

House Bill 210

By: Representative Scott of the 153rd

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide for extensive revision of the certificate of need program; to revise and add
3 definitions; to revise the declaration of policy for state health planning; to revise threshold
4 amounts for expenditures; to revise the composition and duties of the Health Strategies
5 Council; to revise the duties of the Department of Community Health; to revise provisions
6 relating to existing exemptions; to provide for set times to accept applications for capital
7 projects; to require ambulatory surgical centers to provide indigent care; to provide for the
8 establishment of minimum quality standards as a consideration for approval of a certificate
9 of need; to provide for a letter of intent for proposed new clinical health services; to provide
10 for batching and comparative review of applications for clinical health services; to provide
11 for intermediate steps during the application review period for the participation of opposing
12 parties; to provide for the imposition of a temporary moratorium on the issuance of
13 certificates of need for new and emerging health care services; to reassign the hearing
14 functions from the Health Planning Review Board to the Commissioner of the Department
15 of Community Health; to provide for attorney's fees to the prevailing party; to revise
16 provisions relating to judicial review of a final agency decision; to add grounds for which a
17 certificate of need may be revoked; to provide that a portion of a certificate of need may be
18 revoked under certain circumstances; to increase the penalties for services conducted without
19 a required certificate of need; to provide that applicants for certificates of need may be
20 required to participate as a provider of medical assistance for purposes of Medicaid; to add
21 and delete certain exemptions to the certificate of need requirements; to authorize the
22 Department of Community Health to require notice and its certification that an activity is
23 exempt from the certificate of need requirements; to provide for the transfer of certain
24 functions relating to the state health plan to the Board of Community Health from the Health
25 Strategies Council; to abolish the Health Planning Review Board; to transfer pending matters
26 of the Health Planning Review Board to the Commissioner of the Department of Community
27 Health; to revise a provision relating to application of review procedures to expenditures
28 under a federal law; to require ambulatory surgical centers to submit annual reports to the

1 Department of Community Health; to increase the penalties for untimely and incomplete
 2 reports; to transfer licensing of hospitals and other health care facilities from the Department
 3 of Human Resources to the Department of Community Health; to provide for transition; to
 4 provide for licensure standards on a clinical service level for hospitals and related
 5 institutions; to amend various other titles of the Official Code of Georgia Annotated so as to
 6 revise provisions for purposes of conformity; to provide for related matters; to provide for
 7 an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 PART I

10 Revision of Certificate of Need Program.

11 SECTION 1-1.

12 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
 13 Chapter 6, relating to state health planning and development, as follows:

14 "ARTICLE 1

15 31-6-1.

16 The policy of this state and the purposes of this chapter are to ensure access to quality
 17 health care services and to ensure that ~~adequate~~ health care services and facilities are
 18 developed in an orderly and economical manner and are made available to all citizens and
 19 that only those health care services found to be in the public interest shall be provided in
 20 this state. To achieve ~~this~~ such public policy and ~~purpose and purposes~~, it is essential that
 21 appropriate health planning activities be undertaken and implemented and that a system of
 22 mandatory review of new institutional health services be provided. Health care services and
 23 facilities should be provided in a manner that avoids unnecessary duplication of services,
 24 that is cost effective, that provides quality health care services, and that is compatible with
 25 the health care needs of the various areas and populations of the state.

26 31-6-2.

27 As used in this chapter, the term:

28 (1) 'Ambulatory surgical center or obstetrical facility' means a public or private facility,
 29 not a part of a hospital, which provides surgical or obstetrical treatment performed under
 30 general or regional anesthesia in an operating room environment to patients not requiring
 31 hospitalization.

1 (2) 'Application' means a written request for a certificate of need made to the department,
2 containing such documentation and information as the department may require.

3 (3) 'Bed capacity' means space used exclusively for inpatient care, including space
4 designed or remodeled for inpatient beds even though temporarily not used for such
5 purposes. The number of beds to be counted in any patient room shall be the maximum
6 number for which adequate square footage is provided as established by rules of the
7 ~~Department of Human Resources~~ department, except that single beds in single rooms
8 shall be counted even if the room contains inadequate square footage.

9 (3.1) 'Board' means the Board of Community Health.

10 (4) 'Certificate of need' means an official determination by the department, evidenced by
11 certification issued pursuant to an application, that the action proposed in the application
12 satisfies and complies with the criteria contained in this chapter and rules promulgated
13 pursuant hereto.

14 (5) 'Clinical health services' means diagnostic, treatment, or rehabilitative services
15 provided in a health care facility, or parts of the physical plant where such services are
16 located in a health care facility, and includes, but is not limited to, the following:
17 radiology and diagnostic imaging, such as magnetic resonance imaging and positron
18 emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive care;
19 coronary care; pediatrics; gynecology; obstetrics; general medical care; medical/surgical
20 care; inpatient nursing care, whether intermediate, skilled, or extended care; cardiac
21 catheterization; open-heart surgery; inpatient rehabilitation; and alcohol, drug abuse, and
22 mental health services.

23 (5.1) 'Commissioner' means the Commissioner of the Department of Community Health.

24 (6) 'Consumer' means a person who is not employed by any health care facility or
25 provider and who has no financial or fiduciary interest in any health care facility or
26 provider.

27 (6.1) 'Continuing care retirement community' means an organization which offers a
28 contract to provide an individual of retirement status, other than an individual related by
29 consanguinity or affinity to the provider furnishing the care, with board and lodging,
30 licensed nursing facility care, and medical or other health related services. These services
31 are provided for at least one year and may be for as long as the lifetime of the resident.

32 (6.2) 'Department' means the Department of Community Health established under
33 Chapter 5A of this title.

34 (7) 'Develop,' with reference to a project, means:

35 (A) Constructing, remodeling, installing, or proceeding with a project, or any part of
36 a project, or a capital expenditure project, the cost estimate for which exceeds

1 ~~\$900,000.00~~ \$1,750,000.00; provided, however, that this shall not include costs for
 2 parking lots, parking decks, or other parking facilities; or

3 (B) The expenditure or commitment of funds exceeding \$500,000.00 for orders,
 4 purchases, leases, or acquisitions through other comparable arrangements of major
 5 medical equipment.

6 Notwithstanding subparagraphs (A) and (B) of this paragraph, the expenditure or
 7 commitment or incurring an obligation for the expenditure of funds to develop certificate
 8 of need applications, studies, reports, schematics, preliminary plans and specifications,
 9 or working drawings or to acquire, develop, or prepare sites shall not be considered to be
 10 the developing of a project.

11 (7.1) 'Diagnostic, treatment, or rehabilitation center' means any professional or business
 12 undertaking, whether for profit or not for profit, which offers or proposes to offer any
 13 clinical health service in a setting which is not part of a hospital.

14 (8) 'Health care facility' means hospitals; other special care units, including but not
 15 limited to podiatric facilities; skilled nursing facilities; intermediate care facilities;
 16 personal care homes, but only those that are certified as a provider of medical assistance
 17 for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49; ambulatory surgical
 18 centers or obstetrical facilities; health maintenance organizations; home health agencies;
 19 and diagnostic, treatment, or rehabilitation centers, but only to the extent that
 20 subparagraph (G) or (H), or both subparagraphs (G) and (H), of paragraph (14) of this
 21 Code section are applicable thereto; ~~and facilities which are devoted to the provision of~~
 22 ~~treatment and rehabilitative care for periods continuing for 24 hours or longer for persons~~
 23 ~~who have traumatic brain injury, as defined in Code Section 37-3-1.~~

24 (9) 'Health maintenance organization' means a public or private organization organized
 25 under the laws of this state which:

26 (A) Provides or otherwise makes available to enrolled participants health care services,
 27 including at least the following basic health care services: usual physicians' services,
 28 hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area
 29 coverage;

30 (B) Is compensated, except for copayments, for the provision of the basic health care
 31 services listed in subparagraph (A) of this paragraph to enrolled participants on a
 32 predetermined periodic rate basis; and

33 (C) Provides physicians' services primarily:

34 (i) Directly through physicians who are either employees or partners of such
 35 organization; or

36 (ii) Through arrangements with individual physicians organized on a group practice
 37 or individual practice basis.

1 (10) 'Health Strategies Council' or 'council' means the body created by this chapter to
 2 advise the Department of Community Health ~~and adopt the state health plan in~~
 3 accordance with Code Section 31-6-20.

4 (11) 'Home health agency' means a public agency or private organization, or a
 5 subdivision of such an agency or organization, which is primarily engaged in providing
 6 to individuals who are under a written plan of care of a physician, on a visiting basis in
 7 the places of residence used as such individuals' homes, part-time or intermittent nursing
 8 care provided by or under the supervision of a registered professional nurse, and one or
 9 more of the following services:

10 (A) Physical therapy;

11 (B) Occupational therapy;

12 (C) Speech therapy;

13 (D) Medical social services under the direction of a physician; or

14 (E) Part-time or intermittent services of a home health aide.

15 (12) 'Hospital' means an institution which is primarily engaged in providing to inpatients,
 16 by or under the supervision of physicians, diagnostic services and therapeutic services for
 17 medical diagnosis, treatment, and care of injured, disabled, or sick persons or
 18 rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such
 19 term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, and other
 20 specialty hospitals.

21 (13) 'Intermediate care facility' means an institution which provides, on a regular basis,
 22 health related care and services to individuals who do not require the degree of care and
 23 treatment which a hospital or skilled nursing facility is designed to provide but who,
 24 because of their mental or physical condition, require health related care and services
 25 beyond the provision of room and board.

26 (13.1) 'New and emerging health care service' means a health care service or utilization
 27 of medical equipment which has been developed and has become acceptable or available
 28 for implementation or use and which is not currently addressed under the rules and
 29 regulations promulgated by the department pursuant to this chapter.

30 (14) 'New institutional health service' means:

31 (A) The construction, development, or other establishment of a new health care
 32 facility;

33 (B) Any expenditure by or on behalf of a health care facility in excess of ~~\$900,000.00~~
 34 \$1,750,000.00 which, under generally accepted accounting principles consistently
 35 applied, is a capital expenditure, except expenditures for acquisition of an existing
 36 health care facility not owned or operated by or on behalf of a political subdivision of
 37 this state, or any combination of such political subdivisions, or by or on behalf of a

1 hospital authority, as defined in Article 4 of Chapter 7 of this title, or certificate of need
 2 owned by such facility in connection with its acquisition; and provided, however, that
 3 this shall not include costs for parking lots, parking decks, or other parking facilities;

4 (C) Any increase in the bed capacity of a health care facility except as provided in
 5 Code Section 31-6-47;

6 (D) Clinical health services which are offered in or through a health care facility,
 7 which were not offered on a regular basis in or through such health care facility within
 8 the 12 month period prior to the time such services would be offered;

9 (E) Any conversion or upgrading of a facility such that it is converted from a type of
 10 facility not covered by this chapter to any of the types of health care facilities which are
 11 covered by this chapter;

12 (F) The purchase or lease by or on behalf of a health care facility of diagnostic or
 13 therapeutic equipment with a value in excess of \$500,000.00; provided, however, that
 14 this shall also include diagnostic or therapeutic equipment with a value of \$500,000.00
 15 or less unless such health care facility provides uncompensated indigent or charity care
 16 in an amount which meets or exceeds the department's minimum requirements
 17 established pursuant to Code Section 31-6-40.1 and unless such health care facility
 18 provides reports in accordance with Code Section 31-6-70. The acquisition of one or
 19 more items of functionally related diagnostic or therapeutic equipment shall be
 20 considered as one project;

21 (G) Clinical health services which are offered in or through a diagnostic, treatment, or
 22 rehabilitation center which were not offered on a regular basis in or through that center
 23 within the 12 month period prior to the time such services would be offered, but only
 24 if the clinical health services are any of the following:

25 (i) Radiation therapy;

26 (ii) Biliary lithotripsy;

27 (iii) Surgery in an operating room environment, including but not limited to
 28 ambulatory surgery; provided, however, this provision shall not apply to surgery
 29 performed in the offices of an individual private physician or single group practice of
 30 private physicians if such surgery is performed in a facility that is owned, operated,
 31 and utilized by such physicians who also are of a single specialty and the capital
 32 expenditure associated with the construction, development, or other establishment of
 33 the clinical health service does not exceed the amount of \$1 million; and

34 (iv) Cardiac catheterization; or

35 (H) The purchase, lease, or other use by or on behalf of a diagnostic, treatment, or
 36 rehabilitation center of diagnostic or therapeutic equipment with a value in excess of
 37 \$500,000.00; provided, however, that this shall also include diagnostic or therapeutic

1 equipment with a value of \$500,000.00 or less unless such diagnostic, treatment, or
 2 rehabilitation center provides uncompensated indigent or charity care in an amount
 3 which meets or exceeds the department's established minimum requirements
 4 established pursuant to Code Section 31-6-40.1 and unless such health care facility
 5 provides reports in accordance with Code Section 31-6-70. The acquisition of one or
 6 more items of functionally related diagnostic or therapeutic equipment shall be
 7 considered as one project.

8 The dollar amounts specified in subparagraphs (B), (F), and (H) of this paragraph,
 9 division (iii) of subparagraph (G) of this paragraph, and of paragraph (7) of this Code
 10 section shall be adjusted annually by an amount calculated by multiplying such dollar
 11 amounts (as adjusted for the preceding year) by the annual percentage of change in the
 12 composite construction index, or its successor or appropriate replacement index, if any,
 13 published by the Bureau of the Census of the Department of Commerce of the United
 14 States government for the preceding calendar year, commencing on July 1, 1991, and on
 15 each anniversary thereafter of publication of the index. The department shall immediately
 16 institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the
 17 dollar amounts of a proposed project for purposes of subparagraphs (B), (F), and (H) of
 18 this paragraph, division (iii) of subparagraph (G) of this paragraph, and of paragraph (7)
 19 of this Code section, the costs of all items subject to review by this chapter and items not
 20 subject to review by this chapter associated with and simultaneously developed or
 21 proposed with the project shall be counted, except for the expenditure or commitment of
 22 or incurring an obligation for the expenditure of funds to develop certificate of need
 23 applications, studies, reports, schematics, preliminary plans and specifications or working
 24 drawings, or to acquire sites.

25 (15) 'Nonclinical health services' means services or functions provided or performed by
 26 a health care facility, and the parts of the physical plant where they are located in a health
 27 care facility that are not diagnostic, therapeutic, or rehabilitative services to patients and
 28 are not clinical health services defined in this chapter.

29 (16) 'Offer' means that the health care facility is open for the acceptance of patients or
 30 performance of services and has qualified personnel, equipment, and supplies necessary
 31 to provide specified clinical health services.

32 (16.1) 'Operating room environment' means an environment which meets the minimum
 33 physical plant and operational standards specified on January 1, 1991, for ambulatory
 34 surgical treatment centers in Section 290-5-33-.10 of the rules of the Department of
 35 Human Resources or any successor rules of the department.

36 (17) 'Person' means any individual, trust or estate, partnership, corporation (including
 37 associations, joint-stock companies, and insurance companies), state, political

1 subdivision, hospital authority, or instrumentality (including a municipal corporation) of
2 a state as defined in the laws of this state.

3 (18) 'Personal care home' means a residential facility having at least 25 beds and
4 providing, for compensation, protective care and oversight of ambulatory, nonrelated
5 persons who need a monitored environment but who do not have injuries or disabilities
6 which require chronic or convalescent care, including medical, nursing, or intermediate
7 care. Personal care homes include those facilities which monitor daily residents'
8 functioning and location, have the capability for crisis intervention, and provide
9 supervision in areas of nutrition, medication, and provision of transient medical care.

10 Such term does not include:

11 (A) Old age residences which are devoted to independent living units with kitchen
12 facilities in which residents have the option of preparing and serving some or all of their
13 own meals; or

14 (B) Boarding facilities which do not provide personal care.

15 (19) Reserved.

16 (20) 'Project' means a proposal to take an action for which a certificate of need is
17 required under this chapter. A project or proposed project may refer to the proposal from
18 its earliest planning stages up through the point at which the new institutional health
19 service is offered.

20 (21) ~~'Review board' means the Health Planning Review Board created by this chapter~~
21 Reserved.

22 (22) 'Skilled nursing facility' means a public or private institution or a distinct part of an
23 institution which is primarily engaged in providing inpatient skilled nursing care and
24 related services for patients who require medical or nursing care or rehabilitation services
25 for the rehabilitation of injured, disabled, or sick persons.

26 (23) 'State health plan' means a comprehensive program adopted by the Health Strategies
27 Council or by the board as its successor for this purpose, approved by the Governor, and
28 implemented by the State of Georgia for the purpose of providing adequate health care
29 services and facilities throughout the state.

