



GEORGIA DEPARTMENT OF
COMMUNITY HEALTH

Rhonda M. Medows, MD, Commissioner

Sonny Perdue, Governor

2 Peachtree Street, NW
Atlanta, GA 30303-3159
www.dch.georgia.gov

WRITER'S DIRECT DIAL
404-657-7198

June 30, 2008

Katherine H. Forseth
Troutman Sanders
Bank of America Plaza
600 Peachtree Street N.E., Suite 5200
Atlanta, GA 30308

RE: Senate Bill 433 Clarification Regarding Diagnostic and Therapeutic Equipment
Threshold

Dear Ms. Forseth:

The Georgia Department of Community Health, Division of Health Planning (the Department) is in receipt of your request, dated May 16, 2008, seeking clarification regarding the diagnostic and therapeutic equipment threshold provisions 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.

You ask whether a physician group of board certified radiologists would be eligible for the diagnostic or therapeutic equipment expenditure threshold outlined in the bill. SB 433 provides that on or after July 1, 2008, any new institutional health service shall be required to obtain a certificate of need before such service could be offered. O.C.G.A. § 31-6-40(a). {Note: all citations referenced are effective July 1, 2008}. A new institutional health service includes the purchase or lease by or on behalf of a health care facility or a diagnostic, treatment, or rehabilitation center of diagnostic or therapeutic equipment with a value in excess of \$1,000,000.00; provided, however, that diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the cost of equipment; and provided, further, that this shall not include build out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years. O.C.G.A. § 31-6-40(a)(3).

Your letter also asks whether the costs of x-ray, fluoroscopy, or ultrasound equipment will be included in the threshold analysis for diagnostic or therapeutic equipment. SB 433 includes a new definition of diagnostic imaging at O.C.G.A. § 31-6-2(15). This

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definition provides that "diagnostic imaging" means magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as defined by the department by rule, but such term shall not include X-rays, fluoroscopy, or ultrasound services.

Finally, your letter asks whether furniture, fixtures, and equipment costs not specifically related to the functionality of the imaging equipment will be included in the diagnostic and therapeutic equipment expenditure threshold analysis due to the fact that build out costs are no longer to be included in the threshold figure examined by the Department.

Please be advised that the Department interprets the language of O.C.G.A. § 31-6-40(a)(3) to allow a private group practice of physicians who are board certified radiologists to acquire diagnostic or therapeutic equipment to be used exclusively on patients referred to it for radiological services (who will be the radiology group's patients while they are receiving radiological services in the radiology group's offices) for an amount under the referenced threshold without prior CON review and approval. The Department further interprets the applicable provisions to mean that the costs or value of x-ray, fluoroscopy, and ultrasound equipment will no longer be included in the diagnostic and therapeutic equipment expenditure threshold analysis. Finally, the Department will include a definition of build out costs in proposed rules to implement SB 433. Build out costs as defined will no longer be included in the diagnostic and therapeutic equipment expenditure threshold analysis. The Department will no longer include the costs or value of furniture, fixtures, and office equipment not functionally related to the installation and operation of the diagnostic and therapeutic equipment at issue in the equipment expenditure threshold analysis to determine whether or not the acquisition of such diagnostic or therapeutic equipment is subject to prior CON review and approval.

Please be advised that a party wishing to avail itself of this expenditure threshold analysis on or after July 1, 2008, must submit a specific and factual request for a letter of nonreviewability for the acquisition of diagnostic and/or therapeutic equipment to the Department on the existing published 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.

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,



Clyde L. Reese, III
General Counsel