

Senate Bill 164

By: Senators Balfour of the 9th, Williams of the 19th, Golden of the 8th, Stoner of the 6th, Bulloch of the 11th and others

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 enact the "Certificate of Need Reformation Act of 2007"; to provide for extensive revision
3 of the certificate of need program; to revise the declaration of policy for state health
4 planning; to revise and add definitions; to revise the composition and duties of the Health
5 Strategies Council; to revise the duties of the Department of Community Health; to provide
6 for graduated fines for noncompliance with notice provisions; to revise provisions relating
7 to the scope and validity of a certificate of need; to provide for specific conditions for the
8 issuance of a certificate of need; to provide for the establishment of service-specific need
9 methodologies in certain cases; to provide for favorable consideration for applicants
10 providing services in service areas of need; to provide for a letter of intent for proposed
11 projects; to provide for batching and comparative review of applications; to provide for
12 participation of opposing parties; to provide for the imposition of a temporary moratorium
13 on the issuance of certificates of need for new and emerging technologies; to establish a
14 Certificate of Need Appeal Panel composed of independent hearing officers; to revise
15 provisions relating to administrative and judicial review; to add grounds for which a
16 certificate of need may be revoked; to provide that a portion of a certificate of need may be
17 revoked; to provide graduated fines for services conducted without a required certificate of
18 need; to add requirements relating to the annual report prepared by the Department of
19 Community Health; to revise provisions relating to exemptions to certificate of need
20 requirements; to require provision of indigent care, participation as a Medicaid provider, and
21 annual reporting as a condition of exemption from certificate of need requirements for certain
22 entities; to require prior notice to the Department of Community Health that certain activities
23 are exempt from the certificate of need requirements; to provide for transfer of some duties
24 from the Health Strategies Council to the Board of Community Health; to abolish the Health
25 Planning Review Board; to transfer pending matters of the Health Planning Review Board
26 to the Certificate of Need Appeal Panel; to revise a provision relating to application of
27 review procedures to expenditures under a federal law; to require health care facilities and
28 others to submit annual reports to the Department of Community Health; to provide

1 graduated fines for untimely and incomplete reports; to revise a provision relating to the
 2 applicability of the article regarding the Office of State Administrative Hearings; to transfer
 3 licensing of hospitals and other health care facilities from the Department of Human
 4 Resources to the Department of Community Health; to provide for transition; to amend
 5 various other titles of the Official Code of Georgia Annotated so as to revise provisions for
 6 purposes of conformity; to provide for related matters; to provide for effective dates; to
 7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **PART I**
 10 Short Title

11 **SECTION 1-1.**

12 This Act shall be known and may be cited as the "Certificate of Need Reformation Act of
 13 2007."

14 **PART II**
 15 Revisions to Certificate of Need Program

16 **SECTION 2-1.**

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

19 "ARTICLE 1
 20 31-6-1.

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

1 31-6-2.

2 As used in this chapter, the term:

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

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

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

15 (4) 'Board' means the Board of Community Health.'

16 ~~(4)~~(5) 'Certificate of need' means an official determination by the department, evidenced
17 by certification issued pursuant to an application, that the action proposed in the
18 application satisfies and complies with the criteria contained in this chapter and rules
19 promulgated pursuant hereto.

20 ~~(5)~~(6) 'Clinical health services' means diagnostic, treatment, therapeutic, or rehabilitative
21 services provided in a health care facility, or parts of the physical plant where such
22 services are located in a health care facility, and includes, but is not limited to, the
23 following: radiology and diagnostic imaging, such as magnetic resonance imaging and
24 positron emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive
25 care; coronary care; pediatrics; gynecology; obstetrics; general medical care;
26 medical/surgical care; inpatient nursing care, whether intermediate, skilled, or extended
27 care; cardiac catheterization; open-heart surgery; inpatient rehabilitation; and alcohol,
28 drug abuse, and mental health services.

29 (7) 'Commissioner' means the commissioner of community health.

30 ~~(6)~~(8) 'Consumer' means a person who is not employed by any health care facility or
31 provider and who has no financial or fiduciary interest in any health care facility or
32 provider.

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

1 ~~(6.1)(10)~~ (10) 'Department' means the Department of Community Health established under
2 Chapter 5A of this title.

3 ~~(7)(11)~~ (11) 'Develop,' with reference to a project, means:

4 (A) ~~Constructing~~ constructing, remodeling, installing, or proceeding with a project, or
5 any part of a project, or a capital expenditure project, the cost estimate for which
6 exceeds \$900,000.00; or

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

10 ~~Notwithstanding subparagraphs (A) and (B) of this paragraph, the threshold specified in~~
11 ~~subparagraph (B) of paragraph (20) of this Code section; provided, however, that the~~
12 ~~expenditure or commitment or incurring an obligation for the expenditure of funds to~~
13 ~~develop certificate of need applications, studies, reports, schematics, preliminary plans~~
14 ~~and specifications, or working drawings or to acquire, develop, or prepare sites shall not~~
15 ~~be considered to be the developing of a project.~~

16 (12) 'Diagnostic and other imaging services' means magnetic resonance imaging,
17 computed tomography (CT) scanning, positron emission tomography (PET) scanning,
18 positron emission tomography/computed tomography, and other advanced imaging
19 services as defined by the department by rule, but such term shall not include X-rays,
20 fluoroscopy, or ultrasound services.

21 ~~(7.1)(13)~~ (13) 'Diagnostic, treatment, or rehabilitation center' means any professional or
22 business undertaking, whether for profit or not for profit, which offers or proposes to
23 offer any clinical health service in a setting which is not part of a hospital; provided,
24 however, that any such diagnostic, treatment, or rehabilitation center that offers or
25 proposes to offer surgery in an operating room environment and to allow patients to
26 remain more than 23 hours shall be considered a hospital for purposes of this chapter.

