

SENATE BILL 99¹: CERTIFICATE OF NEED REQUIREMENTS; EXEMPTION FOR ACUTE CARE HOSPITALS ESTABLISHED IN RURAL COUNTIES THAT MEET CERTAIN CRITERIA.

Amending O.C.G.A. § 31-6-47

First Signature: Senator Greg Dolezal (27th)

Co-Sponsors: Senator Ben Watson (1st), Senator Matt Brass (28th), and Senator Bill Cowsert (46th)

Summary: “A BILL to be entitled an Act to amend Code Section 31-6-47 of the official Code of Georgia Annotated, relating to exemptions from certificate of need requirements, so as to provide an exemption for acute care hospitals established in rural counties that meet certain criteria; to provide for related matters; to repeal conflicting laws, and for other purposes.”²

Status: This bill has passed the Senate as of 02/27/2023.³

TEXT OF SENATE BILL 99⁴

To Amend Code Section 31-6-47 of the Official Code of Georgia Annotated, relating to exemptions from certificate of need requirements, so as to provide an exemption for acute care hospitals established in rural counties that meet certain criteria; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 31-6-47 of the Official Code of Georgia Annotated, relating to exemptions from certificate of need requirements, is amended in subsection (a) by striking “and” at the end of paragraph (28), by replacing the period at the end of paragraph (29) with “; and”, and by adding a new paragraph to read as follows:

¹ S.B. 99, 157th Gen. Assemb., 1st Reg. Sess. (Ga. 2023), *available at* <https://www.legis.ga.gov/api/legislation/document/20232024/216082> (last visited Sept. 30, 2023).

² 2023-2024 Regular Session-S.B. 99, *Certificate of Need Requirements; exemption for acute care hospitals established in rural counties that meet certain criteria; provide*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/legislation/64040> (last visited Sept. 30, 2023) [hereinafter S.B. 99 Status Sheet].

³ *Id.*

⁴ S.B. 99, *supra* note 1.

“30(A) An acute care hospital established on or after July 1, 2023, in a rural county, as defined in Code Section 31-8-9.1, that will:

(i) Provide inpatient hospital services;

(ii) Participate in both Medicaid and Medicare and will accept both Medicaid and Medicare patients;

(iii) Provide health care services to indigent patients;

(iv) Have at least 10 percent of its annual net revenue categorized as indigent care, charity care, or bad debt;

(v) Annually file IRS Form 990, Return of Organization Exempt From Income Tax, with the department, or for any hospital not required to file IRS Form 990, the department will provide a form that collects the same information to be submitted to the department on an annual basis;

(vi) Be current with all audits and reports required by law.

(B) In the event that the county in which an acute care hospital established in accordance with this paragraph is located no longer meets the definition of a rural county after such hospital has commenced operations, the hospital shall be deemed to continue to meet the requirements of this paragraph for as long as such hospital continues to operate.”

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR’S RATIONALE

Certificate of need requirements were first implemented into federal law in 1974, although repealed on the federal level in 1987, as a means to “assess . . . unnecessary duplication of healthcare services within a certain radius.”⁵ Georgia requires such certificates for an estimated 50 different services, including “new hospitals, expansion of beds, diagnostic imaging, labs, and mental health services.”⁶ In theory, certificates should eliminate duplicative services and thereby should keep the cost of services lower by eliminating market competition.⁷ Georgia’s current laws still require approval not only for the construction of new facilities within a certain radius, but also for improvements to existing hospitals such as adding a new bed or purchasing new imaging equipment.⁸ The attempt to regulate duplication has led to an overcorrection and a depletion of resources making

⁵ Asia Ashley, *Georgia Studies Health Care Access*, CNHI NEWS (June 15, 2023), https://www.cnhinews.com/cnhi/article_9bec9338-0b97-11ee-a36b-e64acbd89ec.html.

⁶ Kelly Whitmire, *Why these state, federal lawmakers want to change how medical center can open*, FORSYTH NEWS (Jan. 21, 2023), <https://www.forsythnews.com/news/government/why-these-state-federal-lawmakers-want-change-how-medical-centers-can-open/>.

