



GEORGIA DEPARTMENT OF
COMMUNITY HEALTH

Rhonda M. Medows, MD, Commissioner

Sonny Perdue, Governor

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WRITER'S DIRECT DIAL
404-657-7198

June 30, 2008

Jennifer Crick Monroe
Ray & Sherman, LLC
One Securities Centre
3490 Piedmont Road, Suite 700
Atlanta, GA 30305

RE: Senate Bill 433 Clarification Regarding Replacement of Diagnostic and/or
Therapeutic Equipment

Dear Ms. Monroe:

The Georgia Department of Community Health, Division of Health Planning (the Department) is in receipt of your request, dated May 30, 2008, seeking clarification with respect to the replacement of diagnostic and therapeutic equipment provisions contained in Senate Bill (SB) 433. You also inquired about the classification of freestanding diagnostic imaging centers as health care facilities under the new provisions as a result of the newly imposed reporting standards contained in Senate Bill 433. Your request was submitted in response to the Department's invitation to submit questions regarding the impact and applicability of Senate Bill (SB) 433, a Certificate of Need (CON) reform bill passed during the 2008 session of the Georgia General Assembly.

Your letter states that you represent Novant Health, Inc. (Novant). Novant is a not-for-profit hospital system, which wholly owns and operates several hospitals. The hospital system also wholly owns numerous free-standing imaging centers that MedQuest, Inc. (MedQuest) or one of its direct subsidiaries developed in Georgia.

SB 433 contains two exemptions related to the replacement of diagnostic and/or therapeutic equipment. O.C.G.A. § 31-6-47(a)(10) exempts from prior CON review and approval expenditures of less than \$870,000 for any minor or major repair or replacement of equipment by a health care facility that is not owned by a group practice of physicians or a hospital and that provides diagnostic imaging services if such facility received a letter of nonreviewability from the department prior to July 1, 2008. This paragraph shall not apply to such facilities in rural counties. {Note: all citations referenced are effective July 1, 2008}.

O.C.G.A. § 31-6-47(a)(10.1) exempts from prior CON review and approval, except as provided in paragraph (10) of the exemptions, expenditures for the minor or major repair of a health care facility or a facility that is exempt from the requirements of this chapter, parts thereof or services provided or equipment used therein; or the replacement of equipment, including but not limited to CT scanners previously approved for a certificate of need.

The Department interprets paragraph (10) to mean that a free-standing imaging center that received a letter of nonreviewability (LNR) prior to July 1, 2008, that is located in an urban county, and that is not owned by a group practice of physicians or a hospital, may replace diagnostic or therapeutic equipment without prior CON review and approval if it spends less than \$870,000 to do so.

The Department interprets paragraph (10.1) to mean that health care facilities, owned by a group practice of physicians or a hospital, may replace diagnostic and/or therapeutic equipment previously approved for a certificate of need, or equipment utilized in a facility exempt from prior CON review and approval, without regard to the value of the replacement equipment.

Your letter also references new requirements in SB 433 for previously exempt facilities, such as a physician owned, single specialty ambulatory surgery center, a diagnostic treatment and rehabilitation center offering imaging services in an exempt facility, and facilities offering imaging services pursuant to a letter of nonreviewability prior to July 1, 2008. Effective July 1, 2008, such facilities will be required to provide notice information of their existence to the Department, and to provide annual reports provided by O.C.G.A. § 31-6-70. O.C.G.A. § 31-6-40(c)(2)(A)(B).

SB 433 further provides that facilities of the type listed directly above will have certain financial accessibility requirements on or after July 1, 2008, if they make a capital expenditure, or acquire or replace equipment, at a cost or with a value over \$800,000 over a two-year period; build a new operating room; or choose to relocate. O.C.G.A. § 31-6-40(c)(2)(C).

Your letter asks, if as a result of the new requirements outlined directly above, the previously exempt facilities will now be considered a defined health care facility. Please be advised the Department will continue to recognize and apply the statutory definition of "health care facility" found at O.C.G.A. § 31-6-2(17). This definition does not include at any point previously exempt facilities of the type referenced in O.C.G.A. § 31-6-40(c)(2). Thus, the Department determines the new requirements do not convert these types of facilities into the statutorily defined category of "health care facility", with all the rights associated with such a designation.

Please be advised that a party wishing to avail itself of a statutory exemption, on or after July 1, 2008, must submit a specific and factual determination request to the Department on the existing published Determination form, along with the proper filing fee. The Department will respond as appropriate, and the Department response shall be the written

confirmation of exemption required in SB 433. This letter is not an official written confirmation of any activity to be undertaken on or after July 1, 2008 pursuant to SB 433.

I hope this letter is responsive to your request. If there are any further questions or concerns, please feel free to contact me at the Department.

Sincerely,

A handwritten signature in black ink that reads "Clyde L. Reese, III". The signature is written in a cursive style with a long, sweeping horizontal line at the end.

Clyde L. Reese, III
General Counsel