27 ~~(8)(14)~~ (14) 'Health care facility' means hospitals; other special care units, including but not
28 limited to podiatric facilities; skilled nursing facilities; intermediate care facilities;
29 personal care homes, but only those that are certified as providers of medical assistance
30 for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49; ambulatory surgical
31 or obstetrical facilities; health maintenance organizations; home health agencies; and
32 diagnostic, treatment, or rehabilitation centers, but only to the extent that subparagraph
33 ~~(F)(G) or (H), or both subparagraphs (G) and (H), of paragraph (14)(20)~~ of this Code
34 section is applicable thereto; ~~and facilities which are devoted to the provision of~~
35 ~~treatment and rehabilitative care for periods continuing for 24 hours or longer for persons~~
36 ~~who have traumatic brain injury, as defined in Code Section 37-3-1.~~

1 ~~(9)~~(15) 'Health maintenance organization' means a public or private organization
2 organized under the laws of this state which:

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

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

10 (C) Provides physicians' services primarily:

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

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

15 ~~(10)~~(16) 'Health Strategies Council' or 'council' means the body created by this chapter
16 to advise the Department of Community Health in accordance with Code Section 31-6-20
17 ~~and adopt the state health plan.~~

18 ~~(11)~~(17) 'Home health agency' means a public agency or private organization, or a
19 subdivision of such an agency or organization, which is primarily engaged in providing
20 to individuals who are under a written plan of care of a physician, on a visiting basis in
21 the places of residence used as such individuals' homes, part-time or intermittent nursing
22 care provided by or under the supervision of a registered professional nurse, and one or
23 more of the following services:

24 (A) Physical therapy;

25 (B) Occupational therapy;

26 (C) Speech therapy;

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

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

29 ~~(12)~~(18) 'Hospital' means an institution which is ~~primarily~~ engaged in providing to
30 inpatients, by or under the supervision of physicians, diagnostic services and therapeutic
31 services for medical diagnosis, treatment, and care of injured, disabled, or sick persons
32 or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such
33 term includes public, private, psychiatric, rehabilitative, geriatric, osteopathic, and other
34 specialty hospitals and also includes any diagnostic, treatment, or rehabilitation center
35 that offers surgery in an operating room environment and allows patients to remain more
36 than 23 hours.

1 ~~(13)~~(19) 'Intermediate care facility' means an institution which provides, on a regular
 2 basis, health related care and services to individuals who do not require the degree of care
 3 and treatment which a hospital or skilled nursing facility is designed to provide but who,
 4 because of their mental or physical condition, require health related care and services
 5 beyond the provision of room and board.

6 ~~(14)~~(20) 'New institutional health service' means:

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

9 (B) Any expenditure by or on behalf of a health care facility in excess of ~~\$900,000.00~~
 10 \$1,750,000.00 which, under generally accepted accounting principles consistently
 11 applied, is a capital expenditure, except expenditures for acquisition of an existing
 12 health care facility not owned or operated by or on behalf of a political subdivision of
 13 this state, or any combination of such political subdivisions, or by or on behalf of a
 14 hospital authority, as defined in Article 4 of Chapter 7 of this title or certificate of need
 15 owned by such facility in connection with its acquisition;

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

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

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

24 ~~(F) The purchase or lease by or on behalf of a health care facility of diagnostic or~~
 25 ~~therapeutic equipment with a value in excess of \$500,000.00. The acquisition of one~~
 26 ~~or more items of functionally related diagnostic or therapeutic equipment shall be~~
 27 ~~considered as one project;~~

28 ~~(G)~~(F) Clinical health services which are offered in or through a diagnostic, treatment,
 29 or rehabilitation center which were not offered to a substantial number of patients on
 30 a regular basis in or through that center within the 12 month period prior to the time
 31 such services would be offered, but only if the clinical health services are any of the
 32 following:

33 (i) Radiation therapy;

34 (ii) Biliary lithotripsy;

35 (iii) Surgery in an operating room environment, including but not limited to
 36 ambulatory surgery; provided, however, this provision shall not apply to surgery
 37 performed in the offices of an individual private physician or single group practice of

1 private physicians if such surgery is performed in a facility that is owned, operated,
 2 and utilized by such physicians who also are of a single specialty and the capital
 3 expenditure associated with the construction, development, or other establishment of
 4 the clinical health service does not exceed the amount of ~~\$1 million~~ \$1,610,823.00;
 5 and

6 (iv) Cardiac catheterization; ~~or~~ and

7 (v) Diagnostic and other imaging services.

8 ~~(H) The purchase, lease, or other use by or on behalf of a diagnostic, treatment, or~~
 9 ~~rehabilitation center of diagnostic or therapeutic equipment with a value in excess of~~
 10 ~~\$500,000.00. The acquisition of one or more items of functionally related diagnostic~~
 11 ~~or therapeutic equipment shall be considered as one project.~~

12 The dollar amounts specified in ~~subparagraphs~~ subparagraph (B), ~~(F), and (H)~~ of this
 13 paragraph; and division (iii) of this subparagraph (G) of this paragraph, ~~and of paragraph~~
 14 ~~(7) of this Code section~~ shall be adjusted annually by an amount calculated by
 15 multiplying such dollar amounts (as adjusted for the preceding year) by the annual
 16 percentage of change in the composite construction index, or its successor or appropriate
 17 replacement index, if any, published by the Bureau of the Census of the Department of
 18 Commerce of the United States government for the preceding calendar year, commencing
 19 on July 1, ~~1991~~ 2007, and on each anniversary thereafter of publication of the index. The
 20 department shall immediately institute rule-making procedures to adopt such adjusted
 21 dollar amounts. In calculating the dollar amounts of a proposed project for purposes of
 22 ~~subparagraphs~~ subparagraph (B), ~~(F), and (H)~~ of this paragraph; and division (iii) of this
 23 ~~subparagraph (G) of this paragraph, and of paragraph (7) of this Code section,~~ the costs
 24 of all items subject to review by this chapter and items not subject to review by this
 25 chapter associated with and simultaneously developed or proposed with the project shall
 26 be counted, except for the expenditure or commitment of or incurring an obligation for
 27 the expenditure of funds to develop certificate of need applications, studies, reports,
 28 schematics, preliminary plans and specifications or working drawings, or to acquire sites.
 29 (21) 'New or emerging technology' means diagnostic or therapeutic equipment which has
 30 not previously been utilized in this state and the need for which has not been addressed
 31 in the state health plan or existing department rules.

32 ~~(15)~~(22) 'Nonclinical health services' means services or functions provided or performed
 33 by a health care facility, and the parts of the physical plant where they are located in a
 34 health care facility that are not diagnostic, therapeutic, or rehabilitative services to
 35 patients and are not clinical health services defined in this chapter.

1 ~~(16)~~(23) 'Offer' means that the health care facility is open for the acceptance of patients
 2 or performance of services and has qualified personnel, equipment, and supplies
 3 necessary to provide specified clinical health services.

4 ~~(16.1)~~(24) 'Operating room environment' means an environment which meets the
 5 minimum physical plant and operational standards specified ~~on January 1, 1991, for~~
 6 ~~ambulatory surgical treatment centers in Section 290-5-33-.10 of~~ in the rules of the
 7 Department of Human Resources in effect January 1, 2007, for purposes of obtaining a
 8 permit or license to operate or any successor rules adopted by the department.

9 ~~(17)~~(25) 'Person' means any individual, trust or estate, partnership, limited liability
 10 company or partnership, corporation (including associations, joint-stock companies, and
 11 insurance companies), state, political subdivision, hospital authority, or instrumentality
 12 (including a municipal corporation) of a state as defined in the laws of this state. This
 13 term shall include all related parties, including individuals, business corporations, general
 14 partnerships, limited partnerships, limited liability companies, limited liability
 15 partnerships, joint ventures, nonprofit corporations, or any other for profit or not for profit
 16 entity that owns or controls, is owned or controlled by, or operates under common
 17 ownership or control with a person.