⁷ Ashley, *Georgia Studies*, *supra* note 5.

⁸ *Id.*

obtaining even basic medical equipment for existing facilities a challenge, says Ashley.⁹

Senator Greg Dolezal introduced Senate Bill S.B. 99 to amend Code Section 31-6-7 of the Official Code of Georgia Annotated to provide immediate medical assistance to rural Georgians.¹⁰ Senate Bill S.B. 99 specifically amends the exemptions from certificate of need requirements, by continuing to provide an exemption for acute care hospitals established in rural counties that meet certain criteria.¹¹ Georgia defines rural as a population of 35,000 or less, or those counties with a population of 50,000 or less.¹² Under Senate Bill 99, the exemption is met when the growth of the county, after the acute care hospital is established, is such that the county no longer meets the definition of a rural county.¹³ This exemption continues for as long as such hospitals continue to operate.¹⁴ Proponents of Senate Bill 99 argue that it would reduce, if not eliminate, barriers developers face in justifying to the State the need for a new facility before development can begin.¹⁵ Furthermore, Senate Bill 99 would encourage the building and establishing of new facilities in medical wastelands, thereby providing critical access to healthcare for Georgia's underserved rural residents.¹⁶

Senate Bill 99 could benefit the rural counties of Georgia; 75% or 120 of the total 159 counties in Georgia are identified as rural.¹⁷ Out of the 120 rural counties, 57 rural counties do not have acute care facilities.¹⁸ After Lumpkin County opens its new acute care hospital in 2024, 56 counties will still lack an acute care facility.¹⁹

⁹ Ashley, *Georgia Studies*, *supra* note 5.

¹⁰ S.B. 99 Status Sheet.

¹¹ *Id.*

¹² SORH Maps of Georgia, GEORGIA DEPARTMENT OF COMMUNITY HEALTH, <https://dch.georgia.gov/divisionsoffices/state-office-rural-health/sorh-maps-georgia>, (last visited Sept. 30, 2023).

¹³ S.B. 99 Status Sheet.

¹⁴ *Id.*

¹⁵ Asia Ashley, *Georgia Senate Oks Scrapping Certificate of Need for Rural Hospitals; Total CON Dump Proposed*, THE DAILY CITIZEN (Feb. 28, 2023), https://www.dailycitizen.news/news/local_news/senate-oks-scrapping-certificate-of-need-for-rural-hospitals-total-con-dump-proposed/article_e3e33428-b776-11ed-bb2a-97ecd9fa60bf.html.

¹⁶ Asia Ashley, *Hospital Groups Fear Proposed Law Could Harm, Not Help Rural Hospitals*, BLUEFIELD DAILY TELEGRAPH (Feb. 20, 2023), https://www.bdonline.com/hospital-groups-fear-proposed-law-could-harm-not-help-rural-hospitals/article_653a25ae-a985-11ed-830d-ebfed152aa73.html.

¹⁷ SORH, *supra* note 12.

¹⁸ *Id.*

¹⁹ Keith Murnen, *New Hospital Set for Spring 2024 Opening*, THE DAHLONEGA NUGGET, (May 10, 2023), <https://www.thedahloneganugget.com/news-newsletter/new-hospital-set-spring-2024-opening>.

The intent of Senate Bill 99 is to increase access to healthcare for rural Georgians by enabling construction of more facilities.²⁰ Thomas Stratmann, a senior researcher at the Mercatus Center at George Mason University, highlights that Certificate of Need (hereinafter CON) requirements work in opposition to providing access to healthcare.²¹ This is shown in statistics that reflect states with a CON requirement have fewer hospitals than states without a CON requirement.²² Since Florida repealed its CON laws in 2019, 64 new ambulatory surgery centers have been added to the community.²³ Additional statistics show states with CON requirements average 131 fewer beds per 100,00 residents, roughly two thirds of the national average of 362 beds per 100,000.²⁴

With Georgia's population at 10.9 million, this could equate to 14,296 fewer beds due to CON requirements.²⁵ States with populations comparable to Georgia, but without CON requirements, reflected a 30% greater average in total facilities within the state, or roughly 50 additional facilities.²⁶ In showing that CON requirements negatively correlate to the number of available facilities and beds, Mr. Stratmann stated that it can be inferred that "CON [requirements] reduce access to healthcare because there are fewer hospitals available."²⁷

Proponents of Senate Bill 99 highlight that the current certificate of need requirements necessitate a lengthy and often expensive pre-construction process which only delays access to Georgians needing care.²⁸ The Georgia Public Policy Foundation conducted a study regarding the 379 CON

²⁰ S.B. 99, *supra* note 1.