30 (24) 'Uncompensated indigent or charity care' means the dollar amount of 'net
31 uncompensated indigent or charity care after direct and indirect (all) compensation' as
32 defined by, and calculated in accordance with, the department's Hospital Indigent Care
33 Survey and related instructions.

ARTICLE 2

31-6-20.

(a) There is created a newly reconstituted Health Strategies Council to be appointed by the Governor, subject to confirmation by the Senate. Any appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate. The newly reconstituted Health Strategies Council shall be the successor to the ~~Health Policy Council~~ Health Strategies Council as it existed on June 30, 2007. Those members of the previously existing ~~Health Policy Council~~ Health Strategies Council who are serving as such on ~~January 1, 1991~~ June 30, 2007, shall have their terms expire on June 30, 2007, ~~shall continue to serve until July 1, 1991, at which time their terms shall expire and that~~ council shall be abolished. On and after that date the council shall be composed of ~~25~~ 13 members, except as otherwise provided for in subsection (b) of this Code section. ~~Of those members, at least one~~ One member shall be appointed from each congressional district.

The council shall be composed as follows:

- (1) ~~One member representing county governments;~~
- (2) One member representing the private insurance industry;
- (3) ~~Ten members representing health care providers as follows:~~
 - (A)(2) One member representing rural hospitals;
 - (B)(3) One member representing urban hospitals;
 - (C)(4) One member who is a primary care physician;
 - (D)(5) One member who is a physician in a board certified specialty;
 - (E) ~~One member who is a registered professional nurse;~~
 - (F) ~~One member who is a registered professional nurse who is certified as a nurse practitioner;~~
 - (G)(6) One member representing nursing homes;
 - (H)(7) One member representing home health agencies;
 - (I)(8) One member representing freestanding ambulatory surgical centers ~~primary care centers~~; and
 - (J) ~~One member who is a primary care dentist;~~
- (4) ~~Ten consumer representatives who are knowledgeable as to health care needs in the fields they represent but who have no financial interest in the health care industry as follows:~~
 - (A)(9) One member representing health care needs of women;
 - (B) ~~One member representing health care needs of children;~~
 - (C)(10) One member representing health care needs of the disabled and elderly;
 - (D)(11) One member representing mental health care needs ~~of the elderly~~;

- 1 ~~(E)(12)~~ One member representing health care needs of ~~low-income~~ indigent persons;
 2 and
 3 ~~(F)(13)~~ One member representing health care needs of ~~small-business~~ personnel;
 4 ~~(G)~~ ~~One member representing health care needs of large business personnel;~~
 5 ~~(H)~~ ~~One member representing health care needs of labor organization members; and~~
 6 ~~(I)~~ ~~Two members who represent populations with special health care access problems;~~
 7 and
 8 ~~(5)~~ ~~Three at-large members.~~

9 (b) If the state obtains ~~an~~ one or more additional ~~member~~ members of the United States
 10 House of Representatives as a result of reapportionment, the Governor shall appoint,
 11 subject to confirmation by the Senate, from ~~the~~ each new congressional district thus created
 12 one member representing local or county governments ~~health care provider member who~~
 13 ~~meets the requirements of subparagraph (a)(3)(J) of this Code section and one consumer~~
 14 ~~member who meets the requirements of subparagraph (a)(4)(I) of this Code section as to~~
 15 ~~a population specified in those subparagraphs which is not then represented on the council.~~
 16 ~~With the addition of these two members, the council shall be composed of 27 members.~~

17 (c) The initial members of the newly reconstituted council ~~who are appointed to succeed~~
 18 ~~those members whose terms expire July 1, 1991,~~ shall take office July 1, 1991 2007, and
 19 ~~12~~ six of them shall be designated in such appointment to serve initial terms of office of
 20 two years and ~~13~~ seven of them shall be designated in such appointment to serve initial
 21 terms of office of four years. If ~~two~~ additional members are appointed to the council to
 22 represent a new congressional district as provided in subsection (b) of this Code section,
 23 one half shall be designated to serve an initial term of office which expires when the above
 24 initial two-year terms of office expire and one half shall be designated to serve an initial
 25 term of office which expires when the above initial four-year terms of office expire. After
 26 the initial terms provided in this subsection, members of the council shall be appointed to
 27 serve for four-year terms of office. Members of the council shall serve out their terms of
 28 office and until their respective successors are appointed and qualified.

29 (d) Members of the council shall be subject to removal by the Governor for ~~incompetence;~~
 30 ~~neglect of duty,~~ any reason or for no reason, at his or her discretion, or for failing to attend
 31 at least 75 percent of the meetings of the council in any calendar year. Vacancies on the
 32 council shall be filled by appointment by the Governor, subject to confirmation by the
 33 Senate.

34 (e) The Governor shall appoint the ~~chairman~~ chairperson of the council. A majority of the
 35 members of the council shall constitute a quorum. The council shall meet no less often
 36 than bimonthly, but may meet more often, at the call of the chairperson.

1 (f) The members of the council attending meetings of such council, or attending a
 2 subcommittee meeting thereof authorized by such council, shall receive no salary but shall
 3 be reimbursed for their expenses in attending meetings and for transportation costs as
 4 authorized by Code Section 45-7-21, which provides for the compensation and allowances
 5 of certain state officials.

6 (g) The ~~functions~~ function of the council shall be to serve as an advisory body to the
 7 department. The department shall be authorized to seek input from the council on proposed
 8 changes to rules and regulations relative to this chapter and to the state health plan.:

9 ~~(1) Adopt the state health plan and submit it to the board for approval which shall~~
 10 ~~include all of the components of the council's functions and be regularly updated;~~

11 ~~(2) Review, comment on, and make recommendations to the department on proposed~~
 12 ~~rules for the administration of this chapter, except emergency rules, prior to their~~
 13 ~~adoption by the department;~~

14 ~~(3) Conduct an ongoing evaluation of Georgia's existing health care resources for~~
 15 ~~accessibility, including but not limited to financial, geographic, cultural, and~~
 16 ~~administrative accessibility, quality, comprehensiveness, and cost;~~

17 ~~(4) Study long-term comprehensive approaches to providing health insurance coverage~~
 18 ~~to the entire population; and~~

19 ~~(5) Perform such other functions as may be specified for the council by the department~~
 20 ~~or its board.~~

21 ~~(h) The council shall prepare an annual report to the board and the General Assembly~~
 22 ~~which presents information and updates on the functions outlined in subsection (g) of this~~
 23 ~~Code section. The annual report shall include information for Georgia's congressional~~
 24 ~~delegation which highlights issues regarding federal laws and regulations influencing~~
 25 ~~Medicaid and medicare, insurance and related tax laws, and long-term health care. The~~
 26 ~~department shall not be required to distribute copies of the annual report to the members~~
 27 ~~of the General Assembly but shall notify the members of the availability of the annual~~
 28 ~~report in the manner which it deems to be most effective and efficient.~~

29 ~~(i)~~(h) The council at the department's request shall involve and coordinate functions with
 30 such state entities as necessary.

31 (j) As used in subsections (g), (h), and (i) of this Code section, the term:

32 (1) 'Board' means the Board of Community Health established under Chapter 5A of this
 33 title.

34 (2) 'Department' means the Department of Community Health established under Chapter
 35 5A of this title.

1 31-6-21.

2 (a) The Department of Community Health, established under Chapter 5A of this title, is
 3 authorized to administer the certificate of need program established under this chapter and,
 4 within the appropriations made available to the department by the General Assembly of
 5 Georgia and consistently with the laws of the State of Georgia, a state health plan adopted
 6 by the ~~Health Strategies Council and approved by the board~~ Board of Community Health.
 7 The department shall provide, by rule, for procedures to administer its functions until
 8 otherwise provided by the Board of Community Health.

9 (b) The functions of the department shall be:

10 (1) To conduct the health planning activities of the state and to implement those parts of
 11 the state health plan which relate to the government of the state;

12 (2) To prepare and revise a ~~draft~~ state health plan for ~~submission to the Health Strategies~~
 13 ~~Council~~ for adoption by the board and submission to the Governor;

14 (3) To ~~assist the~~ seek advice, at its discretion, from the Health Strategies Council in the
 15 performance by the department of its functions pursuant to this chapter;

16 (4) ~~With the prior advice, comment, and recommendations of the Health Strategies~~
 17 ~~Council, except with respect to emergency rules and regulations, to~~ To adopt, promulgate,
 18 and implement rules and regulations sufficient to administer the provisions of this chapter
 19 including the certificate of need program;

20 (5) To define, by rule, the form, content, schedules, and procedures for submission of
 21 applications for certificates of need and periodic reports;

22 (6) To establish time periods and procedures consistent with this chapter to hold hearings
 23 and to obtain the viewpoints of interested persons prior to issuance or denial of a
 24 certificate of need;

25 (7) To provide, by rule, for such fees as may be necessary to cover the costs of hearing
 26 officers, preparing the record for appeals before the such hearing officers and review
 27 board of the decisions of the department, and other related administrative costs, which
 28 costs may include reasonable sharing between the department and the parties to appeal
 29 hearings;

30 (8) To provide, by rule, for a reasonable and equitable fee schedule for certificate of need
 31 applications;

32 (9) To grant, deny, or revoke a certificate of need as applied for or as amended; ~~and~~

33 (10) To provide sufficient staffing to perform its duties under this chapter and to
 34 periodically review and determine its budgeting and staffing needs;

35 ~~(10)~~ (11) To perform powers and functions delegated by the Governor, which delegation
 36 may include the powers to carry out the duties and powers which have been delegated to

1 the department under Section 1122 of the federal Social Security Act of 1935, as
2 amended; and

3 (12) To prepare an annual report to the board and the General Assembly which includes
4 information and updates relating to the state health plan and the certificate of need
5 program. This report shall also include an annual analysis of proactive and prospective
6 approaches to need methodologies and access to health care services. The annual report
7 shall include information for Georgia's congressional delegation which highlights issues
8 regarding federal laws and regulations influencing Medicaid and medicare, insurance and
9 related tax laws, and long-term health care. The department shall not be required to
10 distribute copies of the annual report to the members of the General Assembly but shall
11 notify the members of the availability of the annual report in the manner which it deems
12 to be most effective and efficient.

13 31-6-21.1.

14 (a) Rules of the department shall be adopted, promulgated, and implemented as provided
15 in this Code section and in Chapter 13 of Title 50, the 'Georgia Administrative Procedure
16 Act,' except that the department shall not be required to comply with subsections (c)
17 through (g) of Code Section 50-13-4.

18 (b) The department shall transmit three copies of the notice provided for in paragraph (1)
19 of subsection (a) of Code Section 50-13-4 to the legislative counsel. The copies shall be
20 transmitted at least 30 days prior to that department's intended action. Within five days
21 after receipt of the copies, if possible, the legislative counsel shall furnish the presiding
22 officer of each house with a copy of the notice and mail a copy of the notice to each
23 member of the Health and Human Services Committee of the Senate and each member of
24 the Health and Human Services Committee of the House of Representatives. Each such
25 rule and any part thereof shall be subject to the making of an objection by either such
26 committee. Any rule or part thereof to which no objection is made by both such committees
27 may become adopted by the department at the end of such 30 day period. The department
28 may not adopt any such rule or part thereof which has been changed since having been
29 submitted to those committees unless:

30 (1) That change is to correct only typographical errors;

31 (2) That change is approved in writing by both committees and that approval expressly
32 exempts that change from being subject to the public notice and hearing requirements of
33 subsection (a) of Code Section 50-13-4;

34 (3) That change is approved in writing by both committees and is again subject to the
35 public notice and hearing requirements of subsection (a) of Code Section 50-13-4; or

1 (4) That change is again subject to the public notice and hearing requirements of
2 subsection (a) of Code Section 50-13-4 and the change is submitted and again subject to
3 committee objection as provided in this subsection.

4 Nothing in this subsection shall prohibit the department from adopting any rule or part
5 thereof without adopting all of the rules submitted to the committees if the rule or part so
6 adopted has not been changed since having been submitted to the committees and objection
7 thereto was not made by both committees.

8 (c) Any rule or part thereof to which an objection is made by both committees within the
9 30 day objection period under subsection (b) of this Code section shall not be adopted by
10 the department and shall be invalid if so adopted. A rule or part thereof thus prohibited
11 from being adopted shall be deemed to have been withdrawn by the department unless the
12 department, within the first 15 days of the next regular session of the General Assembly,
13 transmits written notification to each member of the objecting committees that the
14 department does not intend to withdraw that rule or part thereof but intends to adopt the
15 specified rule or part effective the day following adjournment sine die of that regular
16 session. A resolution objecting to such intended adoption may be introduced in either
17 branch of the General Assembly after the fifteenth day but before the thirtieth day of the
18 session in which occurs the notification of intent not to withdraw a rule or part thereof. In
19 the event the resolution is adopted by the branch of the General Assembly in which the
20 resolution was introduced, it shall be immediately transmitted to the other branch of the
21 General Assembly. It shall be the duty of the presiding officer of the other branch to have
22 that branch, within five days after receipt of the resolution, consider the resolution for
23 purposes of objecting to the intended adoption of the rule or part thereof. Upon such
24 resolution being adopted by two-thirds of the vote of each branch of the General Assembly,
25 the rule or part thereof objected to in that resolution shall be disapproved and not adopted
26 by the department. If the resolution is adopted by a majority but by less than two-thirds of
27 the vote of each such branch, the resolution shall be submitted to the Governor for his or
28 her approval or veto. In the event of his a veto, or if no resolution is introduced objecting
29 to the rule, or if the resolution introduced is not approved by at least a majority of the vote
30 of each such branch, the rule shall automatically become adopted the day following
31 adjournment sine die of that regular session. In the event of the Governor's approval of the
32 resolution, the rule shall be disapproved and not adopted by the department.

33 (d) Any rule or part thereof which is objected to by only one committee under subsection
34 (b) of this Code section and which is adopted by the department may be considered by the
35 branch of the General Assembly whose committee objected to its adoption by the
36 introduction of a resolution for the purpose of overriding the rule at any time within the
37 first 30 days of the next regular session of the General Assembly. It shall be the duty of

1 the department in adopting a proposed rule over such objection so to notify the ~~chairmen~~
 2 chairpersons of the Health and Human Services Committee of the Senate and the Health
 3 and Human Services Committee of the House within ten days after the adoption of the rule.
 4 In the event the resolution is adopted by such branch of the General Assembly, it shall be
 5 immediately transmitted to the other branch of the General Assembly. It shall be the duty
 6 of the presiding officer of the other branch of the General Assembly to have such branch,
 7 within five days after the receipt of the resolution, consider the resolution for the purpose
 8 of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of
 9 each branch of the General Assembly, the rule shall be void on the day after the adoption
 10 of the resolution by the second branch of the General Assembly. In the event the resolution
 11 is ratified by a majority but by less than two-thirds of the votes of either branch, the
 12 resolution shall be submitted to the Governor for his or her approval or veto. In the event
 13 of ~~his~~ a veto, the rule shall remain in effect. In the event of ~~his~~ the Governor's approval,
 14 the rule shall be void on the day after the date of ~~his~~ approval.

15 (e) Except for emergency rules, no rule or part thereof adopted by the department after
 16 April 3, 1985, shall be valid unless adopted in compliance with subsections (b), (c), and (d)
 17 of this Code section and subsection (a) of Code Section 50-13-4.

18 (f) Emergency rules shall not be subject to the requirements of subsection (b), (c), or (d)
 19 of this Code section but shall be subject to the requirements of subsection (b) of Code
 20 Section 50-13-4. Upon the first expiration of any department emergency rules, where those
 21 emergency rules are intended to cover matters which had been dealt with by the
 22 department's nonemergency rules but such nonemergency rules have been objected to by
 23 both legislative committees under this Code section, the emergency rules concerning those
 24 matters may not again be adopted except for one 120 day period. No emergency rule or part
 25 thereof which is adopted by the department shall be valid unless adopted in compliance
 26 with this subsection.

27 (g) Any proceeding to contest any rule on the ground of noncompliance with this Code
 28 section must be commenced within two years from the effective date of the rule.

29 (h) For purposes of this Code section, 'rules' shall mean rules and regulations.

30 (i) The state health plan or the rules establishing considerations, standards, or similar
 31 criteria for the grant or denial of a certificate of need pursuant to Code Section 31-6-42
 32 shall not apply to any application for a certificate of need as to which, prior to the effective
 33 date of such plan or rules, respectively, the evidence has been closed following a full
 34 evidentiary hearing before a hearing officer.

35 ~~31-6-22.~~

36 ~~The department shall be directed by the commissioner of community health.~~

ARTICLE 3

31-6-40.