18 ~~(18)~~(26) 'Personal care home' means a residential facility having at least 25 beds and
 19 providing, for compensation, protective care and oversight of ambulatory, nonrelated
 20 persons who need a monitored environment but who do not have injuries or disabilities
 21 which require chronic or convalescent care, including medical, nursing, or intermediate
 22 care. Personal care homes include those facilities which monitor daily residents'
 23 functioning and location, have the capability for crisis intervention, and provide
 24 supervision in areas of nutrition, medication, and provision of transient medical care.
 25 Such term does not include:

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

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

30 ~~(19)~~ Reserved.

31 ~~(20)~~(27) 'Project' means a proposal to take an action for which a certificate of need is
 32 required under this chapter. A project or proposed project may refer to the proposal from
 33 its earliest planning stages up through the point at which the new institutional health
 34 service is offered.

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

36 ~~(22)~~(28) 'Skilled nursing facility' means a public or private institution or a distinct part
 37 of an institution which is primarily engaged in providing inpatient skilled nursing care

1 and related services for patients who require medical or nursing care or rehabilitation
2 services for the rehabilitation of injured, disabled, or sick persons.

3 ~~(23)~~(29) 'State health plan' means a comprehensive program or subcomponents thereof
4 adopted by the Health Strategies Council or by the board as its successor for this purpose,
5 approved by the Governor, and implemented by the State of Georgia for the purpose of
6 providing adequate health care services and facilities throughout the state.

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

11 ARTICLE 2

12 31-6-20.

13 (a) There is created a reconstituted Health Strategies Council to be appointed by the
14 Governor, ~~subject to confirmation by the Senate. Any appointment made when the Senate~~
15 ~~is not in session shall be effective until the appointment is acted upon by the Senate. The~~
16 ~~Health Strategies Council that~~ shall be the successor to the Health ~~Policy Strategies~~ Council
17 in existence on June 30, 2007. Those members of the ~~previously existing Health Policy~~
18 ~~Strategies~~ Council who are serving as such on ~~January 1, 1991~~, shall continue to serve until
19 ~~July 1, 1991, at which time~~ June 30, 2007, shall have their terms ~~shall~~ expire on that date
20 and that council as existed on June 30, 2007, shall be abolished. On and after ~~that date~~ July
21 1, 2007, the council shall be composed of ~~25~~ 15 members. ~~Of those members, at least one~~
22 ~~shall be appointed from each congressional district. The council shall be composed as~~
23 follows:

24 (1) One member representing ~~county governments~~ urban hospitals;

25 (2) One member representing ~~the private insurance industry~~ rural hospitals;

26 (3) One member representing proprietary hospitals;

27 (4) One member representing the private insurance industry;

28 (5) One member who is a primary care physician;

29 (6) One member who is a physician in a board certified specialty;

30 (7) One member representing freestanding ambulatory surgical centers;

31 (8) One member representing the nursing home/long-term care industry;

32 (9) One member representing home health agencies;

33 (10) One member representing health care needs of women and children;

34 (11) One member representing health care needs of the disabled and elderly;

35 (12) One member representing health care needs of the indigent and uninsured;

1 (13) One member who represents populations with mental health care needs;

2 (14) One member representing health care needs as it relates to business; and

3 (15) One at-large member.

4 ~~(3) Ten members representing health care providers as follows:~~

5 ~~(A) One member representing rural hospitals;~~

6 ~~(B) One member representing urban hospitals;~~

7 ~~(C) One member who is a primary care physician;~~

8 ~~(D) One member who is a physician in a board-certified specialty;~~

9 ~~(E) One member who is a registered professional nurse;~~

10 ~~(F) One member who is a registered professional nurse who is certified as a nurse~~
11 ~~practitioner;~~

12 ~~(G) One member representing nursing homes;~~

13 ~~(H) One member representing home health agencies;~~

14 ~~(I) One member representing primary care centers; and~~

15 ~~(J) One member who is a primary care dentist;~~

16 ~~(4) Ten consumer representatives who are knowledgeable as to health care needs in the~~
17 ~~fields they represent but who have no financial interest in the health care industry as~~
18 ~~follows:~~

19 ~~(A) One member representing health care needs of women;~~

20 ~~(B) One member representing health care needs of children;~~

21 ~~(C) One member representing health care needs of the disabled;~~

22 ~~(D) One member representing health care needs of the elderly;~~

23 ~~(E) One member representing health care needs of low-income persons;~~

24 ~~(F) One member representing health care needs of small business personnel;~~

25 ~~(G) One member representing health care needs of large business personnel;~~

26 ~~(H) One member representing health care needs of labor organization members; and~~

27 ~~(I) Two members who represent populations with special health care access problems;~~
28 ~~and~~

29 ~~(5) Three at-large members.~~

30 (b) If the state obtains an additional member or members of the United States House of
31 Representatives as a result of reapportionment, the Governor shall appoint, ~~subject to~~
32 ~~confirmation by the Senate~~, from the each new congressional district thus created one
33 additional member representing hospitals and one additional physician member who is a
34 physician ~~health care provider member who meets the requirements of subparagraph~~
35 ~~(a)(3)(J) of this Code section and one consumer member who meets the requirements of~~
36 ~~subparagraph (a)(4)(I) of this Code section as to a population specified in those~~

1 ~~subparagraphs which is not then represented on the council. With the addition of these two~~
 2 ~~members, the council shall be composed of 27 members.~~

3 (c) The initial members of the reconstituted council ~~who are appointed to succeed those~~
 4 ~~members whose terms expire July 1, 1991,~~ shall take office July 1, ~~1991~~ 2007, and ~~12~~
 5 eight of them shall be designated in such appointment to serve initial terms of office of two
 6 years and ~~13~~ seven of them shall be designated in such appointment to serve initial terms
 7 of office of four years. If ~~two~~ additional members are appointed to the council to represent
 8 a new congressional district as provided in subsection (b) of this Code section, ~~one~~ half of
 9 such additional members shall be designated to serve an initial term of office which expires
 10 when the above initial two-year terms of office expire and ~~one~~ half of such additional
 11 members shall be designated to serve an initial term of office which expires when the
 12 above initial four-year terms of office expire. After the initial terms provided in this
 13 subsection, members of the council shall be appointed to serve for four-year terms of
 14 office. Members of the council shall serve out their terms of office and until their
 15 respective successors are appointed and qualified.