²¹ Asia Ashley, *Study Committee to Assess Hospital Certificate of Needs Requirements*, THE DAILY CITIZEN (April 11, 2023), https://www.dailycitizen.news/news/local_news/study-committee-to-assess-hospital-certificate-of-needs-requirements/article_a2bfc21c-d7b1-11ed-afb4-0bd804696198.html.

²² *Id.*

²³ Tammy Joyner, *What will happen with the Certificate of Need law? Ask 10 people, get 8 different answers*, STATE AFFAIRS, (Jul. 3, 2023), <https://stateaffairs.com/georgia/healthcare/certificate-of-need-law-changes-questions-ideas/>.

²⁴ Thomas Stratmann & Jacob Russ, *Do Certificate of Need Laws Increase Indigent Care*, (Working Paper No. 14-20, Mercatus Center at George Mason University, Arlington, VA, July 15, 2014), <https://www.mercatus.org/students/research/working-papers/do-certificate-need-laws-increase-indigent-care>.

²⁵ QuickFacts Georgia, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/GA/PST045222?>, (last visited Oct. 28, 2023).

²⁶ Ashley, *Study Committee*, *supra* note 21.

²⁷ *Id.*

²⁸ T.A. DeFeo, *Commission chair: Georgia CON laws 'intended to stifle competition'*, THE CENTER SQUARE (Aug. 28, 2023), https://www.thecentersquare.com/georgia/article_933574ac-45e5-11ee-9e35-f31c352afd7a.html.

applications submitted between 2017-2022.²⁹ The study showed general opposition to a CON request added 234 days for a determination to be rendered and doubled the likelihood of denial from 25% to 50%.³⁰ Competitor opposition, such as pushback coming from a nearby facility, added 520 days to the determination process.³¹ Lee County Commission Chairman Billy Mathis went through a multi-million dollar CON process in an attempt to build a “small” acute care facility with 60 beds and 4 operating rooms in Lee County.³² The attempt to build the acute care facility involved nearly five years and \$8 million in litigation costs which ultimately left its citizens with no new facility.³³ Mathis asserts the current Georgia code encourages litigation, arguing Lee county spent millions of dollars in litigation costs and time battling oppositional parties.³⁴ Due to the involved litigation, Lee County was unable to meet their Phase One requirements and Lee County’s CON was revoked in March of 2023.³⁵ The proposed facility was not built.³⁶ As Mathis’s experience shows, the CON process in Georgia can involve extensive litigation, making it an uphill battle from the start, and ends as a detriment to the citizens.³⁷

Studies into the functionality and effects of CON requirements indicate mixed results of meeting their stated objectives to reduce duplication of services and stabilize healthcare costs.³⁸ Georgia Senate Research Office’s senior policy analyst Jocelyn Hill found CON requirements increase health expenditures.³⁹ CON requirements give free rein to existing providers to exercise aggressive price increases on a captive market by granting a monopoly and eliminating market competition under the guise of prevention of duplication of services.⁴⁰

Jesse Weathington, President of Georgia Association of Health Plans, explains how the current CON requirements work in opposition to their

²⁹ Chris Denson, *House holds CON reform hearings*, GEORGIA PUBLIC POLICY FOUNDATION (July 13, 2023), <https://www.georgiapolicy.org/news/house-holds-con-reform-hearings/>.

³⁰ Denson, *supra* note 29.

³¹ *Id.*

³² DaFeo, *supra* note 28.

³³ Joyner, *Ask 10*, *supra* note 23.

³⁴ DaFeo, *supra* note 28.