(a) From and after July 1, 1999, only such new institutional health services or health care facilities as are found by the department to be needed shall be offered in the state. Prior to that date, only such new institutional health services or health care facilities which had been found to be needed by the Health Planning Agency under any prior provisions of this chapter and the regulations issued thereunder shall have been offered in the state, unless otherwise exempt from the requirements of the law or unless that law was not applicable. It is the intent of this provision to assure that no new institutional health services or health care facilities, as defined prior to July 1, 1999, are allowed to avoid the requirements of any prior provisions of this chapter, and applicable regulations, if those laws and regulations were applicable to them.

(b) Any person proposing to develop or offer a new institutional health service or health care facility shall, before commencing such activity, submit a letter of intent and an application to the department and obtain a certificate of need in the manner provided in this chapter unless such activity is excluded from the scope of this chapter.

(c) Any person who had a valid exemption granted or approved by the former Health Planning Agency or the Department of Community Health prior to July 1, 2007, shall not be required to obtain a certificate of need in order to continue to offer those previously offered services.

~~(c)(1) Any person who offered new institutional health services, as defined only in subparagraphs (G) and (H) of paragraph (14) of Code Section 31-6-2, within the 12 month period prior to July 1, 1999, and for which services a certificate of need was not required under the provisions of this chapter as they existed prior to July 1, 1999, shall not be required to obtain a certificate of need in order to continue to offer those previously offered services after that date if that person obtains an exemption therefor as provided in this subsection:~~

~~(1.1) Any person who, on July 1, 1999:~~

~~(A) Has in place a valid written contract of purchase, construction, or assembly for purposes of offering new institutional health services, as defined only in subparagraphs (G) and (H) of paragraph (14) of Code Section 31-6-2;~~

~~(B) Has prior to said date paid in cash or made an irrevocable and secured commitment or obligation of a minimum of 30 percent of the price called for under said contract;~~

~~(C) Has taken delivery and has in operation such new institutional health services on or before January 1, 1992; and~~

1 ~~(D) Has notified the Health Planning Agency no later than July 1, 1991, of that~~
 2 ~~person's intent to apply for an exemption under this paragraph~~
 3 ~~shall not be required to obtain a certificate of need in order to offer those services if that~~
 4 ~~person obtains an exemption therefor as provided in this subsection.~~

5 ~~(2) A person claiming an exemption under paragraph (1) or (1.1) of this subsection shall~~
 6 ~~apply to the Health Planning Agency for that exemption no later than July 1, 1992. The~~
 7 ~~application shall be in such form and manner as established by the Health Planning~~
 8 ~~Agency to provide sufficient proof that the applicant qualifies for the exemption claimed.~~
 9 ~~The Health Planning Agency shall notify the applicant within 90 days after the required~~
 10 ~~application and proof have been properly submitted that the application for exemption is~~
 11 ~~denied; otherwise, the application shall be deemed granted by operation of law upon the~~
 12 ~~ninety-first day. Such a grant of the exemption shall be final and no appeal therefrom~~
 13 ~~shall be authorized. A denial of such application for exemption shall constitute a~~
 14 ~~contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'~~
 15 ~~Any person having a certificate of need or authorization to offer the services for which~~
 16 ~~an application for exemption has been denied may intervene in the contested case if such~~
 17 ~~person offers those services within the same service area as the service area in which~~
 18 ~~were to be offered the services for which the application for exemption was denied.~~

19 ~~(3) A person who claims an exemption pursuant to this subsection may continue to offer~~
 20 ~~the services for which the exemption may be claimed without applying for the exemption;~~
 21 ~~but those services may not be offered after October 1, 1992, or any date prior thereto~~
 22 ~~upon which a decision denying the exemption has become final unless:~~

23 ~~(A) The person applied for the exemption as provided in paragraph (2) of this~~
 24 ~~subsection but on October 1, 1992, there has either been no decision made denying the~~
 25 ~~exemption or a decision denying the exemption has not become final, in either of which~~
 26 ~~events the services for which the application for exemption was made may be offered~~
 27 ~~until there is a final decision denying the exemption;~~

28 ~~(B) The person is granted the exemption; or~~

29 ~~(C) The person obtains a certificate of need for the services.~~

30 ~~For purposes of this subsection, a decision denying an application for an exemption shall~~
 31 ~~become final when the time for appealing that decision expires without an appeal of such~~
 32 ~~decision having been properly made.~~

33 ~~(4) An exemption obtained pursuant to this subsection may be transferred to another~~
 34 ~~person if the department is notified thereof within 45 days after the transfer occurs.~~

35 ~~(5) The Health Planning Agency shall establish procedures for obtaining exemptions~~
 36 ~~under this subsection and shall publish a list not later than October 1, 1992, of all such~~
 37 ~~applications granted or pending on that date.~~

~~(d) Any person that had formally requested, prior to February 1, 1991, a determination from the Health Planning Agency of the applicability of the certificate of need requirements for a specific project that is subsequently approved by the Health Planning Agency or by appeal of the Health Planning Agency's denial shall be exempt under the provisions of this chapter from the requirement of obtaining a certificate of need for that project.~~

31-6-40.1.

(a) Any person who acquires a health care facility by stock or asset purchase, merger, consolidation, or other lawful means shall notify the department of such acquisition, the date thereof, and the name and address of the acquiring person. Such notification shall be made in writing to the department within 45 days following the acquisition and the acquiring person may be fined by the department in the amount of \$500.00 for each day that such notification is late. Such fine shall be paid into the state treasury.

(b) The department may limit the time periods during which it will accept applications for the following health care facilities:

- (1) Skilled nursing facilities;
- (2) Intermediate care facilities; and
- (3) Home health agencies,

to only such times after the department has determined there is an unmet need for such facilities. The department shall make a determination as to whether or not there is an unmet need for each type of facility at least every six months and shall notify those requesting such notification of that determination.

(b.1) The department shall establish, by rule, set times during the year in which applications for capital projects exceeding the threshold amounts in:

- (1) Paragraph (7) of Code Section 31-6-2; and
- (2) Subparagraphs (B),(F),(G), and (H) of paragraph (14) of Code Section 31-6-2 shall be accepted.

(c)(1) The department may require that any applicant for a certificate of need agree to provide a specified amount of clinical health services to indigent patients as a condition for the grant of a certificate of need; provided, however, that the department shall require that any applicant for a certificate of need for an ambulatory surgical center provide uncompensated indigent or charity care in an amount which meets or exceeds the department's established minimum as a condition of certificate of need approval. The department shall be authorized to establish, by rule, minimum volumes of services, quality standards, limitations on services, and any other conditions relating to required clinical health services to indigent patients. A grantee or successor in interest of a certificate of

1 need or an authorization to operate under this chapter which violates such an agreement or
 2 violates any conditions imposed by the department relating to such services, whether made
 3 before or after July 1, ~~1991~~ 2007, shall be liable to the department for a monetary penalty
 4 in the amount of the difference between the amount of services so agreed to be provided
 5 and the amount actually provided and may be subject to revocation of its certificate of need
 6 by the department pursuant to Code Section 31-6-45. Any penalty so recovered shall be
 7 paid into the state treasury.

8 (2) The department shall establish minimum amounts of uncompensated indigent or
 9 charity care which shall be required of a health care facility and diagnostics, treatment,
 10 or rehabilitation center in order to be excluded from the certificate of need requirements
 11 of this chapter for the purchase of diagnostic or therapeutic equipment with a value that
 12 exceeds the threshold amount contained in subparagraphs (F) and (H) of paragraph (14)
 13 of Code Section 31-6-2.

14 (d) Penalties authorized under this Code section shall be subject to the same notices and
 15 hearing for the levy of fines under Code Section 31-6-45.

16 31-6-40.2.

17 (a) As used in this Code section only, the term:

18 (1) 'Certificate of need application' means an application for a certificate of need filed
 19 with the department, any amendments thereto, and any other written material relating to
 20 the application and filed by the applicant with the department.

21 (2) 'First three years of operation' means the first three consecutive 12 month periods
 22 beginning on the first day of a new perinatal service's first full calendar month of
 23 operation.

24 (3) 'First year of operation' means the first consecutive 12 month period beginning on the
 25 first day of a new perinatal service's first full calendar month of operation.

26 (4) 'New perinatal service' means a perinatal service whose first year of operation ends
 27 after April 6, 1992.

28 (5) 'Perinatal service' means obstetric and neonatal services.

29 ~~(6) 'Uncompensated indigent or charity care' means the dollar amount of 'net~~
 30 ~~uncompensated indigent or charity care after direct and indirect (all) compensation' as~~
 31 ~~defined by, and calculated in accordance with, the department's Hospital Indigent Care~~
 32 ~~Survey and related instructions.~~

33 ~~(7)~~(6) 'Year' means one of the three consecutive 12 month periods in a new perinatal
 34 service first 36 months of operation.

35 (b)(1) A new perinatal service shall provide uncompensated indigent or charity care in
 36 an amount which meets or exceeds the department's established minimum at the time the

1 department issued the certificate of need approval for such service for each of the
2 service's first three years of operation; provided, however, that if the certificate of need
3 application under which a new perinatal service was approved included a commitment
4 that uncompensated indigent or charity care would be provided in an amount greater than
5 the established minimum for any time period described in the certificate of need
6 application that falls completely within such new perinatal service's first three years of
7 operation, such new perinatal service shall provide indigent or charity care in an amount
8 which meets or exceeds the amount committed in the certificate of need application for
9 each time period described in the certificate of need application that falls completely
10 within the service's first three years of operation.

11 (2) The department shall revoke the certificate of need and authority to operate of a new
12 perinatal service if after notice to the grantee of the certificate or such grantee's
13 successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the
14 'Georgia Administrative Procedure Act,' the department determines that such new
15 perinatal service has failed to provide indigent or charity care in accordance with the
16 requirements of paragraph (1) of this subsection and such failure is determined by the
17 department to be for reasons substantially within the perinatal service provider's control.
18 The department shall provide the requisite notice, conduct the fair hearing, if requested,
19 and render its determination within 90 days after the end of the first year, or, if
20 applicable, the first time period described in paragraph (1) of this subsection during
21 which the new perinatal service fails to provide indigent or charity care in accordance
22 with the requirements of paragraph (1) of this subsection. Revocation shall be effective
23 30 days after the date of the determination by the department that the requirements of
24 paragraph (1) of this subsection have not been met.

25 (c)(1) A new perinatal service shall achieve the standard number of births specified in
26 the state health plan in effect at the time of the issuance of the certificate of need approval
27 by the department in at least one year during its first three years of operation.

28 (2) The department shall revoke the certificate of need and authority to operate of a new
29 perinatal service if after notice to the grantee of the certificate of need or such grantee's
30 successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the
31 'Georgia Administrative Procedure Act,' the department determines that such new
32 perinatal service has failed to comply with the applicable requirements of paragraph (1)
33 of this subsection and such failure is determined by the department to be for reasons
34 substantially within the perinatal service provider's control. The department shall provide
35 the requisite notice, conduct the fair hearing, if requested, and render its determination
36 within 90 days after the end of the new perinatal service's first three years of operation.
37 Revocation shall be effective 30 days after the date of the determination by the

1 department that the requirements of this paragraph or paragraph (1) of this subsection
2 have not been met.

3 (d) Nothing contained in this Code section shall limit the department's authority to
4 regulate perinatal services in ways or for time periods not addressed by the provisions of
5 this Code section.

6 31-6-41.

7 (a) A certificate of need shall be valid only for the defined scope, location, cost, service
8 area, and person named in an application, as it may be amended, and as such scope,
9 location, area, cost, and person are approved by the department, unless such certificate of
10 need owned by an existing health care facility is transferred to a person who acquires such
11 existing facility. In such case, the certificate of need shall be valid for the person who
12 acquires such a facility and for the scope, location, cost, and service area approved by the
13 department.

14 (b) A certificate of need shall be valid and effective for a period of 12 months after it is
15 issued, or such greater period of time as may be specified by the department at the time the
16 certificate of need is issued. Within the effective period after the grant of a certificate of
17 need, the applicant of a proposed project shall fulfill reasonable performance and
18 scheduling requirements specified by the department, by rule, to assure reasonable progress
19 toward timely completion of a project.

20 (c) By rule, the department may provide for extension of the effective period of a
21 certificate of need when an applicant, by petition, makes a good faith showing that the
22 conditions to be specified according to subsection (b) of this Code section will be
23 performed within the extended period and that the reasons for the extension are beyond the
24 control of the applicant.

25 31-6-42.

26 (a) The written findings of fact and decision, with respect to the department's grant or
27 denial of a certificate of need, shall be based on the applicable considerations specified in
28 this Code section and reasonable rules promulgated by the department interpretive thereof.
29 The department shall issue a certificate of need to each applicant whose application is
30 consistent with the following considerations and such rules deemed applicable to a project,
31 except as specified in subsection (d) of Code Section 31-6-43 and Code Section 31-6-42.1:

32 (1) The proposed new institutional health services are reasonably consistent with the
33 relevant general goals and objectives of the state health plan;

34 (2) The population residing in the area served, or to be served, by the new institutional
35 health service has a need for such services;

- 1 (3) Existing alternatives for providing services in the service area the same as the new
2 institutional health service proposed are neither currently available, implemented,
3 similarly utilized, nor capable of providing a less costly alternative, or no certificate of
4 need to provide such alternative services has been issued by the department and is
5 currently valid;
- 6 (4) The project can be adequately financed and is, in the immediate and long term,
7 financially feasible;
- 8 (5) The effects of new institutional health service on payors for health services, including
9 governmental payors, are not unreasonable;
- 10 (6) The costs and methods of a proposed construction project, including the costs and
11 methods of energy provision and conservation, are reasonable and adequate for quality
12 health care;
- 13 (7) The new institutional health service proposed is reasonably financially and physically
14 accessible to the residents of the proposed service area;
- 15 (8) The proposed new institutional health service has a positive relationship to the
16 existing health care delivery system in the service area;
- 17 (9) The proposed new institutional health service encourages more efficient utilization
18 of the health care facility proposing such service;
- 19 (10) The proposed new institutional health service provides, or would provide, a
20 substantial portion of its services to individuals not residing in its defined service area or
21 the adjacent service area;
- 22 (11) The proposed new institutional health service conducts biomedical or behavioral
23 research projects or new service development which is designed to meet a national,
24 regional, or state-wide need;
- 25 (12) The proposed new institutional health service meets the clinical needs of health
26 professional training programs which request assistance;
- 27 (13) The proposed new institutional health service fosters improvements or innovations
28 in the financing or delivery of health services, promotes health care quality assurance or
29 cost effectiveness, or fosters competition that is shown to result in lower patient costs
30 without a loss of the quality of care; ~~and~~
- 31 (14) The proposed new institutional health service fosters the special needs and
32 circumstances of health maintenance organizations;
- 33 (15) The proposed new institutional health service meets the department's minimum
34 quality standards, including, but not limited to, relating to accreditation, minimum
35 volumes, quality improvements, assurance practices, and utilization review procedures;
36 and

1 (16) The proposed new institutional health service is an underrepresented health service,
2 as determined annually by the department. The department shall, by rule, provide for an
3 advantage to equally qualified applicants that agree to provide an underrepresented
4 service in addition to the services for which the application was originally submitted.

5 (b) In the case of applications for the development or offering of a new institutional health
6 service or health care facility for osteopathic medicine, the need for such service or facility
7 shall be determined on the basis of the need and availability in the community for
8 osteopathic services and facilities in addition to the considerations in subsection (a) of this
9 Code section. Nothing in this chapter shall, however, be construed as otherwise recognizing
10 any distinction between allopathic and osteopathic medicine.

11 (c) If the denial of an application for a certificate of need for a new institutional health
12 service proposed to be offered or developed by a:

13 (1) Minority administered hospital facility serving a socially and economically
14 disadvantaged minority population in an urban setting; or

15 (2) Minority administered hospital facility utilized for the training of minority medical
16 practitioners

17 would adversely impact upon the facility and population served by said facility, the special
18 needs of such hospital facility and the population served by said facility for the new
19 institutional health service shall be given extraordinary consideration by the department in
20 making its determination of need as required by this Code section. The department shall
21 have the authority to vary or modify strict adherence to the provisions of this chapter and
22 the rules enacted pursuant hereto in considering the special needs of such facility and its
23 population served and to avoid an adverse impact on the facility and the population served
24 thereby. For purposes of this subsection, the term 'minority administered hospital facility'
25 means a hospital controlled or operated by a governing body or administrative staff
26 composed predominantly of members of a minority race.

27 (d) For the purposes of the considerations contained in this Code section and in the
28 department's applicable rules, relevant data which were unavailable or omitted when the
29 state health plan or rules were prepared or revised may be considered in the evaluation of
30 a project.

31 (e) The department shall specify in its written findings of fact and decision which of the
32 considerations contained in this Code section and the department's applicable rules are
33 applicable to an application and its reasoning as to and evidentiary support for its
34 evaluation of each such applicable consideration and rule.

1 31-6-42.1.

2 (a) Prior to submitting an application for a certificate of need for clinical health services,
3 a person shall submit a letter of intent to the department.