16 (d) Members of the council shall be subject to removal by the Governor ~~for incompetence;~~
 17 ~~neglect of duty,~~ at his or her discretion, with or without cause, or for removal by the
 18 chairperson of the council ~~or~~ for failing to attend at least ~~75~~ 50 percent of the meetings of
 19 the council in any calendar year or failing to attend any three consecutive meetings.
 20 Vacancies on the council shall be filled by appointment by the Governor, ~~subject to~~
 21 ~~confirmation by the Senate.~~

22 (e) The Governor shall appoint the ~~chairman~~ chairperson of the council. A majority of the
 23 members of the council shall constitute a quorum.

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

29 (g) The council shall meet no less often than bimonthly, but may meet more frequently at
 30 the call of the chairperson as necessary to perform its functions.

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

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

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

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

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

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

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

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

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

22 ~~(1) 'Board' means the Board of Community Health established under Chapter 5A of this~~
 23 ~~title.~~

24 ~~(2) 'Department' means the Department of Community Health established under Chapter~~
 25 ~~5A of this title.~~

26 31-6-21.

27 (a) The Department of Community Health, established under Chapter 5A of this title, is
 28 authorized to administer the certificate of need program established under this chapter and,
 29 within the appropriations made available to the department by the General Assembly of
 30 Georgia and consistently consistent with the laws of the State of Georgia, a state health
 31 plan adopted by the Health Strategies Council and approved by the board Board of
 32 Community Health. The department shall provide, by rule, for procedures to administer
 33 its functions until otherwise provided by the Board of Community Health.

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

35 (1) To conduct the health planning activities of the state and to implement those parts or
 36 components thereof of the state health plan which relate to the government of the state;

- 1 (2) To prepare and revise a draft state health plan for submission to the Health Strategies
 2 Council for adoption by the board and submission to the Governor;
- 3 (3) To ~~assist~~ seek advice, at its discretion, from the Health Strategies Council in the
 4 performance by the department of its functions pursuant to this chapter;
- 5 (4) ~~With the prior advice, comment, and recommendations of the Health Strategies~~
 6 ~~Council, except with respect to emergency rules and regulations, to~~ To adopt, promulgate,
 7 and implement rules and regulations consistent with this chapter sufficient to administer
 8 the provisions of this chapter including the certificate of need program;
- 9 (5) To define, by rule, the form, content, schedules, and procedures for submission of
 10 applications for certificates of need and periodic reports;
- 11 (6) To establish time periods and procedures consistent with this chapter to hold hearings
 12 and to obtain the viewpoints of interested persons prior to issuance or denial of a
 13 certificate of need;
- 14 (7) To provide, by rule, for such fees as may be necessary to cover the costs of preparing
 15 the record for appeals before the hearing officers and ~~review board~~ Certificate of Need
 16 Appeal Panel of the decisions of the department, which costs may include reasonable
 17 sharing between the department and the parties to appeal hearings;
- 18 (8) For the purpose of health planning and for the evaluation of certificate of need
 19 applications, to develop and maintain a comprehensive health care data base and to
 20 require the submission of information from health care facilities and institutions,
 21 including ambulatory surgical centers, whether or not exempt or excluded from obtaining
 22 a certificate of need under this chapter, which is determined by the department, through
 23 rule, to be necessary to meet the department's responsibilities as established in this
 24 chapter.
- 25 (9) To establish, by rule, uniform need methodologies for new institutional health
 26 services and health facilities. In developing such uniform need methodologies, the
 27 department shall, at a minimum, consider the demographic characteristics of the
 28 population, the health status of the population, service use patterns, standards and trends,
 29 financial and geographic accessibility, and market economics.
- 30 ~~(8)~~(10) To provide, by rule, for a reasonable and equitable fee schedule for certificate of
 31 need applications and administrative appeals;
- 32 ~~(9)~~(11) To grant, deny, or revoke a certificate of need as applied for or as amended; and
- 33 ~~(10)~~(12) To perform powers and functions delegated by the Governor, which delegation
 34 may include the powers to carry out the duties and powers which have been delegated to
 35 the department under Section 1122 of the Social Security Act of 1935, as amended.

1 31-6-21.1.

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

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

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

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

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

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

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

31 (c) Any rule or part thereof to which an objection is made by both committees within the
32 30 day objection period under subsection (b) of this Code section shall not be adopted by
33 the department and shall be invalid if so adopted. A rule or part thereof thus prohibited
34 from being adopted shall be deemed to have been withdrawn by the department unless the
35 department, within the first 15 days of the next regular session of the General Assembly,
36 transmits written notification to each member of the objecting committees that the
37 department does not intend to withdraw that rule or part thereof but intends to adopt the

1 specified rule or part effective the day following adjournment sine die of that regular
 2 session. A resolution objecting to such intended adoption may be introduced in either
 3 branch of the General Assembly after the fifteenth day but before the thirtieth day of the
 4 session in which occurs the notification of intent not to withdraw a rule or part thereof. In
 5 the event the resolution is adopted by the branch of the General Assembly in which the
 6 resolution was introduced, it shall be immediately transmitted to the other branch of the
 7 General Assembly. It shall be the duty of the presiding officer of the other branch to have
 8 that branch, within five days after receipt of the resolution, consider the resolution for
 9 purposes of objecting to the intended adoption of the rule or part thereof. Upon such
 10 resolution being adopted by two-thirds of the vote of each branch of the General Assembly,
 11 the rule or part thereof objected to in that resolution shall be disapproved and not adopted
 12 by the department. If the resolution is adopted by a majority but by less than two-thirds of
 13 the vote of each such branch, the resolution shall be submitted to the Governor for his or
 14 her approval or veto. In the event of his a veto, or if no resolution is introduced objecting
 15 to the rule, or if the resolution introduced is not approved by at least a majority of the vote
 16 of each such branch, the rule shall automatically become adopted the day following
 17 adjournment sine die of that regular session. In the event of the Governor's approval of the
 18 resolution, the rule shall be disapproved and not adopted by the department.

19 (d) Any rule or part thereof which is objected to by only one committee under subsection
 20 (b) of this Code section and which is adopted by the department may be considered by the
 21 branch of the General Assembly whose committee objected to its adoption by the
 22 introduction of a resolution for the purpose of overriding the rule at any time within the
 23 first 30 days of the next regular session of the General Assembly. It shall be the duty of
 24 the department in adopting a proposed rule over such objection so to notify the ~~chairmen~~
 25 chairpersons of the Health and Human Services Committee of the Senate and the Health
 26 and Human Services Committee of the House within ten days after the adoption of the rule.
 27 In the event the resolution is adopted by such branch of the General Assembly, it shall be
 28 immediately transmitted to the other branch of the General Assembly. It shall be the duty
 29 of the presiding officer of the other branch of the General Assembly to have such branch,
 30 within five days after the receipt of the resolution, consider the resolution for the purpose
 31 of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of
 32 each branch of the General Assembly, the rule shall be void on the day after the adoption
 33 of the resolution by the second branch of the General Assembly. In the event the resolution
 34 is ratified by a majority but by less than two-thirds of the votes of either branch, the
 35 resolution shall be submitted to the Governor for his or her approval or veto. In the event
 36 of his a veto, the rule shall remain in effect. In the event of his the Governor's approval,
 37 the rule shall be void on the day after the date of his such approval.

