



GEORGIA DEPARTMENT OF
COMMUNITY HEALTH

Rhonda M. Medows, MD, Commissioner

Sonny Perdue, Governor

2 Peachtree Street, NW
Atlanta, GA 30303-3159
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WRITER'S DIRECT DIAL
404-657-7198

June 10, 2008

Charles L. Gregory, Esq.
Arnall Golden Gregory LLP
171 17th Street, NW, Suite 2100
Atlanta, GA 30363-1031

RE: Senate Bill 433 Clarification Regarding Capital Expenditure Threshold

Dear Mr. Gregory:

The Georgia Department of Community Health, Division of Health Planning (the Department) is in receipt of your request, dated May 9, 2008, seeking clarification with respect to the capital expenditure threshold provisions contained in Senate Bill 433. This 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 request asks for clarification with respect to the A.G. Rhodes Home, Inc. (A.G. Rhodes). A.G. Rhodes is an existing nursing home that is planning a capital improvement project that will exceed the current capital expenditure threshold of \$1,603,164, but will be below the capital threshold referenced in SB 433 that is effective on July 1, 2008. Your letter states that A.G. Rhodes does not plan to commence the project until after July 1, 2008. There will be no new services or beds added to the facility. You ask for confirmation that a capital project with a cost below the threshold referenced in SB 433 will not be subject to prior CON review and approval after July 1, 2008. You also ask for confirmation that such a project will not require an official determination from the Department prior to commencing the activity.

The CON reform changes contained within SB 433 are effective on July 1, 2008. SB 433 provides that on or after July 1, 2008, any new institutional health service shall be required to obtain a certificate of need. The bill goes on to say that new institutional health services include any expenditure by or on behalf of a health care facility in excess of \$2,500,000.00 ... O.C.G.A. § 31-6-40(a)(2). {Note: all citations referenced are effective July 1, 2008}. SB 433 also provides that develop means constructing, remodeling, installing, or proceeding with a project, or any part of a project, or a capital expenditure project, the cost estimate for which exceeds \$2,500,000.00. O.C.G.A. § 31-6-2(14)(A).

Please be advised that Section 3-1 of SB 433 provides that the CON changes in Part I of the bill shall become effective on July 1, 2008, and shall only apply to applications submitted on or after July 1, 2008. As a result, on and after July 1, 2008, a capital expenditure by or on behalf of an existing health care facility which does not exceed a cost of \$2,500,000.00 will not be subject to prior CON review and approval.

If you wish to receive official written confirmation that a proposed activity is not subject to prior CON review and approval at a date after July 1, 2008, you could 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. This letter is not an official written confirmation of any activity to be undertaken on or after July 1, 2008 pursuant to SB 433. The Department will publish a proposed rule after July 1, 2008 that requires prior notice and approval via an official determination for the express CON exemptions codified at O.C.G.A. § 31-6-47, pursuant to O.C.G.A. § 31-6-47.1. The Department notes that the reviewability of a new institutional health service is not an express exemption, although a party may still request an official determination.

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 cursive script that reads "Clyde L. Reese, III". The signature is written in dark ink and is positioned above the typed name.

Clyde L. Reese, III
General Counsel