the
26 legal or equitable title of an interest specified hereinabove
27 by a natural person to any member of such person's immediate

1 family. For the purposes of this section "immediate family"
2 shall mean the spouse of the grantor or transferor and any
3 other person related to the grantor or transferor to the
4 fourth degree of kindred as such degrees are computed
5 according to law.

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

8 "(2.1) CAMPUS. The contiguous real property,
9 contained within a single county, which is owned or leased by
10 a health care facility and upon which is located the buildings
11 and any other real property used by the health care facility
12 to provide existing institutional health services which are
13 subject to review.

14 "(3) CAPITAL EXPENDITURE. An expenditure, including
15 a force account expenditure (i.e., an expenditure for a
16 construction project undertaken by the health care facility as
17 its own contractor), which, under generally accepted
18 accounting principles, is not properly chargeable as an
19 expense of operation and maintenance and which satisfies any
20 of the following:

21 "a. Exceeds two million dollars (\$2,000,000) indexed
22 annually for inflation for major medical equipment; eight
23 hundred thousand dollars (\$800,000) for new annual operating
24 costs indexed annually for inflation; four million dollars
25 (\$4,000,000) indexed annually for inflation for any other
26 capital expenditure. The index referenced in this paragraph
27 shall be the Consumer Price Index Market Basket Professional

1 Medical Services index as published by the U.S. Department of
2 Labor, Bureau of Labor Statistics. The State Health Planning
3 and Development Agency shall publish this index information to
4 the general public.

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

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

9 "(4) CONSTRUCTION. Actual commencement, with bona
10 fide intention of completing the construction, or completion
11 of the construction, erection, remodeling, relocation,
12 excavation, or fabrication of any real property constituting a
13 facility under this article, and the term construct shall mean
14 and include any act of construction. "Ground breaking
15 ceremony," "receipt of bids," "receipt of quotation," or
16 similar action that will permit unilateral termination without
17 penalty shall not be considered construction.

18 "(5) FIRM COMMITMENT or OBLIGATION. Any of the
19 following:

20 "a. Any executed, enforceable, unconditional written
21 agreement or contract not subject to unilateral cancellation
22 for the acquisition or construction of a health care facility
23 or purchase of equipment therefor.

24 "b. Actual construction of facilities peculiarly
25 adapted to the furnishing of one or more particular services
26 and with the bona fide intention of furnishing such service or
27 services.

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

4 "(6) HEALTH CARE FACILITY. General and specialized
5 hospitals, including tuberculosis, psychiatric, long-term
6 care, and other types of hospitals, and related facilities
7 such as, laboratories, out-patient clinics, and central
8 service facilities operated in connection with hospitals;
9 skilled nursing facilities; intermediate care facilities;
10 skilled or intermediate care units operated in veterans'
11 nursing homes and veterans' homes, owned or operated by the
12 State Department of Veterans' Affairs, as these terms are
13 described in Chapter 5A (commencing with Section 31-5A-1) of
14 Title 31, rehabilitation centers; public health centers;
15 facilities for surgical treatment of patients not requiring
16 hospitalization; kidney disease treatment centers, including
17 free-standing hemodialysis units; community mental health
18 centers and related facilities; alcohol and drug abuse
19 facilities; facilities for the developmentally disabled;
20 hospice service providers; psychiatric treatment facilities
21 providing psychiatric and other therapeutic and clinically
22 informed services to individuals under the age of 21 outside
23 of an acute care hospital setting, and home health agencies
24 and health maintenance organizations. The term health care
25 facility shall not include the offices of private physicians
26 or dentists, whether for individual or group practices and
27 regardless of ownership, or Christian Science sanatoriums

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

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

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

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

26 "(9.1) MAJOR MEDICAL EQUIPMENT. Medical clinical
27 equipment intended for use in the diagnosis or treatment of

1 medical conditions, which is used to provide institutional
2 health services of a health care facility which are subject to
3 review, and which expenditure exceeds the thresholds
4 referenced in this section and in Section 22-21-263.

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

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

21 "(12) RURAL HEALTH CARE PROVIDER/APPLICANT/HOSPITAL.
22 A provider or applicant or hospital which is designated by the
23 United States government Health Care Financing Administration
24 as rural.

25 "(13) STATE HEALTH PLAN. A comprehensive plan which
26 is prepared triennially and reviewed at least annually and
27 revised as necessary by the Statewide Health Coordinating

1 Council, with the assistance of the State Health Planning and
2 Development Agency, and approved by the Governor.

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

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

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

1 Governor. Where used in this article, the terms, "state
2 agency," and the "SHPDA," shall be synonymous and may be used
3 interchangeably.

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

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

16 Section 2. The State Health Planning and Development
17 Agency and the State Health Coordinating Council shall adopt
18 rules providing for the processing of certificate of need
19 applications of any existing provider of psychiatric
20 residential treatment that is required to obtain a Certificate
21 of Need under the act adding this section.

22 Section 3. Any provision of law to the contrary
23 notwithstanding:

24 (1) The Department of Public Health shall grant a
25 license required pursuant to Section 22-21-20, Code of Alabama
26 1975, for any psychiatric residential treatment facility for
27 persons under the age of 21, that is accredited by the Joint

1 Commission on the Accreditation of Healthcare Organizations,
2 the Commission on Accreditation of Rehabilitation Facilities,
3 the Council on Accreditation of Services for Families and
4 Children, or another nationally established accrediting
5 organization, within 12 months after the effective date of the
6 act adding this subdivision, and shall adopt rules consistent
7 with such standards to govern the licensure of new facilities.

8 (2) Any facility satisfying the requirements of this
9 subdivision shall obtain a certificate of need by filing an
10 application with the State Health Planning and Development
11 Agency within 60 days after the effective date of the act
12 adding this subdivision, without the necessity of filing a
13 letter of intent, and such application shall be processed and
14 approved by the State Health Planning and Development Agency
15 utilizing the nonsubstantive review process under subdivision
16 (4) of Section 22-21-275, Code of Alabama 1975. Such existing
17 facilities may continue to operate pending the grant of
18 certificate of need and issuance of a license pursuant to this
19 section. The State Health Coordinating Council shall revise
20 the State Health Plan to address need for additional,
21 psychiatric residential treatment facilities for persons under
22 the age of 21 following an assessment of the services being
23 provided by existing facilities who receive a certificate of
24 need under this section. No new psychiatric residential
25 treatment facility for persons under the age of 21 shall be
26 established after the effective date of the act adding this
27 subdivision without obtaining a certificate of need.

1 Psychiatric residential treatment facilities existing on the
2 effective date of the act adding this subdivision shall be
3 exempt from Medicaid regional care organizations.

4 Section 4. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law.