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

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

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

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

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

21 ~~31-6-22.~~

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

23 ARTICLE 3

24 31-6-40.

25 (a) From and after July 1, ~~1999~~ 2007, only such new institutional health services ~~or~~ and
 26 health care facilities as are found by the department to be needed shall be offered in the
 27 state. Prior to that date, only such new institutional health services ~~or~~ and health care
 28 facilities which had been found to be needed by department or its predecessor, the Health
 29 Planning Agency, under any prior provisions of this chapter and the regulations issued
 30 thereunder shall have been offered in the state, unless otherwise exempt from the
 31 requirements of the law or unless that law was not applicable. It is the intent of this
 32 provision to assure that no new institutional health services or health care facilities, as
 33 defined prior to July 1, ~~1999~~ 2007, are allowed to avoid the requirements of any prior

1 provisions of this chapter; and applicable regulations, if those laws and regulations were
2 applicable to them.

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

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

14 ~~(1.1) Any person who, on July 1, 1999:~~

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

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

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

22 ~~(D) Has notified the Health Planning Agency no later than July 1, 1991, of that
23 person's intent to apply for an exemption under this paragraph~~

24 ~~shall not be required to obtain a certificate of need in order to offer those services if that
25 person obtains an exemption therefor as provided in this subsection.~~

26 ~~(2) A person claiming an exemption under paragraph (1) or (1.1) of this subsection shall
27 apply to the Health Planning Agency for that exemption no later than July 1, 1992. The
28 application shall be in such form and manner as established by the Health Planning
29 Agency to provide sufficient proof that the applicant qualifies for the exemption claimed.
30 The Health Planning Agency shall notify the applicant within 90 days after the required
31 application and proof have been properly submitted that the application for exemption is
32 denied; otherwise, the application shall be deemed granted by operation of law upon the
33 ninety-first day. Such a grant of the exemption shall be final and no appeal therefrom
34 shall be authorized. A denial of such application for exemption shall constitute a
35 contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
36 Any person having a certificate of need or authorization to offer the services for which
37 an application for exemption has been denied may intervene in the contested case if such~~

1 ~~person offers those services within the same service area as the service area in which~~
 2 ~~were to be offered the services for which the application for exemption was denied.~~

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

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

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

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

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

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

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

22 ~~(d)~~(c) Any person that had formally requested, prior to ~~February 1, 1991~~ July 1, 2007, a
 23 determination from the ~~Health Planning Agency~~ department of the applicability of the
 24 certificate of need requirements for a specific project that is subsequently approved by the
 25 ~~Health Planning Agency~~ department or by appeal of the ~~Health Planning Agency's~~
 26 department's denial shall be exempt under the provisions of this chapter from the
 27 requirement of obtaining a certificate of need for that project.

28 31-6-40.1.

29 (a) Any person who acquires a health care facility by stock or asset purchase, merger,
 30 consolidation, or other lawful means shall notify the department of such acquisition, the
 31 date thereof, and the name and address of the acquiring person. Such notification shall be
 32 made in writing to the department within 45 days following the acquisition and the
 33 acquiring person may be fined by the department ~~in the amount of \$500.00 up to \$1,000.00~~
 34 per day for each day that such notification is late. The fine imposed pursuant to this
 35 subsection shall increase to \$5,000.00 per day upon the seventy-fifth day following the

1 acquisition for each day thereafter that notification has not been made. Such fine or fines
 2 shall be paid into the state treasury.

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

- 5 (1) Skilled nursing facilities;
- 6 (2) Intermediate care facilities; ~~and~~
- 7 (3) Home health agencies; and
- 8 (4) New and emerging technologies,

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

13 (c) The department may require that any applicant for a certificate of need agree to provide
 14 a specified amount of clinical health services to indigent patients as a condition for the
 15 grant of a certificate of need. A grantee or successor in interest of a certificate of need or
 16 an authorization to operate under this chapter which violates such an agreement, whether
 17 made before or after ~~July 1, 1991~~ July 1, 2007, shall be liable to the department for a
 18 monetary penalty in the amount of the difference between the amount of services so agreed
 19 to be provided and the amount actually provided. Any penalty so recovered shall be paid
 20 into the state treasury.

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

23 31-6-40.2.

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

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

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

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

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

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

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

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

7 (b)(1) A new perinatal service shall provide uncompensated indigent or charity care in
8 an amount which meets or exceeds the department's established minimum at the time the
9 department issued the certificate of need approval for such service for each of the
10 service's first three years of operation; provided, however, that if the certificate of need
11 application under which a new perinatal service was approved included a commitment
12 that uncompensated indigent or charity care would be provided in an amount greater than
13 the established minimum for any time period described in the certificate of need
14 application that falls completely within such new perinatal service's first three years of
15 operation, such new perinatal service shall provide indigent or charity care in an amount
16 which meets or exceeds the amount committed in the certificate of need application for
17 each time period described in the certificate of need application that falls completely
18 within the service's first three years of operation.

19 (2) The department shall revoke the certificate of need and authority to operate of a new
20 perinatal service if after notice to the grantee of the certificate or such grantee's
21 successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the
22 'Georgia Administrative Procedure Act,' the department determines that such new
23 perinatal service has failed to provide indigent or charity care in accordance with the
24 requirements of paragraph (1) of this subsection and such failure is determined by the
25 department to be for reasons substantially within the perinatal service provider's control.
26 The department shall provide the requisite notice, conduct the fair hearing, if requested,
27 and render its determination within 90 days after the end of the first year, or, if
28 applicable, the first time period described in paragraph (1) of this subsection during
29 which the new perinatal service fails to provide indigent or charity care in accordance
30 with the requirements of paragraph (1) of this subsection. Revocation shall be effective
31 30 days after the date of the determination by the department that the requirements of
32 paragraph (1) of this subsection have not been met.

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

36 (2) The department shall revoke the certificate of need and authority to operate of a new
37 perinatal service if after notice to the grantee of the certificate of need or such grantee's

1 successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the
2 'Georgia Administrative Procedure Act,' the department determines that such new
3 perinatal service has failed to comply with the applicable requirements of paragraph (1)
4 of this subsection and such failure is determined by the department to be for reasons
5 substantially within the perinatal service provider's control. The department shall provide
6 the requisite notice, conduct the fair hearing, if requested, and render its determination
7 within 90 days after the end of the new perinatal service's first three years of operation.
8 Revocation shall be effective 30 days after the date of the determination by the
9 department that the requirements of this paragraph or paragraph (1) of this subsection
10 have not been met.

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

14 31-6-41.