³⁵ Carlton Fletcher, *Lee County hospital officials’ request for certificate of need extension denied*, THE ALBANY HERALD (Mar. 21, 2023), https://www.albanyherald.com/features/lee-county-hospital-officials-request-for-certificate-of-need-extension-denied/article_e2a21e18-c81e-11ed-bf8d-f327036b4406.html.

³⁶ *Id.*

³⁷ DaFeo, *supra* note 28.

³⁸ Ashley, *Georgia Studies*, *supra* note 5.

³⁹ *Id.*

⁴⁰ Ashley, *Study Committee*, *supra* note 21.

goals to provide access to healthcare.⁴¹ Weatherington argues that permitting exemptions from these requirements, as Senate Bill 99 proposes, would increase availability of acute care facilities, thus increasing access to Georgians.⁴² Furthermore, Weatherington maintains his position that current CON requirements reduce access to healthcare by creating scarcity.⁴³ This scarcity creates local monopolies leading to an increase in costs.⁴⁴ Current CON laws enable and perpetuate these monopolies as incumbent providers are permitted to sit on the board which determines which CON applications will be approved.⁴⁵ Proponents of Senate Bill 99 argue the combination of scarcity and increased costs assures that underserved, rural communities will continue to be underserved.⁴⁶

Proponents of Senate Bill 99 describe the current CON system as being based in an archaic system that delays the provision of healthcare services to rural Georgians, and is in much need of an overhaul.⁴⁷ This exemption would not be the first time an update, alteration, or change has been made to the Georgia CON requirements.⁴⁸ Since its inception in 1974, there have been 29 exemptions to the CON requirements in Georgia; this would be the 30th.⁴⁹ Senator Dolezal reiterated that “Georgia has been in a somewhat periodic stance of regularly reviewing these laws to ensure they best fit the needs of our citizens.”⁵⁰ Proponents see Senate Bill 99 as the continuation of review and tailoring of the CON requirements, which has been routinely exercised for nearly 50 years.⁵¹ The Georgia House Special Committee on Access to Quality Healthcare advanced similar legislation in 2019 and 2022; however neither made it beyond the House floor vote.⁵² By continuing to adhere to the current system, specifically in regards to rural communities, communities are forced to rely upon old and outdated facilities that are no longer adequately equipped to serve the evolving needs of their community.⁵³ Senator Dolezal specifically references the Sylvan Grove Hospital in Butts County, which is 65 years old, has only 25 beds, limited imaging capabilities, and whose services focus mostly on

⁴¹ Ashley, *Study Committee*, *supra* note 21.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Denson, *supra* note 29.

⁴⁶ Ashley, *Study Committee*, *supra* note 21.

⁴⁷ Ashley, *Scrapping*, *supra* note 15.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Christopher Denson & Matthew D. Mitchell, *Economic Report on Georgia's Certificate of Need Program*, GEORGIA PUBLIC POLICY FOUNDATION, (Mar. 20, 2023), <https://www.georgiapolicy.org/wp-content/uploads/2023/04/CON-report.pdf>.

⁵³ Ashley, *Scrapping*, *supra* note 15.

rehabilitation.⁵⁴ Although this facility is not meeting the needs of its immediate community, under the existing CON requirements, a new facility cannot be built.⁵⁵ Passage of the bill would bring new facilities with 21st century medical care to rural communities.⁵⁶

Three separate bills were introduced this year, Senate Bill 162, House Bill 606, and Senate Bill 99, to address CON requirements, indicative of its importance to Georgians.⁵⁷ The study committee of Georgia senators authorized in March 2023 presented their findings, based on extensive research and testimony, in late November 2023, ultimately determining the CON laws need to be repealed in their entirety finding the problems CON laws intend to combat no longer exist.⁵⁸ Similar committees were established to evaluate the efficacy of CON laws in Georgia in 2005, 2008, and 2018.⁵⁹ The most current committee has proposed nine alterations to the current CON laws.⁶⁰ The committee is set to present its recommendations in January 2024 when it reconvenes, but alterations include: ending all hospital based CON requirements by January 1, 2025, repealing CON requirements for all services related to obstetric and neonatal care, repealing cost expenditure triggers for CON, eliminating CON review for new and expanded psychiatric services and beds serving uninsured and Medicaid patients, removing CON for hospital bed expansion, removing CON for research centers, allowing multi-specialty centers specifically in rural areas, revising freestanding emergency department requirements such that the must be within 35 miles of an affiliated hospital and remove CON requirement, and that all medical and surgery specialties – including cardiology and general surgery – should be considered a single specialty.⁶¹