4 (b) Upon receipt of a letter of intent, the department shall notify a newspaper of general
5 circulation in the county in which the clinical health services are proposed to be offered and
6 shall also notify the appropriate regional development center and the chief elected official
7 of the county and municipal governments, if any, in whose boundaries the clinical health
8 services are proposed to be located.

9 (c) The department shall be authorized to provide by rule for the batching of applications
10 for clinical health services two times per year for purposes of comparative review. The
11 department shall review all applications received to determine which application should
12 be approved, if any, based on quality of and distribution and access to the clinical health
13 services and which are consistent with the considerations contained in Code Section
14 31-6-42.

15 31-6-43.

16 (a) Each application for a certificate of need shall be reviewed by the department and
17 within ten working days after the date of its receipt a determination shall be made as to
18 whether the application complies with the rules governing the preparation and submission
19 of applications. If the application complies with the rules governing the preparation and
20 submission of applications, the department shall declare the application complete for
21 review, shall accept and date the application, and shall notify the applicant of the timetable
22 for its review. The department shall also notify a newspaper of general circulation in the
23 county in which the project shall be developed that the application has been deemed
24 complete. The department shall also notify the appropriate regional development center
25 and the chief elected official of the county and municipal governments, if any, in whose
26 boundaries the proposed project will be located that the application is complete for review.
27 If the application does not comply with the rules governing the preparation and submission
28 of applications, the department shall notify the applicant in writing and provide a list of all
29 deficiencies. The applicant shall be afforded an opportunity to correct such deficiencies,
30 and upon such correction, the application shall then be declared complete for review within
31 ten days of the correction of such deficiencies, and notice given to a newspaper of general
32 circulation in the county in which the project shall be developed that the application has
33 been so declared. The department shall also notify the appropriate regional development
34 center and the chief elected official of the county and municipal governments, if any, in
35 whose boundaries the proposed project will be located that the application is complete for
36 review or when in the determination of the department a significant amendment is filed.

1 (b) An applicant may amend its application at any time no later than ten days prior to the
 2 end of the review period, and the department may request an applicant to make
 3 amendments. The department decision shall be made on an application as amended, if at
 4 all, by the applicant.

5 (c) Except as provided in subsection (d) of this Code section and subsection (c) of Code
 6 Section 31-6-42.1, there shall be a time limit of ~~90~~ 120 days for review of a project,
 7 beginning on the day the department declares the application complete for review. The
 8 department may adopt rules for determining when it is not practicable to complete a review
 9 in ~~90~~ 120 days and may extend the review period upon written notice to the applicant but
 10 only for an extended period of not longer than an additional 30 days. During the 120 day
 11 review period, the department shall provide for the following intermediate steps:
 12 submission of written opposition, applicant review meeting, submission of supplemental
 13 information, submission of supplemental written opposition, and an opposition meeting.
 14 The opposition meeting shall provide for opposing parties to formally present their
 15 opposition arguments to the department in a public forum. In order for an opposing party
 16 to have standing to appeal an adverse decision pursuant to Code Section 31-6-44, such
 17 party must attend and participate in the opposition meeting. The department shall, by rule,
 18 establish appropriate time frames and procedures for each intermediate step provided for
 19 in this subsection.

20 (d) The department may order the joinder of an application which is complete for review
 21 with one or more subsequently filed applications declared complete for review when:

22 (1) The first and subsequent applications involve similar projects in the same service area
 23 or overlapping medical service areas; and

24 (2) The subsequent applications are filed and are declared complete for review within 30
 25 days of the date the first application was declared complete for review.

26 Following joinder of the first application with subsequent applications, none of the
 27 subsequent applications so joined may be considered as a first application for the purposes
 28 of future joinder. The department shall notify the applicant to whose application a joinder
 29 is ordered and all other applicants previously joined to such application of the fact of each
 30 joinder pursuant to this subsection. In the event one or more applications have been joined
 31 pursuant to this subsection, the time limits for department action for all of the applicants
 32 shall run from the latest date that any one of the joined applications was declared complete
 33 for review. In the event of the consideration of one or more applications joined pursuant
 34 to this subsection, the department may award no certificate of need or one or more
 35 certificates of need to the application or applications, if any, which are consistent with the
 36 considerations contained in Code Section 31-6-42, the department's applicable rules, and
 37 the award of which will best satisfy the purposes of this chapter.

1 (e) The department shall review the application and all written information submitted by
2 the applicant in support of the application to determine the extent to which the proposed
3 project is consistent with the applicable considerations stated in Code Section 31-6-42 and
4 in the department's applicable rules. During the course of the review, the department staff
5 may request additional information from the applicant as deemed appropriate. Pursuant
6 to rules adopted by the department, a public hearing on applications covered by those
7 regulations may be held prior to the date of the department's decision thereon. Such rules
8 shall provide that when good cause has been shown, a public hearing shall be held by the
9 department. Any interested person may submit information to the department concerning
10 an application, and an applicant shall be entitled to notice of and to respond to any such
11 submission.

12 (f) In the event that the department's initial review of an application indicates that an
13 application is not consistent with the applicable considerations contained in Code Section
14 31-6-42 and in the department's applicable rules, on or before the sixtieth day after an
15 application, or the last application joined pursuant to subsection (d) of this Code section,
16 is declared complete for review, the department shall provide the applicant an opportunity
17 to meet with the department to discuss the application and an opportunity to submit
18 additional information. Such additional information shall be submitted prior to the
19 seventy-fifth day after the application, or the last application joined pursuant to subsection
20 (d) of this Code section, is declared complete for review.

21 (g) The department shall, no later than ~~90~~ 120 days after an application is declared
22 complete for review, or in the event joinder is ordered pursuant to subsection (d) of this
23 Code section, then ~~90~~ 120 days after the last joined application is declared complete for
24 review, provide written notification to an applicant of the department's decision to issue
25 or to deny issuance of a certificate of need for the proposed project. In the event the
26 department has extended the review period pursuant to subsection (c) of this Code section,
27 then the department shall provide such written notification within ~~120~~ 150 days after the
28 application, or the last application joined pursuant to subsection (d) of this Code section,
29 was declared complete for review. Such notice shall contain the department's written
30 findings of fact and decision as to each applicable consideration or rule and a detailed
31 statement of the reasons and evidentiary support for issuing or denying a certificate of need
32 for the action proposed by each applicant. The department shall also mail such notification
33 to the appropriate regional development center and the chief elected official of the county
34 and municipal governments, if any, in whose boundaries the proposed project will be
35 located. In the event such decision is to issue a certificate of need, the certificate of need
36 shall be effective on the day of the decision unless the decision is appealed to the ~~review~~
37 board commissioner in accordance with this chapter.

1 (h) Should the department fail to provide written notification of the decision within the
 2 time limitations set forth in this Code section, an application shall be deemed to have been
 3 approved as of the ~~ninety-first day, or the one hundred twenty-first day~~ or the one hundred
 4 fifty-first day if the review period was extended pursuant to subsection (c) of this Code
 5 section, following notice from the department that an application, or the last of any
 6 applications joined pursuant to subsection (d) of this Code section, is declared 'complete
 7 for review.' complete for review.

8 31-6-43.1.

9 The commissioner shall be authorized, with the approval of the board, to place a temporary
 10 moratorium of up to six months on the issuance of certificates of need for new and
 11 emerging health care services. Any such moratorium placed shall be for the purpose of
 12 promulgating rules and regulations regarding such new and emerging health care services.
 13 A moratorium may be extended one time for an additional three months if circumstances
 14 warrant, as approved by the board. In the event that final rules and regulations are not
 15 promulgated within the time period allowed by the moratorium, any applications received
 16 by the department for a new and emerging health care service shall be reviewed under
 17 existing general statutes and regulations relating to certificates of need.

18 31-6-44.

19 (a) ~~There is created the Health Planning Review Board, which shall be an agency separate~~
 20 ~~and apart from the department. That review board which existed on June 30, 1994, is~~
 21 ~~continued in existence after that date but on and after July 1, 1994, shall be constituted as~~
 22 ~~provided in this subsection. Those members of the Health Planning Review Board serving~~
 23 ~~as such on January 1, 1994, or any person selected to fill a vacancy in such membership~~
 24 ~~shall continue to serve as such members until July 1, 1994, at which time the terms of~~
 25 ~~office of such members shall expire. On and after July 1, 1994, the review board shall be~~
 26 ~~composed of 11 members appointed by the Governor, with one from each congressional~~
 27 ~~district. The Governor shall appoint persons to the review board who are familiar with the~~
 28 ~~health care industry but who do not have a financial interest in or represent or have any~~
 29 ~~compensation arrangement with any health care facility. The Governor shall also name~~
 30 ~~from among such members a chairperson and a vice chairperson of the review board, both~~
 31 ~~of whom shall be attorneys licensed to practice law in this state. The vice chairperson shall~~
 32 ~~have the same authority as the chairperson; provided, however, the vice chairperson shall~~
 33 ~~not exercise such authority unless expressly delegated by the chairperson or in the event~~
 34 ~~the chairperson becomes incapacitated, as determined by the Governor. Vacancies on the~~
 35 ~~board caused by resignation, death, or any other cause shall be filled for the unexpired term~~

1 in the same manner as the original appointment. No person required to register with the
2 Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the
3 Governor to the board.

4 (b) ~~The purpose of the review board shall be to review decisions made by hearing officers
5 as provided in subsection (h) of this Code section. At least a quorum of the review board
6 shall meet at least once every month to review hearing officer decisions unless there are
7 not any decisions for it to review. For purposes of this subsection, a quorum shall consist
8 of five members of the review board, including either the chairperson or the vice
9 chairperson. The review board shall promulgate reasonable rules for its operation and rules
10 of procedure for the conduct of review board meetings and initial administrative appeal
11 hearings held by the appointed hearing officers. Subject to the limitations stated in this
12 subsection and in subsection (c) of this Code section, the review board shall formulate and
13 approve a list of at least five and not more than ten attorneys who shall serve as hearing
14 officers for appeals which are assigned to them by the chairperson of the review board.
15 Each such attorney approved to be included on the list of hearing officers shall be an active
16 member of the State Bar of Georgia in good standing, and each such attorney must have
17 maintained such active status for the five years immediately preceding such person's
18 respective approval. The members of the review board shall receive no salary but shall be
19 reimbursed for their expenses in attending meetings and for transportation costs as
20 authorized by Code Section 45-7-21, which provides for compensation and allowances of
21 certain state officials, and the chairperson and vice chairperson shall also be compensated
22 for their services rendered to the review board outside of attendance at a review board
23 meeting, the amount of which compensation shall be determined according to regulations
24 of the Department of Administrative Services. Hearing officers to whom a case has been
25 assigned shall receive compensation determined to be appropriate and reasonable by the
26 review board. Such compensation to the members of the review board and to hearing
27 officers shall be made by the Department of Administrative Services.~~

28 (c) Any applicant for a project, or any competing applicant, or any competing health care
29 facility that has notified the department prior to its decision that such facility is opposed
30 to the application before the department, or any county or municipal government in whose
31 boundaries the proposed project will be located, who is aggrieved by a decision of the
32 department shall have the right to appeal such decision to the commissioner in an initial
33 administrative appeal hearing before a hearing officer assigned by the commissioner or to
34 intervene in such hearing if such applicant, facility, or government attended and
35 participated in the opposition meeting pursuant to subsection (c) of Code Section 31-6-43.
36 Such request for hearing or intervention shall be made within 30 days of the date of the
37 decision made pursuant to Code Section 31-6-43. In the event that an appeal is requested,

1 the ~~chairperson~~ commissioner of the review board shall appoint a hearing officer for each
2 such hearing within 50 days after the date of the decision made pursuant to Code Section
3 31-6-43. The department shall promulgate reasonable rules for initial administrative appeal
4 hearings held by the appointed hearing officers. Each hearing officer shall be an active
5 member of the State Bar of Georgia in good standing, and each such attorney must have
6 maintained such active status for the five years immediately preceding such person's
7 respective approval. Hearing officers to whom a case has been assigned shall receive
8 compensation determined to be appropriate and reasonable by the department. Within 14
9 days after the appointment of the hearing officer, such hearing officer shall set the date or
10 dates for the hearing and shall provide the parties with written notice mailed at least 14
11 days before the date of commencement of such hearing. The hearing shall be commenced
12 within 120 days of the filing of the request for a hearing, unless the applicant consents or,
13 in the case of competing applicants, all applicants consent to an extension of this time
14 period to a specified date. Unless the applicant consents or, in the case of competing
15 applicants, all applicants consent to an extension of said 120 day period, any hearing
16 officer who fails to commence a hearing within the required time period shall not be
17 eligible for continued service as a hearing officer for the purposes of this Code section.
18 The hearing officer shall have the authority to dispose of all motions made by any party
19 before the issuance of the hearing officer's decision and shall make such rulings as may be
20 required for the conduct of the hearing.

21 ~~(d)~~(b) In fulfilling the functions and duties of this chapter, the hearing officer shall act, and
22 the hearing shall be conducted as a full evidentiary hearing, in accordance with Chapter 13
23 of Title 50, the 'Georgia Administrative Procedure Act,' relating to contested cases, except
24 as otherwise specified in this Code section. Subject to the provisions of Article 4 of
25 Chapter 18 of Title 50, all files, working papers, studies, notes, and other writings or
26 information used by the department in making its decision shall be public records and
27 available to the parties, and the hearing officer may permit each party to exercise such
28 reasonable rights of prehearing discovery of such information used by the parties as will
29 expedite the hearing.

30 ~~(e)~~(c) The issue for the decision by the hearing officer shall be whether, and the hearing
31 officer shall order the issuance of a certificate of need if, in the hearing officer's judgment
32 the application is consistent with the considerations as set forth in Code Section 31-6-42
33 and the department's rules, as the hearing officer deems such considerations and rules
34 applicable to the review of the project. The hearing officer shall also consider whether the
35 department committed prejudicial procedural error in its consideration of the application.
36 The hearing officer shall also consider whether the appeal lacks substantial justification and
37 whether such appeal was undertaken solely for the purpose of delay or harassment.

1 Appellants or applicants shall proceed first with their cases before the hearing officer in the
2 order determined by the hearing officer, and the department, if a party, shall proceed last.
3 In the event of a consolidated hearing on applications which were joined pursuant to
4 subsection (d) of Code Section 31-6-43, the hearing officer shall have the same powers
5 specified for the department in subsection (d) of Code Section 31-6-43 to order the
6 issuance of no certificate of need or one or more certificates of need.

7 ~~(f)~~(d) All evidence shall be presented at the initial administrative appeal hearing conducted
8 by the appointed hearing officer. A party or intervenor may present any relevant evidence
9 on all issues raised by the hearing officer or any party to the hearing or revealed during
10 discovery, except that, unless in response to an issue raised by an opponent or the hearing
11 officer or revealed during discovery, a party or intervenor may not present a new need
12 study or analysis that is substantially different from any such study or analysis submitted
13 to the department prior to its decision and that could reasonably have been available for
14 submission to the department prior to its decision. Except for such limitation on new
15 studies or analyses, the hearing officer may consider the latest data available, including
16 updates of studies previously submitted, in deciding whether an application is consistent
17 with the applicable considerations or rules.

18 ~~(g)~~(e) Within 30 days after the conclusion of the hearing, the hearing officer shall make
19 written findings of fact and conclusions of law as to each consideration as set forth in Code
20 Section 31-6-42 and the department's rules, including a detailed statement of the reasons
21 for the decision of the hearing officer. If any party has alleged that an appeal lacks
22 substantial justification and was undertaken solely for the purpose of delay or harassment,
23 the decision of the hearing officer shall make findings of fact addressing the merits of the
24 allegation. Immediately upon rendering a decision, the hearing officer shall file such
25 decision with the ~~review board~~ commissioner, serve such decision upon all parties, and
26 transmit the administrative record to the ~~chairperson of the review board~~ commissioner.
27 Any party, including the department, which disputes any finding of fact or conclusion of
28 law rendered by the hearing officer in such hearing officer's decision and which wishes to
29 appeal that decision to the ~~review board~~ commissioner shall file such party's specific
30 objections thereto with the ~~review board~~ commissioner within 30 days of such party's
31 receipt of the hearing officer's decision.

32 ~~(h)~~(f) The decision of the hearing officer will become the final decision of the department
33 upon the sixty-first day following the receipt of the decision by the ~~review board~~
34 commissioner unless an objection thereto is filed within the time limit established in
35 subsection ~~(g)~~(e) of this Code section and within 60 days of the receipt of the hearing
36 officer's decision by the ~~review board~~ commissioner.