15 (a) A certificate of need shall be valid only for the defined scope, location, cost, service
16 area, and person named in an application, as it may be amended, and as such scope,
17 location, area, cost, and person are approved by the department, unless such certificate of
18 need owned by an existing health care facility is transferred to a person who acquires such
19 existing facility; provided, however, that a certificate holder may relocate pursuant to
20 paragraph (17) of subsection (a) of Code Section 31-6-47. In such case, the certificate of
21 need shall be valid for the person who acquires such a facility and for the scope, location,
22 cost, and service area approved by the department; provided, however, that a certificate
23 holder may relocate pursuant to paragraph (17) of subsection (a) of Code Section 31-6-47.

24 (b) A certificate of need shall be valid and effective for a period of 12 months after it is
25 issued, or such greater period of time as may be specified by the department at the time the
26 certificate of need is issued. Within the effective period after the grant of a certificate of
27 need, the applicant of a proposed project shall fulfill reasonable performance and
28 scheduling requirements specified by the department, by rule, to assure reasonable progress
29 toward timely completion of a project. The license or permit of any health care facility or
30 institutional health services provider subject to the provisions of this chapter shall specify
31 the number of beds and identify the clinical health services authorized or exempted by the
32 department pursuant to this chapter.

33 (c) By rule, the department may provide for extension of the effective period of a
34 certificate of need when an applicant, by petition, makes a good faith showing that the
35 conditions to be specified according to subsection (b) of this Code section will be

1 performed within the extended period and that the reasons for the extension are beyond the
2 control of the applicant.

3 31-6-41.1.

4 (a) The department may require that an applicant agree to meet certain specified
5 conditions, either prescribed by applicable rule or based upon representations of intent by
6 the applicant in the application, in order to obtain a certificate of need and may issue a
7 certificate of need predicated upon the applicant's compliance with those conditions. Such
8 conditions may include requiring a minimum amount of uncompensated indigent or charity
9 care, requiring participation as a provider of medical assistance for Medicaid purposes, or
10 any other condition relating to the considerations in Code Section 31-6-42. Any such
11 conditions imposed on a certificate of need specified by the department shall be stated by
12 the department in its decision to grant the certificate and on the face of the certificate of
13 need issued to the applicant.

14 (b) The department may revoke the certificate of need, assess a monetary penalty against
15 the certificate holders, or both, if the holder of a certificate of need fails to comply
16 substantially with a condition imposed pursuant to subsection (a) of this Code section. The
17 maximum amount of the fine imposed shall not exceed \$5,000.00 per failure per day of
18 noncompliance. The department shall promulgate rules for reporting compliance with
19 conditions imposed on a certificate of need. Failure by the certificate holder to report
20 compliance with any condition upon which the issuance of the certificate was granted shall
21 constitute noncompliance. In assessing the appropriate penalty, the department shall take
22 into account as mitigation the degree of noncompliance and good cause demonstrated by
23 the certificate holder.

24 31-6-42.

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

- 31 (1) The proposed new institutional health services are reasonably consistent with the
32 relevant general goals and objectives of the state health plan;
33 (2) The population residing in the area served, or to be served, by the new institutional
34 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) Any adverse effects of the proposed new institutional health service on existing
 18 providers have been assessed and will not unreasonably impact the quality, efficiency,
 19 or financial viability of such existing providers;

20 ~~(9)~~(10) The proposed new institutional health service encourages more efficient
 21 utilization of the health care facility proposing such service;

22 ~~(10)~~(11) The proposed new institutional health service provides, or would provide, a
 23 substantial portion of its services to individuals not residing in its defined service area or
 24 the adjacent service area;

25 ~~(11)~~(12) The proposed new institutional health service conducts biomedical or
 26 behavioral research projects or new service development which is designed to meet a
 27 national, regional, or state-wide need;

28 ~~(12)~~(13) The proposed new institutional health service meets the clinical needs of health
 29 professional training programs which request assistance;

30 ~~(13)~~(14) The proposed new institutional health service fosters improvements or
 31 innovations in the financing or delivery of health services, promotes health care quality
 32 assurance or cost effectiveness, or fosters competition that is shown to result in lower
 33 patient costs without a loss of the quality of care; ~~and~~

34 (15) The applicant for the proposed new institutional health service:

35 (A) If an existing health care facility, demonstrates that it provides high quality care
 36 and complies fully with relevant licensure and accreditation standards; or

1 (B) If not an existing provider, demonstrates that it will provide quality care and will
 2 comply fully with relevant licensure and accreditation standards; and

3 ~~(14)~~(16) The proposed new institutional health service fosters the special needs and
 4 circumstances of health maintenance organizations.

5 (b) No later than January 1, 2008, the department shall develop and adopt a
 6 service-specific need methodology for each clinical health service and for all diagnostic
 7 and other imaging services; diagnostic, treatment, or rehabilitation centers; and diagnostic
 8 imaging and therapeutic equipment subject to review under this chapter.

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

15 (d) In the case of applications that are joined for comparative review pursuant to
 16 subsection (b) of Code Section 31-6-40.1 or subsection (f) of Code Section 31-6-43, the
 17 department may give favorable consideration to projects and applicants where the applicant
 18 agrees to provide a clinical health service that is needed in the service area of the proposed
 19 project, and the department shall condition the award of a certificate upon the applicant's
 20 providing such needed clinical health service. Such favorable consideration shall only be
 21 available where each applicant competing in the comparative review may provide such
 22 needed clinical health services.

23 ~~(e)~~(e) If the denial of an application for a certificate of need for a new institutional health
 24 service proposed to be offered or developed by a:

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

27 (2) Minority administered hospital facility utilized for the training of minority medical
 28 practitioners

29 would adversely impact upon the facility and population served by said facility, the special
 30 needs of such hospital facility and the population served by said facility for the new
 31 institutional health service shall be given ~~extraordinary~~ favorable consideration by the
 32 department in making its determination of need as required by this Code section. The
 33 department shall have the authority to vary or modify strict adherence to the provisions of
 34 this chapter and the rules enacted pursuant hereto in considering the special needs of such
 35 facility and its population served and to avoid an adverse impact on the facility and the
 36 population served thereby. For purposes of this subsection, the term 'minority administered

1 hospital facility' means a hospital controlled or operated by a governing body or
2 administrative staff composed predominantly of members of a minority race.

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

7 ~~(e)~~(g) The department shall specify in its written findings of fact and decision which of the
8 considerations contained in this Code section and in the department's applicable rules are
9 applicable to an application and its reasoning as to ~~and~~ any evidentiary support for its
10 evaluation of each such applicable consideration and rule.

11 31-6-43.