Pursuant to the Senate Committee's findings, in January 2024, the Senate reintroduced Senate Bill 162, which proposes to narrow the facilities to which CON laws would apply, and introduced Senate Bill 442 which proposes that after a certain date, CON requirements shall not apply to any

⁵⁴ Ashley, *Scrapping*, *supra* note 15.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Chris Denson, *What happened to CON reform this year?*, GEORGIA PUBLIC POLICY FOUNDATION, (Mar. 23, 2023), <https://www.georgiapolicy.org/news/what-happened-to-con-reform-this-year/>.

⁵⁸ Tammy Joyner, *Georgia lawmakers push for repeal of law determining where medical facilities are built*, STATE AFFAIRS, (Dec. 2, 2023), https://stateaffairs.com/georgia/healthcare/georgia-senate-certificate-of-need-reform/?sa_signed_up=true.

⁵⁹ Denson & Mitchell, *supra* note 52.

⁶⁰ Joyner, *Georgia Lawmakers*, *supra* note 58.

⁶¹ S.R. 279, 157th Gen. Assemb., Reg. Session. (Ga. 2023), <https://www.senate.ga.gov/committees/Documents/CONFfinalReport11.29.23.pdf>.

health care related service in a county with a population of less than 35,000.⁶²

OPPOSITION'S RATIONALE

Senator Nan Orrock asserts the CON requirements protect existing hospitals from being encroached upon by new facilities.⁶³ The Georgia Department of Community Health deploys the CON program for a specific purpose, which is to safeguard against “unnecessary duplication of services that perpetuate the costs of healthcare services.”⁶⁴ This is partly accomplished through the program’s criteria for the number of miles between specific facilities.⁶⁵ The encroachment of new facilities onto older facilities is financially detrimental to the existing facilities and to the new construction because it forces both to compete for patients in areas with an already limited population.⁶⁶ Senator Orrock also asserts that CON exemptions have the potential to affect facilities in nearby counties.⁶⁷ The proposed new facility in Butts County, on which Senate Bill 99 was predicated, would impact its intra-county neighbor of Sylvan Grove Hospital, as well as its inter-county neighbor WellStar Regional Hospital, a 160 bed facility, located just a few miles over the county border.⁶⁸ To exempt facilities from the CON program would be detrimental to the healthcare system by permitting the very vices the CON program works to prevent – duplication of services.⁶⁹

Opponents of the Bill argue that Senate Bill 99 is short sighted and does not recognize the broader, more far-reaching effects the plan will have.⁷⁰ CON laws were initially developed with the intent to protect rural and struggling hospitals by ensuring their revenue streams through elective surgeries and imaging.⁷¹ The increased competition for patients the Bill would permit will ultimately impact existing facilities’ financial viability.⁷² A significant number of hospitals in more populated areas are closing due to increased costs and decreasing revenue; most recently, WellStar’s

⁶² Anne Marie Simoneaux, *Georgia’s [Potential] Certificate of Need Reform*, FRIENDHUDAKHARRIS (Feb. 6, 2024), <https://www.fh2.com/ga-con-reform/>.

⁶³ Dave Williams, *Bill Meant to Give More Healthcare Access in Rural Georgia Clears State Senate*, ATHENS BANNER-HERALD (Feb. 27, 2023), <https://www.onlineathens.com/story/news/healthcare/2023/02/27/senate-bill-hopes-to-booster-access-to-healthcare-in-rural-georgia/69950597007/>.

⁶⁴ Ashley, *Fear*, *supra* note 16.

⁶⁵ *Id.*

⁶⁶ Williams, *supra* note 63.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Ashley, *Fear*, *supra* note 16.

⁷⁰ *Id.*

⁷¹ Denson & Mitchell, *supra* note 52.