1 ~~(1) At least a quorum of the review board meets to review such decision and, by a~~
 2 ~~majority vote of those members present at the meeting, decides whether to affirm,~~
 3 ~~reverse, or modify the hearing officer's decision or to remand the case to the hearing~~
 4 ~~officer for further consideration; or~~

5 ~~(2) At the request of any party which participated in the initial administrative hearing~~
 6 ~~before the hearing officer, or upon its own initiative, the chairperson or the chairperson's~~
 7 ~~designee extends the time period for review of such decision. However, the review board~~
 8 ~~may not extend the time period for review of such decision for longer than 45 days.~~

9 The chairperson or vice chairperson commissioner shall set the date for the review board
 10 meeting of the initial order and provide the parties with written notice mailed at least 14
 11 days prior to such meeting date. Within 30 days after ~~meeting to review of~~ such hearing
 12 officer's decision, ~~either the chairperson or the vice chairperson of the review board~~
 13 commissioner shall, ~~on behalf of the review board members present at such meeting,~~ issue
 14 a written order which memorializes ~~the~~ his or her final decision ~~of the review board~~
 15 ~~reached by such majority vote~~. In the event the review board commissioner reverses or
 16 modifies the hearing officer's decision, the review board commissioner shall issue a written
 17 decision explaining why such changes were made. However, the ~~review board~~
 18 commissioner shall not reverse findings of fact made by the hearing officer unless ~~the~~
 19 ~~review board~~ he or she specifically finds that the hearing officer's findings of fact are not
 20 supported by substantial evidence, which shall mean that the record does not contain such
 21 relevant evidence as a reasonable mind might accept as adequate to support such findings,
 22 inferences, conclusions, or decisions, which such evidentiary standard shall be in excess
 23 of the 'any evidence' standard contained in other statutory provisions. If, before the date
 24 set for ~~the review board's meeting~~ final review, application is made to the chairperson
 25 commissioner for leave to present additional evidence and it is shown to the satisfaction
 26 of the chairperson commissioner that the additional evidence is material and there were
 27 good reasons for failure to present it in the proceedings before the hearing officer, the
 28 chairperson commissioner may order that the additional evidence be taken before the same
 29 hearing officer who rendered the initial decision upon conditions determined by the
 30 chairperson commissioner. The hearing officer may modify the initial decision by reason
 31 of the additional evidence and shall file that evidence and any modifications, new findings,
 32 or decision with the review board commissioner. Unless leave is given by the chairperson
 33 commissioner in accordance with the provisions of this subsection, the ~~review board~~
 34 hearing officer may not consider new evidence under any circumstances. In all
 35 circumstances, the review board's commissioner's decision shall be based upon
 36 considerations as set forth in ~~Code Section 31-6-42~~ this chapter and the department's rules.

1 ~~(i)~~(g) After the issuance of a decision by the department pursuant to Code Section 31-6-43,
 2 no party to an appeal hearing, nor any person on behalf of such party, shall make any ex
 3 parte contact with the hearing officer appointed to conduct the appeal hearing or any
 4 ~~member of the review board~~ the commissioner in regard to a project under appeal.

5 ~~(j)~~(h) Unless the hearing officer's decision becomes the department's decision by
 6 operation of law as provided in subsection ~~(h)~~(f) of this Code section, the final decision of
 7 the ~~review board~~ commissioner shall become the department's decision by operation of
 8 law. Such final decision shall be the final department decision for purposes of Chapter 13
 9 of Title 50, the 'Georgia Administrative Procedure Act.' The appeals process provided by
 10 this Code section shall be the administrative remedy only for decisions made by the
 11 department pursuant to Code Section Sections 31-6-42.1 and 31-6-43 which involve the
 12 approval or denial of applications for certificates of need.

13 ~~(k)~~(i) In the event that the ~~review board or its chairperson or vice chairperson~~
 14 commissioner requires additional legal counsel, ~~the chairperson or vice chairperson shall~~
 15 he or she may make a request for such advice to the Attorney General.

16 ~~(l)~~(j) If, based upon the findings of the hearing officer, the review board determines that
 17 the appeal filed by any party of a decision of the department lacks substantial justification
 18 and was undertaken solely for the purpose of delay or harassment, the review board The
 19 commissioner may shall enter an award in its his or her written order against such party and
 20 in favor of the successful party or parties, including the department, of all or any part of
 21 their respective reasonable and necessary attorney's fees and expenses of litigation less any
 22 fees paid by the losing party pursuant to those established and imposed pursuant to
 23 paragraph (7) of Code Section 31-6-21, as ~~the review board~~ the commissioner deems just.
 24 Such award may shall be enforced by any court undertaking judicial review of the final
 25 decision. In the absence of any petition for judicial review, then such award shall be
 26 enforced, upon due application, by any court having personal jurisdiction over the party
 27 against whom such an award is made.

28 ~~(m)~~(1) Any party to the initial administrative appeal hearing conducted by the appointed
 29 hearing officer, ~~excluding the department, may seek judicial review of the final decision~~
 30 ~~in accordance with the method set forth in Chapter 13 of Title 50, the 'Georgia~~
 31 ~~Administrative Procedure Act', provided, however, that in conducting such review, the~~ or
 32 any opposing party that participated in the opposition meeting as required by subsection
 33 (c) of Code Section 31-6-43 may, within 20 days from the date of any such final decision
 34 by the commissioner, but not thereafter, appeal such final decision to the superior court of
 35 the county in which the proposed new institutional health service or health care facility is
 36 to be sited in the manner and upon the grounds provided in this Code section. Said appeal
 37 shall be filed with the commissioner in writing stating generally the grounds upon which

1 such appeal is sought. In the event of an appeal, the commissioner shall, within 30 days
 2 of the filing of the notice of appeal with the commissioner, transmit certified copies of all
 3 documents and papers in the file together with a transcript of the testimony taken and his
 4 or her findings of fact and decision to the clerk of the superior court to which the case is
 5 appealable, as provided in this subsection. The case so appealed may then be brought by
 6 any eligible party upon ten days' written notice to the other before the superior court for
 7 a hearing upon such record, subject to an assignment of the case for hearing by the court;
 8 provided, however, if the court does not hear the case within 60 days of the date of
 9 docketing in the superior court, the decision of the commissioner shall be considered
 10 affirmed by operation of law unless a hearing originally scheduled to be heard within the
 11 60 days has been continued to a date certain by order of the court. In the event a hearing
 12 is held later than 60 days after the date of docketing in the superior court because same has
 13 been continued to a date certain by order of the court, the decision of the commissioner
 14 shall be considered affirmed by operation of law if no order of the court disposing of the
 15 issues on appeal has been entered within 20 days after the date of the continued hearing.
 16 If a case is heard within 60 days from the date of docketing in the superior court, the
 17 decision of the commissioner shall be considered affirmed by operation of law if no order
 18 of the court dispositive of the issues on appeal has been entered within 20 days of the date
 19 of the hearing.

20 (2) The court may reverse or modify the final decision only if substantial rights of the
 21 appellant have been prejudiced because the procedures followed by the department, the
 22 hearing officer, or the ~~review board~~ commissioner or the administrative findings,
 23 inferences, and conclusions contained in the final decision are:

24 ~~(1)~~(A) In violation of constitutional or statutory provisions;

25 ~~(2)~~(B) In excess of the statutory authority of the department;

26 ~~(3)~~(C) Made upon unlawful procedures;

27 ~~(4)~~(D) Affected by other error of law;

28 ~~(5)~~(E) Not supported by substantial evidence, which shall mean that the record does not
 29 contain such relevant evidence as a reasonable mind might accept as adequate to support
 30 such findings, inferences, conclusions, or decisions, which such evidentiary standard shall
 31 be in excess of the 'any evidence' standard contained in other statutory provisions; or

32 ~~(6)~~(F) Arbitrary or capricious or characterized by abuse of discretion or clearly
 33 unwarranted exercise of discretion.

34 (3) No decision of the commissioner shall be set aside by the court upon any grounds
 35 other than one or more of the grounds stated in paragraph (2) of this subsection. In the
 36 event a hearing is not held and a decision is not rendered by the superior court within the
 37 time provided in paragraph (1) of this subsection, the decision of the commissioner shall

1 be affirmed by operation of law. The date of entry of judgment for purposes of appeal
 2 pursuant to Code Section 5-6-35 of a decision affirmed by operation of law without
 3 action of the superior court shall be the last date on which the superior court could have
 4 taken action under paragraph (1) of this subsection. Upon the setting aside of any such
 5 decision of the commissioner, the court may recommit the controversy to the
 6 commissioner for further hearing or proceedings in conformity with the judgment and
 7 opinion of the court or such court may enter the proper judgment upon the findings, as
 8 the nature of the case may demand. Such decree of the court shall have the same effect
 9 and all proceedings in relation thereto shall, subject to the other provisions of this chapter,
 10 thereafter be the same as though rendered in an action heard and determined by the court.
 11 (4) The prevailing party shall be entitled to an award of court costs, costs of litigation,
 12 and reasonable attorney's fees.
 13 (5) Any party in interest who is aggrieved by a judgment entered by the superior court
 14 upon an appeal from a decision of the commissioner to the superior court may have such
 15 judgment reviewed by the Court of Appeals within the time and in the manner provided
 16 by law. In the case of an appeal from the decision of the commissioner, the appeal shall
 17 operate as a supersedeas.

18 31-6-45.

19 (a) The department may revoke a certificate of need after notice to the holder of the
 20 certificate and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative
 21 Procedure Act,' for the following reasons:

22 (1) Failure to comply with the provisions of Code Section 31-6-41; ~~or~~

23 (2) The intentional provision of false information to the department by an applicant in
 24 that applicant's application;

25 (3) Failure to substantially comply with any requirement to provide a minimum amount
 26 of uncompensated indigent or charity care pursuant to Code Section 31-6-40.1. The
 27 department shall be authorized to establish by rule the definition of substantial
 28 compliance for this purpose;

29 (4) Failure to participate as a provider of medical assistance for Medicaid purposes
 30 pursuant to Code Section 31-6-45.2; or

31 (5) The failure to submit a timely or complete report within 180 days following the date
 32 the report is due pursuant to Code Section 31-6-70.

33 The department may not, however, revoke a certificate of need if the applicant changes the
 34 defined location of the project within the same county less than three miles from the
 35 location specified in the certificate of need for financial reasons or other reasons beyond
 36 its control, including, but not limited to, failure to obtain any required approval from

1 zoning or other governmental agencies or entities, provided such change in location is
 2 otherwise consistent with the considerations and rules applied in the evaluation of the
 3 project.

4 (a.1) The department may revoke a certificate of need or a portion of a certificate of need
 5 after notice to the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title
 6 50, the 'Georgia Administrative Procedure Act,' if the services or units of services for
 7 which the certificate of need was issued are not implemented in a timely manner, as
 8 established by the department in its rules. This subsection shall apply only to certificates
 9 of need issued on or after July 1, 2007.

10 (b) Any health care facility offering a new institutional health service without having
 11 obtained a certificate of need and which has not been previously licensed as a health care
 12 facility shall be denied a license to operate.

13 (c) In the event that a new institutional health service is knowingly offered or developed
 14 without having obtained a certificate of need as required by this chapter, or the certificate
 15 of need for such service is revoked according to the provisions of this Code section, a
 16 facility or applicant may be fined an amount not to exceed:

17 (1) \$5,000.00 per day for every day up to 30 days;

18 (2) \$10,000.00 per day for every day from 31 days through 60 days; and

19 (3) \$25,000.00 per day for every day over 60 days

20 that the violation of this chapter has existed and knowingly and willingly continues;
 21 provided, however, that the expenditure or commitment of or incurring an obligation for
 22 the expenditure of funds to take or perform actions not subject to this chapter or to acquire,
 23 develop, or prepare a health care facility site for which a certificate of need application is
 24 denied shall not be a violation of this chapter and shall not be subject to such a fine. The
 25 commissioner of the department shall determine, after notice and a hearing, whether the
 26 fines provided in this Code section shall be levied.

27 (d) In addition, for purposes of this Code section, the State of Georgia, acting by and
 28 through the department, or any other interested person, shall have standing in any court of
 29 competent jurisdiction to maintain an action for injunctive relief to enforce the provisions
 30 of this chapter.

31 31-6-45.1.

32 (a) A health care facility which has a certificate of need or is otherwise authorized to
 33 operate pursuant to this chapter shall have such certificate of need or authority to operate
 34 automatically revoked by operation of law without any action by the ~~Department of~~
 35 ~~Community Health~~ department when that facility's permit to operate pursuant to Code
 36 Section 31-7-4 is finally revoked by order of the ~~Department of Human Resources~~

1 department. For purposes of this subsection, the date of such final revocation shall be as
2 follows:

3 (1) When there is no appeal of the order pursuant to Chapter 5 of this title, the one
4 hundred and eightieth day after the date upon which expires the time for appealing the
5 revocation order without such an appeal being filed; or

6 (2) When there is an appeal of the order pursuant to Chapter 5 of this title, the date upon
7 which expires the time to appeal the last administrative or judicial order affirming or
8 approving the revocation or revocation order without such appeal being filed.

9 ~~The Department of Community Health may become a party to any judicial proceeding to~~
10 ~~review a decision by the Department of Human Resources to revoke such a permit.~~

11 (b) The services which had been authorized to be offered by a health care facility for
12 which a certificate of need has been revoked pursuant to subsection (a) of this Code section
13 may continue to be offered in the service area in which that facility was located under such
14 conditions as specified by the department notwithstanding that some or all of such services
15 could not otherwise be offered as new institutional health services.

16 31-6-45.2.

17 (a) The department may require that any applicant for a certificate of need agree to
18 participate as a provider of medical assistance for Medicaid purposes pursuant to Article
19 7 of Chapter 4 of Title 49. The department shall be authorized to establish, by rule,
20 minimum volumes of services, quality standards, limitations on services, and any other
21 conditions relating to required health services to Medicaid patients.

22 ~~(a)~~(b) Any proposed or existing health care facility which obtains a certificate of need on
23 or after April 6, 1992, based in part upon assurances that it will participate as a provider
24 of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, and which
25 terminates its participation as a provider of medical assistance or violates any conditions
26 imposed by the department relating to such participation, shall be subject to a monetary
27 penalty in the amount of the difference between the Medicaid covered services which the
28 facility agreed to provide in its certificate of need application and the amount actually
29 provided and may be subject to revocation of its certificate of need by the department
30 pursuant to Code Section 31-6-45; provided, however, that this Code section shall not
31 apply if:

32 (1) The proposed or existing health care facility's certificate of need application was
33 approved by the Health Planning Agency prior to April 6, 1992, and the Health Planning
34 Agency's approval of such application was under appeal on or after April 6, 1992, and
35 the Health Planning Agency's approval of such application is ultimately affirmed;

1 (2) Such facility's participation as a provider of medical assistance is terminated by the
2 state or federal government; or

3 (3) Such facility establishes good cause for terminating its participation as a provider of
4 medical assistance. For purposes of this Code section, 'good cause' shall mean:

5 (A) Changes in the adequacy of medical assistance payments, as defined in paragraph
6 (5) of Code Section 49-4-141, provided that at least 10 percent of the facility's
7 utilization during the preceding 12 month period was attributable to services to
8 recipients of medical assistance, as defined in paragraph (7) of Code Section 49-4-141.
9 Medical assistance payments to a facility shall be presumed adequate unless the
10 revenues received by the facility from all sources are less than the total costs set forth
11 in the cost report for the preceding full 12 month period filed by such facility pursuant
12 to the state plan as defined in paragraph (8) of Code Section 49-4-141 which are
13 allowed under the state plan for purposes of determining such facility's reimbursement
14 rate for medical assistance and the aggregate amount of such facility's medical
15 assistance payments (including any amounts received by the facility from recipients of
16 medical assistance) during the preceding full 12 month cost reporting period is less than
17 85 percent of such facility's Medicaid costs for such period. Medicaid costs shall be
18 determined by multiplying the allowable costs set forth in the cost report, less any audit
19 adjustments, by the percentage of the facility's utilization during the cost reporting
20 period which was attributable to recipients of medical assistance;

21 (B) Changes in the overall ability of the facility to cover its costs if such changes are
22 of such a degree as to seriously threaten the continued viability of the facility; or

23 (C) Changes in the state plan, statutes, or rules and regulations governing providers of
24 medical assistance which impose substantial new obligations upon the facility which
25 are not reimbursed by Medicaid and which adversely affect the financial viability of the
26 facility in a substantial manner.

27 ~~(b)~~(c) A facility seeking to terminate its enrollment as a provider of medical assistance
28 shall submit a written request to the ~~Department of Community Health~~ department
29 documenting good cause for termination. The ~~Department of Community Health, after~~
30 ~~consultation with the department,~~ shall grant or deny the facility's request within 30 days.
31 If the ~~Department of Community Health~~ department denies the facility's request, the
32 facility shall be entitled to a hearing conducted in the same manner as an evidentiary
33 hearing conducted by the ~~Department of Community Health~~ department pursuant to the
34 provisions of Code Section 49-4-153 within 30 days of the ~~Department of Community~~
35 ~~Health's~~ department's decision.