12 (a) Each application for a certificate of need shall be reviewed by the department and
13 within ten working days after the date of its receipt a determination shall be made as to
14 whether the application complies with the rules governing the preparation and submission
15 of applications. If the application complies with the rules governing the preparation and
16 submission of applications, the department shall declare the application complete for
17 review, shall accept and date the application, and shall notify the applicant of the timetable
18 for its review. The department shall also notify a newspaper of general circulation in the
19 county in which the project ~~shall~~ will be developed that the application has been deemed
20 complete and shall publish notice of the application in a department tracking report
21 established for these purposes. The department shall also notify the appropriate regional
22 development center and the chief elected official of the county and municipal governments,
23 if any, in whose boundaries the proposed project will be located that the application is
24 complete for review. If the application does not comply with the rules governing the
25 preparation and submission of applications, the department shall notify the applicant in
26 writing and provide a list of all deficiencies. If the requested information is not filed with
27 the department within 14 days of the date of the notice, the application shall be deemed
28 incomplete and deemed withdrawn from consideration. ~~The applicant shall be afforded an~~
29 ~~opportunity to correct such deficiencies, and upon such correction~~ If the applicant corrects
30 such deficiencies, the application shall then be declared complete for review ~~within ten~~
31 ~~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~~ will be developed that the application
33 has been so declared and notice published in the department tracking report. The
34 department shall also notify the appropriate regional development center and the chief
35 elected official of the county and municipal governments, if any, in whose boundaries the

1 proposed project will be located that the application is complete for review or when in the
2 determination of the department a significant amendment is filed.

3 (b) At least 45 days prior to filing an application, the applicant shall file a letter of intent
4 with the department respecting the development of a project subject to review. The
5 department shall provide by rule a process for filing letters of intent and a mechanism by
6 which applications may be filed to compete with and be reviewed comparatively with
7 proposals described in filed letters of intent. Letters of intent must describe the proposal;
8 specify the number of beds sought, if any; identify the services to be provided and the
9 specific location and service area; and identify the applicant. Within 14 days after receipt
10 of a letter of intent, the department shall publish notice of the letter of intent in the
11 department tracking report.

12 ~~(b)(c)~~ An The department shall specify by rule the time within which an applicant may
13 amend its application, but no amendment shall be allowed at any time ~~no later than ten days~~
14 ~~prior to the end~~ within 30 days of the end of the review period, and the department may
15 request an applicant to make ~~amendments~~ an amendment. The department decision shall
16 be made on an application as amended, if at all, by the applicant.

17 ~~(c)(d)~~ Except as provided in subsection (d) of this Code section, there There shall be a time
18 limit of ~~90~~ 120 days for review of a project, beginning on the day the department declares
19 the application complete for review or, in the case of applications joined for comparative
20 review, beginning on the day the department declares the final application complete. The
21 department may adopt rules for determining when it is not practicable to complete a review
22 in 90 days and may extend the review period upon written notice to the applicant but only
23 for an extended period of not longer than an additional 30 days. The department shall
24 adopt rules governing the submission of additional information by the applicant and for
25 opposing an application.

26 (e) To allow the opportunity for comparative review of applications, the department shall
27 provide by rule for applications for a certificate of need to be submitted on a timetable or
28 batching cycle basis no less often than two times per calendar year for each clinical health
29 service. Applications for services, facilities, or expenditures for which there is no specified
30 batching cycle may be filed at any time.

31 ~~(d)(f)~~ The department may order the joinder of shall join an application which is
32 determined to be complete by the department for comparative review with one or more
33 subsequently filed applications declared complete for review during the same batching
34 cycle when the:

35 (1) ~~The first and subsequent~~ applications involve similar projects in the same clinical
36 health service area or overlapping ~~medical~~ clinical health service areas; ~~and~~

37 (2) The subsequent applications are filed and are declared complete for review within 30

1 ~~days of the date the first application was declared complete for review.~~

2 ~~Following joinder of the first application with subsequent applications, none of the~~
 3 ~~subsequent applications so joined may be considered as a first application for the purposes~~
 4 ~~of future joinder. The department shall notify the applicant to whose application a joinder~~
 5 ~~is ordered and all other applicants previously joined to such application~~ all applicants
 6 whose applications are joined of the fact of each joinder pursuant to this subsection. ~~In the~~
 7 ~~event one or more applications have been joined pursuant to this subsection, the time limits~~
 8 ~~for department action for all of the applicants shall run from the latest date that any one of~~
 9 ~~the joined applications was declared complete for review. In the event of the consideration~~
 10 ~~of one or more applications joined pursuant to this subsection, the department may award~~
 11 ~~no certificate of need or one or more certificates of need to the application or applications,~~
 12 ~~if any, which are consistent with the considerations contained in Code Section 31-6-42, the~~
 13 ~~department's applicable rules, and the award of which will best satisfy the purposes of this~~
 14 ~~chapter.~~

15 ~~(e)(g)~~ (g) The department shall review the application and all written information submitted
 16 by the applicant in support of the application and all information submitted in opposition
 17 to the application to determine the extent to which the proposed project is consistent with
 18 the applicable considerations stated in Code Section 31-6-42 and in the department's
 19 applicable rules. During the course of the review, the department staff may request
 20 additional information from the applicant as deemed appropriate. Pursuant to rules adopted
 21 by the department, a public hearing on applications covered by those regulations may be
 22 held prior to the date of the department's decision thereon. Such rules shall provide that
 23 when good cause has been shown, a public hearing shall be held by the department. Any
 24 interested person may submit information to the department concerning an application, and
 25 an applicant shall be entitled to notice of and to respond to any such submission.

26 ~~(f)(h)~~ (h) ~~In the event that the department's initial review of an application indicates that an~~
 27 ~~application is not consistent with the applicable considerations contained in Code Section~~
 28 ~~31-6-42 and in the department's applicable rules, on or before the sixtieth day after an~~
 29 ~~application, or the last application joined pursuant to subsection (d) of this Code section,~~
 30 ~~is declared complete for review, the~~ The department shall provide the applicant an
 31 opportunity to meet with the department to discuss the application and to provide an
 32 opportunity to submit additional information. Such additional information shall be
 33 submitted ~~prior to the seventy-fifth day after the application, or the last application joined~~
 34 ~~pursuant to subsection (d) of this Code section, is declared complete for review~~ within the
 35 time limits adopted by the department. The department shall also provide an opportunity
 36 for any party that is opposed to an application to meet with the department and to provide
 37 additional information to the department.