⁷² Ashley, *Fear*, *supra* note 16.

Atlanta Medical Center closed its doors in 2022 citing a \$100 million loss over the preceding 12 months as the decisive factor to close the medical center.⁷³

Supporters of the existing CON laws contend the laws prevent private practices from cherry picking the financially advantageous patients, leaving existing facilities with lower income and indigent patients.⁷⁴ The CON exemption would enable physician-owned ambulatory surgery centers to open near existing hospitals.⁷⁵ These types of facilities have a history of siphoning off paying patients, and leaving the neighboring hospital with a higher proportion of non-paying patients.⁷⁶ These ambulatory surgery centers tend to specialize in elective surgeries and imaging, which are typically the highest revenue producing services offered by hospitals.⁷⁷ By repealing CON laws and permitting these surgery centers to flood the market, such activity jeopardizes the financial viability of existing hospitals, whose closures would adversely affect the surrounding population.⁷⁸

Opponents to CON argue a benefit to CON laws is its increased quality of care.⁷⁹ By limiting the number of providers available, it necessarily directs patients to more limited providers.⁸⁰ These providers are then able to increase their proficiency through greater volume, thus increasing the quality of services provided.⁸¹ Procedures improved and perfected through practice and repetition could lead to better outcomes for the patients who undergo these procedures both physically and financially.⁸²

In addition to increased competition for patients and revenue, Leo Reichert, Executive Vice President and General Counsel for WellStar Health System, notes that passage of Senate Bill 99 will put a tax on an already taxed healthcare workforce.⁸³ With existing facilities already struggling to meet their staffing needs, adding another will inevitably lead to all facilities being understaffed, thus compromising patient care on the whole.⁸⁴ As Tim Kibler with the Georgia Alliance of Community Hospitals contends, Senate Bill 99 is “an attempt to address a specific situation [access

⁷³ Ashley, *Fear*, *supra* note 16.

⁷⁴ Greg Bluestein & Ariel Hart, *Ga. GOP warms to Medicaid deal*, ATLANTA JOURNAL CONSTITUTION, (Nov. 29, 2023), <https://www.ajc.com/politics/could-georgia-adopt-an-arkansas-style-medicaid-plan/XAYRHSL2M5DTTOW6NRWEB533XQ/>.

⁷⁵ Williams, *supra* note 63.

⁷⁶ *Id.*

⁷⁷ Denson & Mitchell, *supra* note 52.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Denson & Mitchell, *supra* note 52.

⁸³ Ashley, *Study Committee*, *supra* note 21.

⁸⁴ *Id.*

to trauma care] that is going to have broad and far-reaching implications much beyond [its intended scope].”⁸⁵

Senator Orreck identifies and criticizes the loophole created by the CON exemption, wherein potential hospitals would be able to continue to receive state funds when their respective county no longer meets the requirements of a rural community.⁸⁶ This would enable facilities in counties that experience economic growth to retain state funds specifically earmarked for the rural communities, thus decreasing the funds available to those communities not experiencing growth, and still in need.⁸⁷ Senator Orreck contends the exemption is an attempt to skirt regulations and provide special treatment to private developers.⁸⁸

Rather than providing complete exemptions to the CON program, Ana Adams, Executive Vice President of the Georgia Hospital Association, believes there is a middle ground to be sought; that the retention of certain requirements could protect the quality of the health care provided and prevent duplication of services.⁸⁹ Jocelyn Hill, senior policy analyst at the Georgia Senate Research Office, does not deny that access to trauma care across the state is an issue, but believes this issue is not conclusively linked to CON requirements.⁹⁰ Hill recommends a holistic approach to research and developing changes that will be practically beneficial to hospitals, rather than the “easy” fix of an exemption.⁹¹

IMPLICATIONS IN GEORGIA

The passage of the Bill will either greatly benefit the citizens of Georgia or further exacerbate an already taxed healthcare system; it all depends on with whom you speak. Proponents of the Bill believe providing the exemption proposed in Senate Bill 99 would circumvent the lengthy CON process, ultimately benefiting Georgians by saving tax-payer dollars in litigation expenses and ending with the construction of new facilities and expanded services.⁹² The majority of the opposition believes the CON process is functioning as intended, and exemptions will lead to competition for staff and patients, putting all facilities at risk.⁹³

⁸⁵ Ashley, *Fear*, *supra* note 16.