36 ~~(e)~~(d) The imposition of the monetary penalty provided in this Code section shall
37 commence upon ~~notification to the commissioner of the department by the commissioner~~

1 of community health the date that said facility has terminated its participation as a provider
 2 of medical assistance, as determined by the commissioner. The monetary penalty shall be
 3 levied and collected by the department on an annual basis for every year in which the
 4 facility fails to participate as a provider of medical assistance. Penalties authorized under
 5 this Code section shall be subject to the same notices and hearings as provided for levy of
 6 fines under Code Section 31-6-45.

7 31-6-46.

8 The department shall prepare and submit an annual report to the Health and Human
 9 Services Committee of the Senate and the Health and Human Services Committee of the
 10 House of Representatives about its operations and decisions for the preceding 12 month
 11 period, not later than 30 days prior to each convening of the General Assembly in regular
 12 session. Either committee may request any additional reports or information, including
 13 decisions, from the department at any time, including a period in which the General
 14 Assembly is not in regular session.

15 31-6-47.

- 16 (a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to:
- 17 (1) Infirmaries operated by educational institutions for the sole and exclusive benefit of
 18 students, faculty members, officers, or employees thereof;
 - 19 (2) Infirmaries or facilities operated by businesses for the sole and exclusive benefit of
 20 officers or employees thereof, provided that such infirmaries or facilities make no
 21 provision for overnight stay by persons receiving their services;
 - 22 (3) Institutions operated exclusively by the federal government or by any of its agencies;
 - 23 (4) Offices of private physicians or dentists whether for individual or group practice,
 24 except as otherwise provided in subparagraphs (G) and (H) of paragraph (14) of Code
 25 Section 31-6-2;
 - 26 (5) ~~Christian Science sanatoriums operated or listed and certified by the First Church of~~
 27 ~~Christ Scientist, Boston, Massachusetts~~ Expenditures for computer systems, software, and
 28 other information technology;
 - 29 (6) Site acquisitions for health care facilities or preparation or development costs for
 30 such sites prior to the decision to file a certificate of need application;
 - 31 (7) Expenditures related to adequate preparation and development of an application for
 32 a certificate of need;
 - 33 (8) The commitment of funds conditioned upon the obtaining of a certificate of need;

1 (9) Expenditures for the acquisition of existing health care facilities by stock or asset
 2 purchase, merger, consolidation, or other lawful means unless the facilities are owned or
 3 operated by or on behalf of a:

4 (A) Political subdivision of this state;

5 (B) Combination of such political subdivisions; or

6 (C) Hospital authority, as defined in Article 4 of Chapter 7 of this title;

7 (9.1) Expenditures for the restructuring of or for the acquisition by stock or asset
 8 purchase, merger, consolidation, or other lawful means of an existing health care facility
 9 which is owned or operated by or on behalf of any entity described in subparagraph (A),
 10 (B), or (C) of paragraph (9) of this subsection only if such restructuring or acquisition is
 11 made by any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this
 12 subsection;

13 (10) Expenditures for ~~the minor~~ any minor or major repair of a health care facility, or
 14 parts thereof or services provided or equipment used therein, or replacement of
 15 equipment, including, but not limited to, CT scanners;

16 (11) Capital expenditures otherwise covered by this chapter required solely to eliminate
 17 or prevent safety hazards as defined by federal, state, or local fire, building,
 18 environmental, occupational health, or life safety codes or regulations, to comply with
 19 licensing requirements of the ~~Department of Human Resources~~ department, or to comply
 20 with accreditation standards of the Joint Commission on Accreditation of Hospitals;

21 (12) Cost overruns whose percentage of the cost of a project is equal to or less than the
 22 cumulative annual rate of increase in the composite construction index, published by the
 23 Bureau of the Census of the Department of Commerce, of the United States government,
 24 calculated from the date of approval of the project;

25 (13) Transfers from one health care facility to another such facility of major medical
 26 equipment previously approved under or exempted from certificate of need review,
 27 except where such transfer results in the institution of a new clinical health service for
 28 which a certificate of need is required in the facility acquiring said equipment, provided
 29 that such transfers are recorded at net book value of the medical equipment as recorded
 30 on the books of the transferring facility;

31 (14) New institutional health services provided by or on behalf of health maintenance
 32 organizations or related health care facilities in circumstances defined by the department
 33 pursuant to federal law;

34 (15) Increases in the bed capacity of a hospital up to ten beds or 10 percent of capacity,
 35 whichever is less, in any consecutive two-year period, in a hospital that has maintained
 36 an overall occupancy rate greater than 85 percent for the previous 12 month period; ~~and~~

37 (16) Medical office buildings, including construction and expansion;

1 (17) State mental health facilities;

2 (18) Continuing care retirement communities that maintain sheltered nursing beds, as
3 defined by the department; and

4 ~~(16)~~(19) Capital expenditures for a project otherwise requiring a certificate of need if
5 those expenditures are for a project to remodel, renovate, replace, or any combination
6 thereof, a ~~medical-surgical hospital~~ health care facility and:

7 ~~(A) That hospital:~~

8 ~~(i) Has a bed capacity of not more than 50 beds;~~

9 ~~(ii) Is located in a county in which no other medical-surgical hospital is located;~~

10 ~~(iii) Has at any time been designated as a disproportionate share hospital by the~~
11 ~~Department of Community Health; and~~

12 ~~(iv) Has at least 45 percent of its patient revenues derived from medicare, Medicaid,~~
13 ~~or any combination thereof, for the immediately preceding three years; and~~

14 ~~(B) That that project:~~

15 ~~(i)~~(A) Does not result in any of the following:

16 ~~(i)~~(i) The offering of any new clinical health services;

17 ~~(ii)~~(ii) Any increase in bed capacity;

18 ~~(iii)~~(iii) Any redistribution of existing beds among existing clinical health services;
19 or

20 ~~(iv)~~(iv) Any increase in capacity of existing clinical health services;

21 ~~(ii) Has at least 80 percent of its capital expenditures financed by the proceeds of a~~
22 ~~special purpose county sales and use tax imposed pursuant to Article 3 of Chapter 8~~
23 ~~of Title 48; and~~

24 ~~(iii)~~(B) If a replacement facility, is ~~Is~~ located within a defined distance, as determined
25 by the department pursuant to its rules and regulations, and would have no adverse
26 impact on other existing providers ~~three-mile radius of and within the same county~~
27 as the hospital's existing facility.

28 (b) The department shall establish, by rule, procedures whereby requirements for the
29 process of review and issuance of a certificate of need may be modified and expedited as
30 a result of emergency situations.

31 (c) By rule, the department shall establish a procedure for expediting or waiving reviews
32 of certain projects the nonreview of which it deems compatible with the purposes of this
33 chapter, in addition to expenditures exempted from review by this Code section.

34 31-6-47.1.

35 The department shall be authorized to require prior notice from a health care provider or
36 facility and its approval of any activity which is believed to be exempt from the

1 requirements of this chapter pursuant to Code Section 31-6-47 or otherwise excluded from
 2 the requirements of this chapter pursuant to the provisions of this chapter. The department
 3 shall be authorized to establish timeframes, forms, and criteria relating to its certification
 4 that an activity is properly exempt or excluded under this chapter prior to its
 5 implementation.

6 31-6-48.

7 The State Health Planning and Development Agency, the State-wide Health Coordinating
 8 Council, and the State Health Planning Review Board existing immediately prior to July
 9 1, 1983, are abolished, and their respective successors on and after July 1, 1983, shall be
 10 the Health Planning Agency, the Health Policy Council, and the Health Planning Review
 11 Board, as established in this chapter, except that on and after July 1, 1991, the Health
 12 Strategies Council shall be the successor to the Health Policy Council, and except that on
 13 and after July 1, 1999, the Department of Community Health shall be the successor to the
 14 Health Planning Agency, and except that on and after July 1, 2007, the Board of
 15 Community Health shall be the successor to the duties of the Health Strategies Council
 16 with respect to adoption of the state health plan, and except that on June 30, 2007, the
 17 Health Planning Review Board is abolished and the terms of all members on such board
 18 on such date shall automatically terminate. For purposes of any existing contract with the
 19 federal government, or federal law referring to such abolished agency, council, or board,
 20 the successor department, council, or board established in this chapter or in Chapter 5A of
 21 this title shall be deemed to be the abolished agency, council, or board and shall succeed
 22 to the abolished agency's, council's, or board's functions. The State Health Planning and
 23 Development Commission is abolished.

24 31-6-49.

25 ~~All matters transferred to the Health Strategies Council and the Health Planning Review~~
 26 ~~Board by the previously existing provisions of this Code section and that are in effect on~~
 27 ~~June 30, 1999, shall automatically remain in such council or board on and after July 1,~~
 28 ~~1999, until otherwise disposed of.~~ All matters transferred to the Health Planning Agency
 29 by the previously existing provisions of this Code section and that are in effect on June 30,
 30 1999, shall automatically be transferred to the Department of Community Health on July
 31 1, 1999. All matters of the Health Planning Review Board that are pending on June 30,
 32 2007, shall automatically be transferred to the commissioner of community health for
 33 disposition in accordance with Code Section 31-6-44.

1 31-6-50.

2 ~~From and after July 1, 1983, the~~ The review and appeal considerations and procedures set
 3 forth in Code Sections 31-6-42 through 31-6-44, respectively, shall apply to and govern the
 4 review of capital expenditures under the Section 1122 program of the federal Social
 5 Security Act of 1935, as amended, including, but not limited to, any application for
 6 approval under Section 1122 which is under consideration by the Health Planning Agency
 7 or on appeal before the ~~review board~~ now abolished Health Planning Review Board as of
 8 ~~July 1, 1983~~ June 30, 2007.

9 ARTICLE 4

10 31-6-70.

11 (a) There shall be required from each hospital and ambulatory surgical center in this state
 12 an annual report of certain health care information to be submitted to the department. The
 13 report shall be due on the last day of January and shall cover the 12 month period preceding
 14 each such calendar year.

15 (b) The report required under subsection (a) of this Code section shall contain the
 16 following information:

17 (1) Total gross revenues;

18 (2) Bad debts;

19 (3) Amounts of free care extended, excluding bad debts;

20 (4) Contractual adjustments;

21 (5) Amounts of care provided under a Hill-Burton commitment;

22 (6) Amounts of charity care provided to indigent persons;

23 (7) Amounts of outside sources of funding from governmental entities, philanthropic
 24 groups, or any other source, including the proportion of any such funding dedicated to the
 25 care of indigent persons; and

26 (8) For cases involving indigent persons:

27 (A) The number of persons treated;

28 (B) The number of inpatients and outpatients;

29 (C) Total patient days;

30 (D) The number of patients categorized by county of residence; and

31 (E) The indigent care costs incurred by the hospital or ambulatory surgical center by
 32 county of residence.

33 (c) As used in subsection (b) of this Code section, 'indigent persons' means persons having
 34 as a maximum allowable income level an amount corresponding to 125 percent of the
 35 federal poverty guideline.

1 (d) The department shall provide a form for the report required by subsection (a) of this
 2 Code section and may provide in said form for further categorical divisions of the
 3 information listed in subsection (b) of this Code section.

4 (e)(1) In the event ~~that~~ the department does not receive an annual report from a hospital
 5 or ambulatory surgical center within 30 days following on or before the date such report
 6 was due or receives a timely but incomplete report, the department shall notify the
 7 hospital or ambulatory surgical center regarding the deficiencies and shall be authorized
 8 to fine such hospital or ambulatory surgical center in an amount not to exceed:

9 (A) \$500.00 per day for every day up to 30 days; and

10 (B) \$1,000.00 per day for every day over 30 days

11 for every day of such untimely or deficient report.

12 (2) In the event the department does not receive an annual report from a hospital or
 13 ambulatory surgical center within 180 days following the date such report was due or
 14 receives a timely but incomplete report which is not completed with such 180 days, the
 15 department shall be authorized to revoke such hospital's or ambulatory surgical center's
 16 certificate of need in accordance with Code Section 31-6-45.

17 (f) No application for a certificate of need under Article 3 of this chapter shall be
 18 considered as complete if the applicant has not submitted the annual report required by
 19 subsection (a) of this Code section."

20 PART II

21 Transfer of Licensing Functions from the Department of Human Resources to the
 22 Department of Community Health.

23 SECTION 2-1.

24 Code Section 19-10A-2, relating to the definition of "medical facility" for purposes of the
 25 "Safe Place for Newborns Act of 2002," is amended as follows:

26 "19-10A-2.

27 As used in this chapter, the term 'medical facility' shall mean any licensed general or
 28 specialized hospital, institutional infirmary, health center operated by a county board of
 29 health, or facility where human births occur on a regular and ongoing basis which is
 30 classified by the Department of ~~Human Resources~~ Community Health as a birthing center,
 31 but shall not mean physicians' or dentists' private offices."

1 that college or school with the balance being paid directly to the applicant; all of which
 2 shall be under such terms and conditions as may be provided under rules and regulations
 3 of the State Medical Education Board. The loans or scholarships to be granted to each
 4 applicant shall be based upon the condition that the full amount of the loans or scholarships
 5 shall be repaid to the State of Georgia in services to be rendered by the applicant by
 6 practicing his or her profession in a State Medical Education Board approved rural county
 7 in Georgia of 35,000 population or less according to the United States decennial census of
 8 1990 or any future such census or at any hospital or facility operated by or under the
 9 jurisdiction of the Department of ~~Human Resources~~ Community Health or at any facility
 10 operated by or under the jurisdiction of the Department of Corrections or at any facility
 11 operated by or under the jurisdiction of the Department of Juvenile Justice. For each year
 12 of practicing his or her profession in such State Medical Education Board approved
 13 location, the applicant shall receive credit for the amount of the scholarship received during
 14 any one year in medical school, with the interest due on such amount."

15 SECTION 2-4.

16 Code Section 24-9-47, relating to disclosure of AIDS confidential information as evidence,
 17 is amended by revising paragraph (1) of subsection (h) as follows:

18 "(h)(1) An administrator of an institution licensed as a hospital by the Department of
 19 ~~Human Resources~~ Community Health or a physician having a patient who has been
 20 determined to be infected with HIV may disclose to the Department of Human
 21 Resources:

22 (A) The name and address of that patient;

23 (B) That such patient has been determined to be infected with HIV; and

24 (C) The name and address of any other person whom the disclosing physician or
 25 administrator reasonably believes to be a person at risk of being infected with HIV by
 26 that patient."

27 SECTION 2-5.

28 Code Section 24-10-70, relating to definitions relative to production of medical records as
 29 evidence, is amended by revising paragraph (1) as follows:

30 "(1) 'Institution' shall have the meaning set forth in paragraph ~~(1)~~(4) of Code Section
 31 31-7-1 and shall also include a psychiatric hospital as defined in paragraph (7) of Code
 32 Section 37-3-1."

SECTION 2-6.

Code Section 25-2-13, relating to buildings presenting special hazards to persons or property, is amended by revising subparagraph (b)(1)(J) as follows:

"(J) Personal care homes required to be licensed as such by the Department of ~~Human Resources~~ Community Health and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for those homes, and any structure constructed as or converted to a personal care home on or after April 15, 1986, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the standards established by the Commissioner if he deems this necessary for proper fire safety."

SECTION 2-7.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code Section 31-1-1, relating to definitions relative to general health provisions, as follows:

"31-1-1.

Except as specifically provided otherwise, as ~~As~~ used in this title, the term:

- (1) 'Board' means the Board of Human Resources.
- (2) 'Commissioner' means the commissioner of human resources.
- (3) 'Department' means the Department of Human Resources."

SECTION 2-8.

Said title is further amended in Code Section 31-7-1, relating to definitions relative to the regulation of hospitals and related institutions, as follows:

"31-7-1.

As used in this chapter, the term:

- (1) 'Board' means the Board of Community Health.
- (2) 'Commissioner' means the commissioner of community health.
- (3) 'Department' means the Department of Community Health.
- (4) 'Institution' means:

(A) ~~Reserved;~~

~~(B)~~ Any building, facility, or place in which are provided two or more beds and other facilities and services that are used for persons received for examination, diagnosis, treatment, surgery, maternity care, nursing care, or personal care for periods continuing for 24 hours or longer and which is classified by the department, as provided for in this chapter, as either a hospital, nursing home, or personal care home;

1 ~~(C)~~(B) Any health facility wherein abortion procedures under subsections (b) and (c)
2 of Code Section 16-12-141 are performed or are to be performed;

3 ~~(D)~~(C) Any building or facility, not under the operation or control of a hospital, which
4 is primarily devoted to the provision of surgical treatment to patients not requiring
5 hospitalization and which is classified by the department as an ambulatory surgical
6 treatment center;

7 ~~(E)~~(D) Any fixed or mobile specimen collection center or health testing facility where
8 specimens are taken from the human body for delivery to and examination in a licensed
9 clinical laboratory or where certain measurements such as height and weight
10 determination, limited audio and visual tests, and electrocardiograms are made,
11 excluding public health services operated by the state, its counties, or municipalities;

12 ~~(F)~~(E) Any building or facility where human births occur on a regular and ongoing
13 basis and which is classified by the ~~Department of Human Resources~~ department as a
14 birthing center; or

15 ~~(G)~~(F) Any building or facility which is devoted to the provision of treatment and
16 rehabilitative care for periods continuing for 24 hours or longer for persons who have
17 traumatic brain injury, as defined in Code Section 37-3-1.

