



General surgery wins fight for recognition

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Author's note: Deadlines for publication of articles and the calendars of state legislatures very often do not coincide, and that is true of the following article, which is reflective of a certain period of time during the spring session of the Georgia General Assembly.

At press time, the issue of recognition of general surgery as a single specialty had been successfully resolved for the state's general surgery community with the enactment of S.B. 433. Georgia general surgeons are now able to open ambulatory surgery facilities in the state like any other "single specialty," and they may apply for an exemption from certificate-of-need regulations.

State legislatures kicked into high gear earlier in the year, with many set to adjourn by the end of this month. Georgia was no exception to this rule, although the General Assembly's session lasts only 40 days with adjournment by April 4. Not surprisingly, the issue of general surgery being defined as a single specialty and certificate-of-need (CON) reform were high on the legislative agenda, competing for legislators' attention among tax cuts; funding for the state's trauma system; and bailing out Grady Memorial, the financially ailing public hospital in Atlanta.

The crux of the matter

A detailed description of the general surgery issue in Georgia can be found in a November 2006 *Bulletin* article.* In short, general surgery is defined as a multispecialty for purposes of the ambulatory surgery center (ASC) CON exemption for single surgical specialties. Other surgical specialties, such as orthopaedics and plastic surgery, are eligible for the single-specialty exemption.

This discriminatory regulation was particularly offensive to a group of Albany general surgeons who wanted to open an ASC under the exemption. After years of legal wrangling, grassroots advocacy, stomping out a rumor that defining general surgery as a single specialty would result in general surgeons opening abortion clinics, and

*Health care competition in Georgia: Still restricted for general surgeons. *Bull Am Coll Surg.* 2006;91[11]:23-25. Available at http://www.facs.org/fellows_info/bulletin/2006/sutton1106.pdf.

repeated requests for regulatory relief to the Department of Community Health (DCH), the Board of Community Health sponsored a public hearing on November 28, 2007, to consider a series of proposed amendments to the state's CON program. Of particular interest to surgeons and the physician community was an amendment that would recognize general surgery as a single specialty.

Testimony offered at the hearing was impassioned and overwhelmingly in favor of recognizing general surgery as a single specialty. More than 25 general surgeons, other surgical specialists, patients, and representatives of Georgia medical organizations and the American College of Surgeons filled the Atlanta hearing room. In addition, more than 150 Georgia Fellows sent letters of support through the Surgery State Legislative Action Center, serving as an excellent example of true grassroots advocacy for all surgeons.

The Board of Community Health took into account the strong support of the general surgery community and voted to formally adopt the rules on December 13, 2007. However, on December 31, the Georgia Alliance of Community Hospitals and the Georgia Hospital Association filed their lawsuit against the board and, in a move seen as hostile toward surgery, against Albany Surgical PC.

As it did years ago in the first lawsuit filed to overturn the ASC CON definition of general surgery, the College was planning to file an amicus brief. The Medical Association of Georgia was intervening in the case, as was the Georgia Society of General Surgeons. In addition, the ACS planned to continue its ban on sponsoring meetings in the state until general surgery was properly defined.

The process plays on

Though the author was optimistic that this issue would be quickly resolved without a snag, such hope faded when the compromise language of a bill was initially held up by legislative leadership in the Georgia House. Developed by the House Special Committee on CON, S.B. 433 would amend many sections of the CON program and finally recognize general surgery as a single specialty. Relating to ambulatory surgery centers,

the proposal would exempt the following entities from the CON process:

- *Physician-owned single specialty ASCs.* These ASCs are exempt provided they address the following requirements: meet a \$2.5 million capital expenditure threshold (indexed for inflation) or be the only ASC in the specialty in the county with no more than two operating rooms and have a hospital affiliation agreement; provide 4 percent indigent care if not a Medicaid provider or 2 percent indigent care if a Medicaid provider; and provide annual reports to the DCH.

- *Joint venture ASCs (physician/hospital ownership).* These entities are exempt provided that capital expenditures are less than \$5 million, indigent care is provided at the same levels of the hospital, and annual reports are submitted to DCH.

- *Existing physician-owned ASCs.* These facilities are grandfathered in, but, like all facilities, must submit annual reports to DCH and provide 4 percent indigent care if not a Medicaid provider or 2 percent indigent care if a Medicaid provider, but only if capital expenditures are more than \$800,000, a new operating room is built, or the ASC relocates.

A representative coalition of medical and health care organizations, including the following, supported S.B. 433: Medical Association of Georgia, Georgia Chapter of the American College of Surgeons, Georgia Society of General Surgeons, Georgia Society of Ambulatory Centers, Georgia Orthopaedic Society, Georgia Society of Ophthalmologists, and Hometown Health (a group of rural hospitals). College advocacy efforts included regular e-mails to Fellows, directing them to call and write to legislative leaders as well as their respective state legislators through the Surgery State Legislative Action Center.

S.B. 433 unanimously passed out of the Georgia House Special Committee on CON on March 31, with the House Rules Committee releasing the bill to the entire House on April 4. Significantly, that day was the last day of the 2008 session of the Georgia General Assembly, and pressure remained high on legislators to deal with the CON reform issue. Late in the day, the House took up the measure and approved it on a 138–17 vote, with the Senate shortly following with a 44–7 vote. Capping this legislative victory,

the bill was finally signed by the governor on April 9, statutorily recognizing general surgery as a single specialty and making moot the lawsuit filed by the hospital lobby.

Lesson learned: Grassroots advocacy

Georgia's general surgery issue is a prime example of how grassroots advocacy works in the states. The focus is not just on the legislature, but it can also involve regulatory and judicial initiatives. Sometimes all three components are needed to successfully achieve a desired outcome, although this may take many years of hard work and the expenditure of considerable sums of money. Coalitions become critical at many points in the process, and when physicians stick together and present a united front, good things can happen.

The real key, however, is that of individual surgeons contacting their own legislators about an issue—whether through phone calls, letters, faxes, or e-mails—and building relationships with them. Grassroots advocacy is all about individual, one-to-one interaction, and the more surgeons do contact their lawmakers directly, the more successful they will be on the state and federal level. State Affairs staff is available to help with this entire process, and we encourage you to make use of our expertise. □