Single Specialty Ambulatory Surgery Work Group
1.26.09

STATE	PLANNING/CON INFORMATION
AL, AK, CT, DE, GA, HI, IL, IA, KY, ME, MD, MA, MI, MS, MT, NV, NH, NY, NC, RI, SC, TN, VT, VA, WA, WV, DC, PR	Regulate ambulatory surgery centers.
Georgia, Maryland, Mississippi, and Washington	Exemptions from CON review for single specialty ambulatory surgery centers.
Georgia	Senate Bill 433 – passed July 1, 2008. o Requirements for ASCs Developed after July 1, 2008: • Requires an indigent care commitment of 2% for Medicaid providers and 4% for non-providers. • Allows joint ventures of single specialty centers with a hospital as long as one entity owns a minimum of 30%. Partners can include a private physician group or hospital employed physicians. • Raises the capital threshold to $2.5 million for single specialty centers and $5 million for single specialty centers in joint ventures with hospitals. • Exempts an ASC from CON that: o Has capital expenditures associated with the construction, development, or other establishment of the clinical health service which do not exceed $2,500,000.00; **or** o Is the only single specialty ambulatory surgical center in the county owned by the group practice and has two or fewer operating rooms; provided, however, that a center exempt pursuant to this paragraph shall be required to obtain a certificate of need in order to add any additional operating rooms; • Requires all centers to provide annual reports in the same manner that CON centers are currently required to report. • Defines single specialty to include general surgery, group practices which include one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and orthopaedic practices that include hand surgeons with a certificate of added qualifications in Surgery of the

Single Specialty Ambulatory Surgery Work Group
1.26.09

STATE	PLANNING/CON INFORMATION
	Hand from the American Board of Plastic and Reconstructive Surgery. • Exempts existing and future ophthalmic ASCs from participation in the indigent care requirements.
Massachusetts	Excerpt from American Medical News: 1.12.09 summarizing SENATE, No. 2863 "The state's Dept. of Public Health approved amendments to the state's CON law that require single-specialty surgery centers to demonstrate a community need before getting state approval to open a new facility. The physician-owned centers previously were exempt from the process, which largely regulated hospital projects. The rules, which took effect last month, exempt existing ambulatory surgical centers. Hospital outpatient projects costing more than $25 million also must submit to the determination of need process." o SENATE, No. 2863, signed by the governor 8.10.08 Section 53G. Any entity that is certified or seeking certification as an ambulatory surgical center by the Centers for Medicare and Medicaid Services for participation in the Medicare program shall be a clinic for the purpose of licensure under section 51, and shall be deemed to be in compliance with the conditions for licensure as a clinic under said section 51 if it is accredited to provide ambulatory surgery services by the Accreditation Association for Ambulatory Health Care, Inc., the Joint Commission on Accreditation of Healthcare Organizations, the American Association for Accreditation of Ambulatory Surgery Facilities or any other national accrediting body that the department determines provides reasonable assurances that such conditions are met. No original license shall be issued pursuant to said section 51 to establish any such ambulatory surgical clinic unless there is a determination by the department that there is a need for such a facility. For purposes of this section, "clinic" shall not include a clinic conducted by a hospital licensed under said section 51 or by the federal government or the commonwealth.
Tennessee	Excerpts from Chattanooga Times Free Press Jan 27 2008, comments about ambulatory surgery: "Tennessee does not require a commitment to treat charity cases……In Tennessee there are several things that can happen….General surgeons can do surgery in their offices without a CON in certain limits. We passed a law last

STATE	PLANNING/CON INFORMATION
	year that allows certain complicated surgeries to occur in a physician's office with certain conditions…The law expanded the types of surgeries and the number of patients that may be seen in a surgeon's ambulatory center, opposed to having to be performed in a hospital. Under the new law, Tennessee general surgeons may perform up to Level III surgeries, which require patients be sedated, without going through the CON process. Doctors who want to do more than four Level III procedures at a time must apply for the certificate." Excerpts from Tennessee Administrative Code "Level II office-based surgery" means Level II surgery, as defined by the board of medical examiners in its rules and regulations, that is performed outside of a hospital, an ambulatory surgical treatment center, or other medical facility licensed by the department of health; "Office-based surgery" means Level III surgery requiring a level of sedation beyond the level of sedation defined by the board of medical examiners as Level II surgery that is performed outside a hospital, an ambulatory surgical treatment center, or other medical facility licensed by the department of health; b) The board *(of medical examiners)* shall have the duty and responsibility to regulate the practice of office-based surgery, including the promulgation of rules necessary to promote patient health and safety in such practices, including, but not limited to, a mechanism by which all office-based surgical suites are surveyed and certified by the board. (c) The board shall specifically identify in rules the parameters to be used in determining Level III surgical procedures and multiple procedures that may be performed in an office-based setting pursuant to the level of anesthesia involved in the procedures. In addition, the board shall promulgate age and risk classification criteria of patients eligible for Level III office-based surgical procedures. (d) By December 30, 2007, the board shall adopt rules establishing a specific list of approved Level III surgical procedures that can be performed in a physician's office in this state. The ambulatory surgical center covered procedures list promulgated by the centers of medicare and medicaid, shall be used as a guide. No physician shall perform any Level III surgical procedures that are not included on the list promulgated by the board. The board may modify the list as the board deems necessary. The board shall also promulgate rules addressing the minimum requirements deemed necessary by the board for the safe performance of office-based surgery.
Ohio	Bill was introduced in the 2007-2008 session to restore the CON program for the construction of new hospitals and

Single Specialty Ambulatory Surgery Work Group
1.26.09

STATE	PLANNING/CON INFORMATION
	the conduct of other health-related activities, including ambulatory surgery centers. This bill is in the early stages of the legislative process.
New Jersey	INTRODUCED SEPTEMBER 22, 2008 Reinstates certificate of need requirement for ambulatory surgical facilities. Currently being reviewed by Health and Senior Services Committee.
Louisiana	Does not regulate ambulatory surgery centers.
Illinois	Illinois Hospital Association: 1.16.09 TASK FORCE ISSUES REPORT ON CON REFORMS The Illinois Task Force on Health Planning Reform this week submitted its final report to the General Assembly, calling for a series of reforms as well as a ten-year extension of the Certificate of Need (CON) Program. The report includes recommendations supported by IHA on streamlining and simplifying the CON process and improving predictability and accountability. Among the key recommendations: --increase the capital expenditure threshold to $11.5 million (from $8.8 million); --change provisions so that common financing of projects would not automatically result in the projects being considered interrelated; --focus the review on major projects (new or replacement facilities; bed increases over 20 beds or 10% of bed capacity; new services); --eliminate the Letter of Intent requirement; --require only annual progress and final cost reports post-permit; --consider allowing the planning board chair to approve projects that meet criteria and are unopposed; --increase the size of the board to nine members; --require all applicants, except for long-term care facilities, to file a Safety Net Impact Statement to describe a project's potential impact on safety net services in the community (but no charity care standard or mandate). The CON program is currently scheduled to sunset on July 1.