18 The term 'institution' shall exclude all physicians' and dentists' private offices and
19 treatment rooms in which such ~~dentists or physicians~~ or dentists primarily see, consult
20 with, and treat patients.

21 ~~(2)~~(5) 'Medical facility' means any licensed general or specialized hospital, institutional
22 infirmary, public health center, or diagnostic and treatment center.

23 ~~(3)~~(6) 'Permit' means a permit issued by the department upon compliance with the rules
24 and regulations of the department.

25 ~~(4)~~(7) 'Provisional permit' means a permit issued on a conditional basis for one of the
26 following reasons:

27 (A) To allow a newly established institution a reasonable but limited period of time to
28 demonstrate that its operational procedures equal standards specified by the rules and
29 regulations of the department; or

30 (B) To allow an existing institution a reasonable length of time to comply with rules
31 and regulations, provided the institution shall present a plan of improvement acceptable
32 to the department."

33 SECTION 2-9.

34 Said title is further amended by revising Code Section 31-7-2.1, relating to rules and
35 regulations relative to the regulation of hospitals and related institutions, as follows:

1 "(a) The department shall adopt and promulgate such reasonable rules and regulations
 2 which in its judgment are necessary to protect the health and lives of patients and shall
 3 prescribe and set out the kind and quality of building, equipment, facilities, and
 4 institutional services which institutions shall have and use in order to properly care for their
 5 patients. Such rules and regulations shall include detailed quality standards for specific
 6 clinical services which shall be required to be met by an institution prior to offering the
 7 particular service. Such rules and regulations shall require that all nursing homes annually
 8 offer unless contraindicated, contingent on availability, an influenza virus vaccine to all
 9 medicare and Medicaid-eligible patients and private-pay patients in their facilities, in
 10 accordance with the rules and regulations established pursuant to this subsection. Such
 11 rules and regulations shall also require that all nursing homes annually offer unless
 12 contraindicated, contingent on availability, a pneumococcal bacteria vaccine to all
 13 medicare-eligible patients and all private-pay patients, 65 years of age or older, in their
 14 facilities, in accordance with the rules and regulations established pursuant to this
 15 subsection.

16 (b) The department shall compile and distribute, upon request, to interested persons a
 17 monthly list of those nursing homes and intermediate care homes surveyed, inspected, or
 18 investigated during the month, indicating each facility for which deficiencies have been
 19 cited by the department, and indicating where reports of the cited deficiencies and
 20 information regarding any sanctions imposed can be obtained. The department shall also
 21 make available the survey reports upon written request.

22 (c) Except as provided in Code Sections 31-8-86 and 31-5-5, all worksheets or documents
 23 prepared or compiled by ~~Department of Human Resources~~ department surveyors in the
 24 course of nursing home surveys shall be provided upon written request to a nursing home
 25 which has received notice of intent to impose a remedy or sanction pursuant to 42 U.S.C.
 26 Section 1396r or Code Section 31-2-6; provided, however, that the names of residents and
 27 any other information that would reveal the identities of residents and the content of
 28 resident interviews shall not be disclosed except as provided in survey protocols of the
 29 federal Centers for Medicare and Medicaid Services. The department may charge a
 30 reasonable reproduction fee as provided in Code Section 50-18-70 et seq."

31 SECTION 2-10.

32 Said title is further amended by revising subsection (a) of Code Section 31-7-3, relating to
 33 requirements for permits to operate a health care institution, as follows:

34 "(a) Any person or persons responsible for the operation of any institution, or who may
 35 hereafter propose to establish and operate an institution and to provide specified clinical
 36 services, shall submit an application to the department for a permit to operate the institution

1 and provide such services, such application to be made on forms prescribed by the
 2 department. No institution shall be operated in this state without such a permit, which shall
 3 be displayed in a conspicuous place on the premises. No clinical services shall be provided
 4 by an institution except as approved by the department in accordance with the rules and
 5 regulations established pursuant to Code Section 31-7-2.1. Failure or refusal to file an
 6 application for a permit shall constitute a violation of this chapter and shall be dealt with
 7 as provided for in Article 1 of Chapter 5 of this title. Following inspection and
 8 classification of the institution for which a permit is applied for, the department may issue
 9 or refuse to issue a permit or a provisional permit. Permits issued shall remain in force and
 10 effect until revoked or suspended; provisional permits issued shall remain in force and
 11 effect for such limited period of time as may be specified by the department."

12 SECTION 2-11.

13 Said title is further amended by revising Code Section 31-7-4, relating to denial or revocation
 14 of permits, as follows:

15 "31-7-4.

16 The department may refuse to grant a permit as provided for in Code Section 31-7-3 for the
 17 operation of any institution that does not fulfill the minimum requirements which the
 18 department may prescribe by rules and regulations, ~~and~~ may revoke a permit which has
 19 been issued if an institution violates any of such rules and regulations, and may revoke a
 20 portion of a permit which has been issued as it relates to a specific clinical service if the
 21 quality standards established by the department pursuant to Code Section 31-7-2.1 for such
 22 clinical service are not met; provided, however, that before any order is entered refusing
 23 a permit applied for or revoking a permit previously granted, the applicant or permit holder,
 24 as the case may be, shall be afforded an opportunity for a hearing as provided for in Article
 25 1 of Chapter 5 of this title. All appeals from such orders and all rights of enforcement by
 26 injunction shall be governed by Article 1 of Chapter 5 of this title."

27 SECTION 2-12.

28 Said title is further amended by revising Code Section 31-7-5, relating to exemptions from
 29 permit requirements to operate a health care institution, as follows:

30 "31-7-5.

31 Code Section 31-7-3 shall not apply to the offices of physicians or others practicing the
 32 healing arts unless the facilities and services described in paragraph ~~(1)~~(4) of Code Section
 33 31-7-1 are provided therein; nor shall this chapter apply to institutions operated exclusively
 34 by the federal government or by any of its agencies."

SECTION 2-13.

Said title is further amended by revising subsection (a) of Code Section 31-7-9, relating to reports by physicians and other personnel of nonaccidental injuries to patients, as follows:

"(a) As used in this Code section, the term 'medical facility' includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph ~~(D)~~(C) of paragraph ~~(H)~~ (4) of Code Section 31-7-1."

SECTION 2-14.

Said title is further amended by inserting a new Code Section to read as follows:

"31-7-17.

(a) Effective July 1, 2007, all matters relating to the licensure and regulation of hospitals and related institutions pursuant to this article shall be transferred from the Department of Human Resources to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2007, or scheduled to go into effect on or after July 1, 2007, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2007, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2007, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2007, shall, on July 1, 2007, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and

1 policies of the Department of Community Health on and after July 1, 2007, but the
 2 compensation and benefits of such transferred employees shall not be reduced as a result
 3 of such transfer. Employees who are subject to the rules of the State Personnel Board and
 4 thereby under the State Merit System of Personnel Administration and who are transferred
 5 to the department shall retain all existing rights under the State Merit System of Personnel
 6 Administration. Retirement rights of such transferred employees existing under the
 7 Employees' Retirement System of Georgia or other public retirement systems on June 30,
 8 2007, shall not be impaired or interrupted by the transfer of such employees and
 9 membership in any such retirement system shall continue in the same status possessed by
 10 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
 11 said employees on June 30, 2007, shall be retained by said employees as employees of the
 12 Department of Community Health."

13 **SECTION 2-15.**

14 Said title is further amended in Code Section 31-7-150, relating to definitions relative to
 15 home health agencies, by adding a new paragraph to read as follows:

16 "(1.1) 'Department' means the Department of Community Health."

17 **SECTION 2-16.**

18 Said title is further amended in Code Section 31-7-155, relating to certificates of need for
 19 new service or extending service area, as follows:

20 "31-7-155.

21 (a) No home health agency initiating service or extending the range of its service area shall
 22 be licensed unless the ~~Department of Community Health~~ department determines, in
 23 accordance with Article 3 of Chapter 6 of this title and regulations pursuant thereto, that
 24 there is a need for said services within the area to be served. All home health agencies
 25 which were delivering services prior to July 1, 1979, and were certified for participation
 26 in either Title XVIII or Title XIX of the federal Social Security Act prior to such date shall
 27 be exempt from a certificate of need, except in those instances where expansion of services
 28 or service areas is requested by such home health agencies. Such exemption from a
 29 certificate of need shall extend to all areas in which a home health agency was licensed by
 30 the department to provide services on or before December 31, 1989, except as provided in
 31 subsection (b) of this Code section.

32 (b) Concerning an exemption from a certificate of need pursuant to subsection (a) of this
 33 Code section, service areas which were the subject of litigation pending in any court of
 34 competent jurisdiction, whether by way of appeal, remand, stay, or otherwise, as of

1 December 31, 1989, shall not be so exempt except as set forth in the final unappealed
2 administrative or judicial decision rendered in such litigation.

3 (c) Except with respect to a home health agency's service areas which were the subject of
4 litigation pending in any court of competent jurisdiction as of December 31, 1989, the
5 ~~Department of Community Health~~ department shall not consider any request for or issue
6 a determination of an exemption from a certificate of need pursuant to this Code section
7 after December 31, 1989."

8 **SECTION 2-17.**

9 Said title is further amended by inserting a new Code Section to read as follows:

10 "31-7-159.

11 (a) Effective July 1, 2007, all matters relating to the licensure and regulation of home
12 health agencies pursuant to this article shall be transferred from the Department of Human
13 Resources to the Department of Community Health.

14 (b) The Department of Community Health shall succeed to all rules, regulations, policies,
15 procedures, and administrative orders of the Department of Human Resources that are in
16 effect on June 30, 2007, or scheduled to go into effect on or after July 1, 2007, and which
17 relate to the functions transferred to the Department of Community Health pursuant to this
18 Code section and shall further succeed to any rights, privileges, entitlements, obligations,
19 and duties of the Department of Human Resources that are in effect on June 30, 2007,
20 which relate to the functions transferred to the Department of Community Health pursuant
21 to this Code section. Such rules, regulations, policies, procedures, and administrative
22 orders shall remain in effect until amended, repealed, superseded, or nullified by the
23 Department of Community Health by proper authority or as otherwise provided by law.

24 (c) The rights, privileges, entitlements, and duties of parties to contracts, leases,
25 agreements, and other transactions entered into before July 1, 2007, by the Department of
26 Human Resources which relate to the functions transferred to the Department of
27 Community Health pursuant to this Code section shall continue to exist; and none of these
28 rights, privileges, entitlements, and duties are impaired or diminished by reason of the
29 transfer of the functions to the Department of Community Health. In all such instances, the
30 Department of Community Health shall be substituted for the Department of Human
31 Resources, and the Department of Community Health shall succeed to the rights and duties
32 under such contracts, leases, agreements, and other transactions.

33 (d) All persons employed by the Department of Human Resources in capacities which
34 relate to the functions transferred to the Department of Community Health pursuant to this
35 Code section on June 30, 2007, shall, on July 1, 2007, become employees of the
36 Department of Community Health in similar capacities, as determined by the commissioner

1 of community health. Such employees shall be subject to the employment practices and
 2 policies of the Department of Community Health on and after July 1, 2007, but the
 3 compensation and benefits of such transferred employees shall not be reduced as a result
 4 of such transfer. Employees who are subject to the rules of the State Personnel Board and
 5 thereby under the State Merit System of Personnel Administration and who are transferred
 6 to the department shall retain all existing rights under the State Merit System of Personnel
 7 Administration. Retirement rights of such transferred employees existing under the
 8 Employees' Retirement System of Georgia or other public retirement systems on June 30,
 9 2007, shall not be impaired or interrupted by the transfer of such employees and
 10 membership in any such retirement system shall continue in the same status possessed by
 11 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
 12 said employees on June 30, 2007, shall be retained by said employees as employees of the
 13 Department of Community Health."

14 **SECTION 2-18.**

15 Said title is further amended by revising paragraph (3) of Code Section 31-7-172, relating
 16 to definitions relative to hospice care, as follows:

17 "(3) 'Department' means the Department of ~~Human Resources~~ Community Health."

18 **SECTION 2-19.**

19 Said title is further amended by revising Code Section 31-7-175, relating to the
 20 administration of the "Georgia Hospice Law," as follows:

21 "31-7-175.

22 (a) The administration of this article is vested in the Department of ~~Human Resources~~
 23 Community Health which shall:

24 (1) Prepare and furnish all forms necessary under the provisions of this article in relation
 25 to the application for licensure or renewals thereof;

26 (2) After consultation with appropriate public interest groups, adopt rules within the
 27 standards of this article necessary to effect the purposes of this article; and

28 (3) Establish rules and regulations for the licensure of hospices.

29 (b) Rules promulgated by the department shall include but not be limited to the following:

30 (1) The qualifications of professional and ancillary personnel in order to furnish adequate
 31 hospice care;

32 (2) Standards for the organization and quality of patient care;

33 (3) Procedures for maintaining records;

34 (4) Standards for inpatient facilities, to include specifications that the hospice retain
 35 primary responsibility for the coordination of inpatient hospice care;

1 (5) Provision for contractual arrangements for professional and ancillary hospice
2 services; and

3 (6) Provisions for the imposition of administrative fines for any violations of any
4 provisions of this article or of department rules or regulations.

5 ~~(c) The department is directed to have in place regulations by March 1, 1984."~~

6 **SECTION 2-20.**

7 Said title is further amended by inserting a new Code section to read as follows:

8 "31-7-175.1.

9 (a) Effective July 1, 2007, all matters relating to the licensure and regulation of hospices
10 pursuant to this article shall be transferred from the Department of Human Resources to the
11 Department of Community Health.

12 (b) The Department of Community Health shall succeed to all rules, regulations, policies,
13 procedures, and administrative orders of the Department of Human Resources that are in
14 effect on June 30, 2007, or scheduled to go into effect on or after July 1, 2007, and which
15 relate to the functions transferred to the Department of Community Health pursuant to this
16 Code section and shall further succeed to any rights, privileges, entitlements, obligations,
17 and duties of the Department of Human Resources that are in effect on June 30, 2007,
18 which relate to the functions transferred to the Department of Community Health pursuant
19 to this Code section. Such rules, regulations, policies, procedures, and administrative
20 orders shall remain in effect until amended, repealed, superseded, or nullified by the
21 Department of Community Health by proper authority or as otherwise provided by law.

22 (c) The rights, privileges, entitlements, and duties of parties to contracts, leases,
23 agreements, and other transactions entered into before July 1, 2007, by the Department of
24 Human Resources which relate to the functions transferred to the Department of
25 Community Health pursuant to this Code section shall continue to exist; and none of these
26 rights, privileges, entitlements, and duties are impaired or diminished by reason of the
27 transfer of the functions to the Department of Community Health. In all such instances, the
28 Department of Community Health shall be substituted for the Department of Human
29 Resources, and the Department of Community Health shall succeed to the rights and duties
30 under such contracts, leases, agreements, and other transactions.

31 (d) All persons employed by the Department of Human Resources in capacities which
32 relate to the functions transferred to the Department of Community Health pursuant to this
33 Code section on June 30, 2007, shall, on July 1, 2007, become employees of the
34 Department of Community Health in similar capacities, as determined by the commissioner
35 of community health. Such employees shall be subject to the employment practices and
36 policies of the Department of Community Health on and after July 1, 2007, but the

1 compensation and benefits of such transferred employees shall not be reduced as a result
2 of such transfer. Employees who are subject to the rules of the State Personnel Board and
3 thereby under the State Merit System of Personnel Administration and who are transferred
4 to the department shall retain all existing rights under the State Merit System of Personnel
5 Administration. Retirement rights of such transferred employees existing under the
6 Employees' Retirement System of Georgia or other public retirement systems on June 30,
7 2007, shall not be impaired or interrupted by the transfer of such employees and
8 membership in any such retirement system shall continue in the same status possessed by
9 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
10 said employees on June 30, 2007, shall be retained by said employees as employees of the
11 Department of Community Health."

12 **SECTION 2-21.**

13 Said title is further amended in Code Section 31-7-250, relating to definitions relative to
14 facility licensing and employee records checks for personal care homes, by adding a new
15 paragraph to read as follows:

16 "(3.1) 'Department' means the Department of Community Health."