⁸⁶ Ashley, *Scrapping*, *supra* note 15.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Ashley, *Georgia Studies*, *supra* note 5.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Ashley, *Study Committee*, *supra* note 21.

Passage of this Bill will help expand access to acute healthcare to some of the most underserved populations in Georgia.⁹⁴ At least one facility, the proposed 100 bed facility in Butts County, is already being delayed from providing comprehensive, current medical care to a deserving population.⁹⁵ Studies show states with CON laws have fewer rural hospitals, fewer rural ambulatory surgery centers, fewer open-heart surgery programs, fewer home health agencies, and fewer neonatal intensive care units.⁹⁶ Tests that study the availability of services indicate by a 15:1 ratio that CON laws are associated with a diminished availability of services.⁹⁷ This Bill will encourage development of new facilities in areas where their presence can have the most positive impact.⁹⁸ The short term effects seem to indicate there will be an increase in healthcare provided to Georgians.⁹⁹

Passage would enable communities to have more control over what services are being brought to and provided in their communities.¹⁰⁰ Specifically, it would have provided Lee County with the hospital it attempted to build and a new birthing center in south Georgia whose construction was blocked by other providers.¹⁰¹ It will provide Georgians with the autonomy to determine which services they most require, whether that be home health, imaging, dialysis, drug and alcohol abuse facilities, without having to expend the time and resources to prove the services their communities are asking for meet the standards of necessity promulgated by the CON laws.¹⁰²

Passage could also lead to an increase in revenue and investment in Georgia.¹⁰³ Georgia's deputy state director for Americans for Prosperity, Tony West, asserts CON mandates cost Georgians millions of dollars in healthcare investments.¹⁰⁴ Through application costs and guaranteed opposition from existing facilities, CON laws do not portray Georgia as a worthy investment opportunity.¹⁰⁵ The passage of this Bill would open up Georgia to a new set of potential investors who would have previously discounted it due the existing prohibitive laws.¹⁰⁶

⁹⁴ Ashley, *Fear*, *supra* note 16.

⁹⁵ *Id.*

⁹⁶ Denson & Mitchell, *supra* note 52.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ashley, *Scrapping*, *supra* note 15.

¹⁰⁰ *Id.*

¹⁰¹ Whitmire, *supra* note 6.

¹⁰² Denson & Mitchell, *supra* note 52.

¹⁰³ Ashley, *Scrapping*, *supra* note 15.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Should the bill come to fruition and further exemptions be provided, only time will tell if it will increase or decrease the cost of healthcare in Georgia.¹⁰⁷ However, neighboring states who have eliminated their CON laws indicated passage of the Bill could also lead to a decrease in the overall cost of healthcare in Georgia.¹⁰⁸ As Mercatus Center's Stratmann reiterates, CON reduces competition between hospitals, which is often associated with higher costs due to the monopolies created.¹⁰⁹ Additionally, studies show states with CON laws have an 11% higher cost of healthcare than states who do not have CON laws.¹¹⁰

LEGISLATIVE GENEALOGY

Senate Bill 99 was entered into the Senate Hopper February 6, 2023.¹¹¹ It had its first reading and was referred to the Senate on February 7, 2023.¹¹² The Senate Committee favorably reported the Bill by substitute on February 22, 2023.¹¹³ The Senate read S.B. 99 for a second time on February 23, 2023.¹¹⁴ The Senate read S.B. 99 for a third time on February 27, 2023.¹¹⁵ That same day, the Senate passed / adopted by substitute S.B. 99.¹¹⁶ The House had their first read of S.B. 99 on February 28, 2023.¹¹⁷ The House read the Bill a second time on March 1, 2023.¹¹⁸

Prepared by: *Elissa Codrea*

¹⁰⁷ Joyner, *Ask 10*, *supra* note 23.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ S.B. 99 Status Sheet, *supra* note 2.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ S.B. 99 Status Sheet, *supra* note 2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*