17 **SECTION 2-22.**

18 Said title is further amended by inserting a new Code section to read as follows:

19 "31-7-265.

20 (a) Effective July 1, 2007, all matters relating to facility licensing and employee records
21 checks for personal care homes pursuant to this article shall be transferred from the
22 Department of Human Resources to the Department of Community Health.

23 (b) The Department of Community Health shall succeed to all rules, regulations, policies,
24 procedures, and administrative orders of the Department of Human Resources that are in
25 effect on June 30, 2007, or scheduled to go into effect on or after July 1, 2007, and which
26 relate to the functions transferred to the Department of Community Health pursuant to this
27 Code section and shall further succeed to any rights, privileges, entitlements, obligations,
28 and duties of the Department of Human Resources that are in effect on June 30, 2007,
29 which relate to the functions transferred to the Department of Community Health pursuant
30 to this Code section. Such rules, regulations, policies, procedures, and administrative
31 orders shall remain in effect until amended, repealed, superseded, or nullified by the
32 Department of Community Health by proper authority or as otherwise provided by law.

33 (c) The rights, privileges, entitlements, and duties of parties to contracts, leases,
34 agreements, and other transactions entered into before July 1, 2007, by the Department of
35 Human Resources which relate to the functions transferred to the Department of

1 Community Health pursuant to this Code section shall continue to exist; and none of these
 2 rights, privileges, entitlements, and duties are impaired or diminished by reason of the
 3 transfer of the functions to the Department of Community Health. In all such instances, the
 4 Department of Community Health shall be substituted for the Department of Human
 5 Resources, and the Department of Community Health shall succeed to the rights and duties
 6 under such contracts, leases, agreements, and other transactions.

7 (d) All persons employed by the Department of Human Resources in capacities which
 8 relate to the functions transferred to the Department of Community Health pursuant to this
 9 Code section on June 30, 2007, shall, on July 1, 2007, become employees of the
 10 Department of Community Health in similar capacities, as determined by the commissioner
 11 of community health. Such employees shall be subject to the employment practices and
 12 policies of the Department of Community Health on and after July 1, 2007, but the
 13 compensation and benefits of such transferred employees shall not be reduced as a result
 14 of such transfer. Employees who are subject to the rules of the State Personnel Board and
 15 thereby under the State Merit System of Personnel Administration and who are transferred
 16 to the department shall retain all existing rights under the State Merit System of Personnel
 17 Administration. Retirement rights of such transferred employees existing under the
 18 Employees' Retirement System of Georgia or other public retirement systems on June 30,
 19 2007, shall not be impaired or interrupted by the transfer of such employees and
 20 membership in any such retirement system shall continue in the same status possessed by
 21 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
 22 said employees on June 30, 2007, shall be retained by said employees as employees of the
 23 Department of Community Health."

24 **SECTION 2-23.**

25 Said title is further amended in Code Section 31-7-280, relating to health care provider
 26 annual reports, by revising subsection (a) as follows:

27 "(a) As used in this article, the term:

28 (1) 'Department' means the Department of Community Health.

29 ~~(1)~~(2) 'Health care provider' means any hospital or ambulatory surgical or obstetrical
 30 facility having a license or permit issued by the department under Article 1 of this
 31 chapter.

32 ~~(2)~~(3) 'Indigent person' means any person having as a maximum allowable income level
 33 an amount corresponding to 125 percent of the federal poverty guideline.

34 ~~(3)~~(4) 'Third-party payor' means any entity which provides health care insurance or a
 35 health care service plan, including but not limited to providers of major medical or
 36 comprehensive accident or health insurance, whether or not through a self-insurance plan,

1 Medicaid, hospital service nonprofit corporation plans, health care plans, or nonprofit
 2 medical service corporation plans, but does not mean a specified disease or supplemental
 3 hospital indemnity payor."

4 **SECTION 2-24.**

5 Said title is further amended by revising Code Section 31-7-282, relating to collection and
 6 submission of health care data, as follows:

7 "31-7-282.

8 The department shall be authorized to request, collect, or receive the collection and
 9 submission of data listed in subsection (c) of Code Section 31-7-280 from:

- 10 (1) Health care providers;
- 11 (2) The Department of ~~Community Health~~ Human Resources;
- 12 (3) The Commissioner of Insurance;
- 13 (4) Reserved;
- 14 (5) Third-party payors;
- 15 (6) The Joint Commission on the Accreditation of Healthcare Organizations; and
- 16 (7) Other appropriate sources as determined by the department.

17 Any entity specified in paragraphs (1) through (4) of this Code section which has in its
 18 custody or control data requested by the department pursuant to this Code section shall
 19 provide the department with such data, but any data regarding a health care provider which
 20 is already available in the records of any state officer, department, or agency specified in
 21 paragraph (2), (3), or (4) of this Code section shall not be required to be provided to the
 22 department by that health care provider."

23 **SECTION 2-25.**

24 Said title is further amended in Code Section 31-7-300, relating to definitions relative to
 25 private home care providers, by revising paragraph (2) as follows:

26 "(2) 'Department' means the Department of ~~Human Resources~~ Community Health."

27 **SECTION 2-26.**

28 Said title is further amended by inserting a new Code section to read as follows:

29 "31-7-308.

- 30 (a) Effective July 1, 2007, all matters relating to the licensure and regulation of private
 31 home care providers pursuant to this article shall be transferred from the Department of
 32 Human Resources to the Department of Community Health.
- 33 (b) The Department of Community Health shall succeed to all rules, regulations, policies,
 34 procedures, and administrative orders of the Department of Human Resources that are in

1 effect on June 30, 2007, or scheduled to go into effect on or after July 1, 2007, and which
2 relate to the functions transferred to the Department of Community Health pursuant to this
3 Code section and shall further succeed to any rights, privileges, entitlements, obligations,
4 and duties of the Department of Human Resources that are in effect on June 30, 2007,
5 which relate to the functions transferred to the Department of Community Health pursuant
6 to this Code section. Such rules, regulations, policies, procedures, and administrative
7 orders shall remain in effect until amended, repealed, superseded, or nullified by the
8 Department of Community Health by proper authority or as otherwise provided by law.

9 (c) The rights, privileges, entitlements, and duties of parties to contracts, leases,
10 agreements, and other transactions entered into before July 1, 2007, by the Department of
11 Human Resources which relate to the functions transferred to the Department of
12 Community Health pursuant to this Code section shall continue to exist; and none of these
13 rights, privileges, entitlements, and duties are impaired or diminished by reason of the
14 transfer of the functions to the Department of Community Health. In all such instances, the
15 Department of Community Health shall be substituted for the Department of Human
16 Resources, and the Department of Community Health shall succeed to the rights and duties
17 under such contracts, leases, agreements, and other transactions.

18 (d) All persons employed by the Department of Human Resources in capacities which
19 relate to the functions transferred to the Department of Community Health pursuant to this
20 Code section on June 30, 2007, shall, on July 1, 2007, become employees of the
21 Department of Community Health in similar capacities, as determined by the commissioner
22 of community health. Such employees shall be subject to the employment practices and
23 policies of the Department of Community Health on and after July 1, 2007, but the
24 compensation and benefits of such transferred employees shall not be reduced as a result
25 of such transfer. Employees who are subject to the rules of the State Personnel Board and
26 thereby under the State Merit System of Personnel Administration and who are transferred
27 to the department shall retain all existing rights under the State Merit System of Personnel
28 Administration. Retirement rights of such transferred employees existing under the
29 Employees' Retirement System of Georgia or other public retirement systems on June 30,
30 2007, shall not be impaired or interrupted by the transfer of such employees and
31 membership in any such retirement system shall continue in the same status possessed by
32 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
33 said employees on June 30, 2007, shall be retained by said employees as employees of the
34 Department of Community Health."

35 **SECTION 2-27.**

36 Said title is further amended by inserting a new Code section to read as follows:

1 "31-7-354.

2 The Department of Community Health shall be authorized to enforce this article and to
3 promulgate rules and regulations related to the requirements of this article."

4 **SECTION 2-28.**

5 Said title is further amended in Code Section 31-7-400, relating to definitions relative to
6 hospital acquisitions, by revising paragraph (8) as follows:

7 "(8) 'Hospital' means any institution classified and having a permit as a hospital from the
8 ~~department~~ Department of Community Health pursuant to this chapter and the such
9 department's rules and regulations."

10 **SECTION 2-29.**

11 Said title is further amended in Code Section 31-8-46, relating to investigation of alleged
12 violation of requirement of hospitals with emergency services to provide care to pregnant
13 women in labor, is amended by revising subsection (c) as follows:

14 "(c) Any hospital held to be in violation of Code Section 31-8-42 more than three times
15 within any 12 month period shall be subject to suspension or revocation of license by the
16 Department of ~~Human Resources~~ Community Health."

17 **SECTION 2-30.**

18 Said title is further amended in Code Section 31-11-81, relating to definitions relative to
19 emergency services, is amended by revising paragraph (2) as follows:

20 "(2) 'Emergency medical provider' means any provider of emergency medical
21 transportation licensed or permitted by the ~~Georgia~~ Department of Human Resources, any
22 hospital licensed or permitted by the ~~Georgia~~ Department of ~~Human Resources~~
23 Community Health, any hospital based service, or any physician licensed by the
24 Composite State Board of Medical Examiners who provides emergency services."

25 **SECTION 2-31.**

26 Said title is further amended in Code Section 31-18-3, relating to reporting procedures for
27 the registry for traumatic brain and spinal cord injuries, is amended as follows:

28 "31-18-3.

29 Every public and private health and social agency, every hospital or facility that has a valid
30 permit or provisional permit issued by the Department of ~~Human Resources~~ Community
31 Health under Chapter 7 of this title, and every physician licensed to practice medicine in
32 this state, if such physician has not otherwise reported such information to another agency,
33 hospital, and facility, shall report to the Brain and Spinal Injury Trust Fund Commission
34 such information concerning the identity of the person such agency, hospital, facility, or

1 physician has identified as having a traumatic brain or spinal cord injury as defined in this
 2 chapter. The report shall be made within 45 days after identification of the person with the
 3 traumatic brain or spinal cord injury. The report shall contain the name, age, address, type
 4 and extent of ~~disability~~ injury, and such other information concerning the person with the
 5 ~~disability~~ injury as the Brain and Spinal Injury Trust Fund Commission, which is
 6 administratively assigned to the department, may require."

7 **SECTION 2-32.**

8 Said title is further amended in Code Section 31-20-1, relating to definitions relative to
 9 performance of sterilization procedures, is amended by revising paragraph (1) as follows:

10 "(1) 'Accredited hospital' means a hospital licensed by the Department of ~~Human~~
 11 ~~Resources~~ Community Health and accredited by the Joint Commission on the
 12 Accreditation of Hospitals."

13 **SECTION 2-33.**

14 Said title is further amended in Code Section 31-21-5, relating to incineration or cremation
 15 of dead body or parts thereof, is amended by revising subsection (a) as follows:

16 "(a) It shall be unlawful for any person to incinerate or cremate a dead body or parts
 17 thereof; provided, however, that the provisions of this subsection shall not apply to a
 18 crematory licensed by the State Board of Funeral Service pursuant to Chapter 18 of Title
 19 43 or to a hospital, clinic, laboratory, or other facility authorized by the Department of
 20 ~~Human Resources~~ Community Health and in a manner approved by the commissioner of
 21 ~~human resources~~ community health."

22
 23 **SECTION 2-34.**

24 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section
 25 31-33-2, relating to furnishing copies of health records to patients, providers, or other
 26 authorized persons, as follows:

27 "(a)(1)(A) A provider having custody and control of any evaluation, diagnosis,
 28 prognosis, laboratory report, or biopsy slide in a patient's record shall retain such item
 29 for a period of not less than ten years from the date such item was created.

30 (B) The requirements of subparagraph (A) of this paragraph shall not apply to:

31 (i) An individual provider who has retired from or sold his or her professional
 32 practice if such provider has notified the patient of such retirement or sale and offered
 33 to provide such items in the patient's record or copies thereof to another provider of
 34 the patient's choice and, if the patient so requests, to the patient; or

1 (ii) A hospital which is an institution as defined in subparagraph ~~(B)~~(A) of paragraph
 2 ~~(1)~~(4) of Code Section 31-7-1, which shall retain patient records in accordance with
 3 rules and regulations for hospitals as issued by the department pursuant to Code
 4 Section 31-7-2."

5 **SECTION 2-35.**

6 Code Section 33-19-10, relating to limitation as to hospitals with which corporations
 7 authorized to contract, is amended as follows:

8 "33-19-10.

9 The corporations shall have authority to contract only with hospitals licensed by the
 10 Department of ~~Human Resources~~ Community Health."

11 **SECTION 2-36.**

12 Code Section 36-42-3, relating to definitions relative to downtown development authorities,
 13 is amended by revising paragraph (6) as follows:

14 "(6) 'Project' means the acquisition, construction, installation, modification, renovation,
 15 or rehabilitation of land, interests in land, buildings, structures, facilities, or other
 16 improvements located or to be located within the downtown development area, and the
 17 acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures,
 18 machinery, equipment, furniture, or other property of any nature whatsoever used on, in,
 19 or in connection with any such land, interest in land, building, structure, facility, or other
 20 improvement, any undertaking authorized by Chapter 43 of this title as part of a city
 21 business improvement district, any undertaking authorized in Chapter 44 of this title, the
 22 'Redevelopment Powers Law,' when the downtown development authority has been
 23 designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of
 24 this title, the 'Urban Redevelopment Law,' when the downtown development authority
 25 has been designated as an urban redevelopment agency, all for the essential public
 26 purpose of the development of trade, commerce, industry, and employment opportunities
 27 in its authorized area of operation. A project may be for any industrial, commercial,
 28 business, office, parking, public, or other use, provided that a majority of the members
 29 of the authority determine, by a duly adopted resolution, that the project and such use
 30 thereof would further the public purpose of this chapter. Such term shall include any one
 31 or more buildings or structures used or to be used as a not for profit hospital, not for
 32 profit skilled nursing home, or not for profit intermediate care home subject to regulation
 33 and licensure by the Department of ~~Human Resources~~ Community Health and all
 34 necessary, convenient, or related interests in land, machinery, apparatus, appliances,

1 equipment, furnishings, appurtenances, site preparation, landscaping, and physical
2 amenities."

3 **SECTION 2-37.**

4 Code Section 43-34-26.3, relating to delegation of certain medical acts to advanced practice
5 registered nurse, is amended by revising paragraph (2) of subsection (a) as follows:

6 "(2) 'Birthing center' means a facility or building where human births occur on a regular
7 or ongoing basis and which is classified by the Department of ~~Human Resources~~
8 Community Health as a birthing center."

9 **SECTION 2-38.**

10 Code Section 44-14-470, relating to liens on causes of action accruing to injured person for
11 costs of care and treatment of injuries arising out of such causes of action, is amended by
12 revising paragraph (1) of subsection (a) as follows:

13 "(1) 'Hospital' means any hospital or nursing home subject to regulation and licensure by
14 the Department of ~~Human Resources~~ Community Health."

15 **SECTION 2-39.**

16 Code Section 51-1-29.3, relating to immunity for operators of external defibrillators, is
17 amended by revising paragraph (3) of subsection (a) as follows:

18 "(3) Any physician or other medical professional who authorizes, directs, or supervises the
19 installation or provision of automated external defibrillator equipment in or on any
20 premises or conveyance other than any medical facility as defined in paragraph ~~(2)~~(5) of
21 Code Section 31-7-1; and"

22 **SECTION 2-40.**

23 Code Section 51-2-5.1, relating to the relationship between hospital and health care provider
24 as a prerequisite to liability, is amended by revising paragraph (2) of subsection (a) as
25 follows:

26 "(2) 'Hospital' means a facility that has a valid permit or provisional permit issued by the
27 Department of ~~Human Resources~~ Community Health under Chapter 7 of Title 31."

28 **SECTION 2-41.**

29 Code Section 52-7-14, relating to collisions, accidents, and casualties relative to watercraft,
30 is amended by revising subparagraph (c)(4)(A) as follows:

31 "(A) As used in this paragraph, the term 'medical facility' means any licensed general
32 or specialized hospital, institutional infirmary, public health center, or diagnostic and

1 treatment center. The term also includes, without being limited to, any building or
2 facility, not under the operation or control of a hospital, which is primarily devoted to
3 the provision of surgical treatment to patients not requiring hospitalization and which
4 is classified by the Department of ~~Human Resources~~ Community Health as an
5 ambulatory surgical treatment center."

6 PART III

7 Effective Date and Repealer.

8 SECTION 3-1

9 This Act shall become effective on July 1, 2007.

10 SECTION 3-2.

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