1 ~~(g)~~(i) The department shall, no later than ~~90~~120 days after an application is ~~declared~~
 2 determined to be complete for review, or, in the event ~~joinder is ordered pursuant to~~
 3 ~~subsection (d) of this Code section~~ of joined applications, then ~~90~~ 120 days after the last
 4 ~~joined~~ application is declared complete for review, provide written notification to an
 5 applicant of the department's decision to issue or to deny issuance of a certificate of need
 6 for the proposed project. ~~In the event the department has extended the review period~~
 7 ~~pursuant to subsection (c) of this Code section, then the department shall provide such~~
 8 ~~written notification within 120 days after the application, or the last application joined~~
 9 ~~pursuant to subsection (d) of this Code section, was declared complete for review.~~ Such
 10 notice shall contain the department's written findings of fact and decision as to each
 11 applicable consideration or rule and a detailed statement of the reasons and evidentiary
 12 support for issuing or denying a certificate of need for the action proposed by each
 13 applicant. The department shall also mail such notification to the appropriate regional
 14 development center and the chief elected official of the county and municipal governments,
 15 if any, in whose boundaries the proposed project will be located. In the event such decision
 16 is to issue a certificate of need, the certificate of need shall be effective on the day of the
 17 decision unless the decision is appealed to the ~~review board~~ Certificate of Need Appeal
 18 Panel in accordance with this chapter. Within seven days of the decision, the department
 19 shall publish notice of its decision to grant or deny an application in the same manner as
 20 it publishes notices of the filing of an application.

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

27 (k) To allow the department adequate time to develop an appropriate need methodology,
 28 the department shall be authorized to issue a six-month moratorium for consideration of
 29 any applications for a certificate of need for a new or emerging technology. The
 30 department shall implement an expedited process to develop a need methodology and
 31 service-specific review criteria for such new or emerging technology which shall be
 32 applied to any applications for such technology upon the expiration of the moratorium.
 33 The department may extend the moratorium on consideration of such an application for up
 34 to three additional months. If the department is unable to adopt a need methodology and
 35 service-specific rule for the new or emerging technology during the moratorium, the
 36 department shall review the application for certificate of need under the general review
 37 criteria of this chapter.

1 31-6-44.

2 (a) There is created the ~~Health Planning Review Board~~ Certificate of Need Appeal Panel,
 3 which shall be an agency separate and apart from the department and shall consist of a
 4 panel of independent hearing officers. The purpose of the appeal board shall be to serve
 5 as a panel of independent hearing officers to review the department's initial decision to
 6 grant or deny a certificate of need application. ~~That review board which existed on June~~
 7 ~~30, 1994, is continued in existence after that date but on and after July 1, 1994, shall be~~
 8 ~~constituted as provided in this subsection. The Health Planning Review Board which~~
 9 ~~existed on June 30, 2007, shall cease to exist after that date and the Certificate of Need~~
 10 ~~Appeal Panel shall be constituted effective July 1, 2007, pursuant to this Code section.~~
 11 ~~Those~~ The terms of all members of the Health Planning Review Board serving as such on
 12 January 1, 1994, or any person selected to fill a vacancy in such membership shall continue
 13 to serve as such members until July 1, 1994, at which time the terms of office of such
 14 members shall expire June 30, 2007, shall automatically terminate on such date.

15 (b) On and after July 1, 1994 2007, the ~~review board~~ appeal panel shall be composed of
 16 ~~† five~~ five members appointed by the Governor, ~~with one from each congressional district for~~
 17 ~~a term of up to four years each.~~ The Governor shall appoint persons to the review board
 18 appeal panel attorneys who practice law in this state and who are familiar with the health
 19 care industry but who do not have a financial interest in or represent or have any
 20 compensation arrangement with any health care facility. Each member of the appeal panel
 21 shall be an active member of the State Bar of Georgia in good standing, and each attorney
 22 shall have maintained such active status for the five years immediately preceding such
 23 person's appointment. The Governor shall also name from among such members a
 24 chairperson and a vice chairperson of the ~~review board, both of whom shall be attorneys~~
 25 ~~licensed to practice law in this state~~ appeal panel. The vice chairperson shall have the same
 26 authority as the chairperson; provided, however, the vice chairperson shall not exercise
 27 such authority unless expressly delegated by the chairperson or in the event the chairperson
 28 becomes incapacitated, as determined by the Governor. Vacancies on the ~~board~~ appeal
 29 panel caused by resignation, death, or any other cause shall be filled for the unexpired term
 30 in the same manner as the original appointment. No person required to register with the
 31 Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the
 32 Governor to the ~~board~~ appeal panel.

33 (b)(c) ~~The purpose of the review board shall be to review decisions made by hearing~~
 34 ~~officers as provided in subsection (h) of this Code section. At least a quorum of the review~~
 35 ~~board shall meet at least once every month to review hearing officer decisions unless there~~
 36 ~~are not any decisions for it to review. For purposes of this subsection, a quorum shall~~
 37 ~~consist of five members of the review board, including either the chairperson or the vice~~

1 ~~chairperson.~~ The ~~review board~~ appeal panel shall promulgate reasonable rules for its
 2 operation and rules of procedure for the conduct of ~~review board meetings and initial~~
 3 administrative appeal hearings held by the appointed hearing officers, including an
 4 appropriate fee schedule for filing such appeals. Members of the appeal panel shall serve
 5 as hearing officers for appeals that are assigned to them on a random, rotating basis by the
 6 chairperson of the review board. Subject to the limitations stated in this subsection and in
 7 subsection (c) of this Code section, ~~the review board shall formulate and approve a list of~~
 8 ~~at least five and not more than ten attorneys who shall serve as hearing officers for appeals~~
 9 ~~which are assigned to them by the chairperson of the review board. Each such attorney~~
 10 ~~approved to be included on the list of hearing officers shall be an active member of the~~
 11 ~~State Bar of Georgia in good standing, and each such attorney must have maintained such~~
 12 ~~active status for the five years immediately preceding such person's respective approval.~~
 13 The members of the ~~review board~~ appeal panel shall receive no salary but shall be
 14 reimbursed for their expenses in attending meetings and for transportation costs as
 15 authorized by Code Section 45-7-21, which provides for compensation and allowances of
 16 certain state officials, ~~and~~; provided, however, that the chairperson and vice chairperson
 17 of the appeal panel shall also be compensated for their services rendered to the ~~review~~
 18 ~~board~~ appeal panel outside of attendance at a ~~review board~~ an appeal panel meeting, such
 19 as for time spent assigning hearing officers, the amount of which compensation shall be
 20 determined according to regulations of the Department of Administrative Services.
 21 ~~Hearing officers to whom a case has been assigned~~ Appeal panel members shall receive
 22 compensation for the administration of the cases assigned to them, including prehearing,
 23 hearing, and posthearing work, in an amount determined to be appropriate and reasonable
 24 by the ~~review board~~ department. Such compensation to the members of the ~~review board~~
 25 ~~and to hearing officers~~ appeal panel shall be made by the Department of Administrative
 26 Services.

27 ~~(c)~~(d) Any applicant for a project, or any competing applicant in the same batching cycle,
 28 or any competing health care facility that has notified the department prior to its decision
 29 that such facility is opposed to the application before the department, or any county or
 30 municipal government in whose boundaries the proposed project will be located, who is
 31 aggrieved by a decision of the department shall have the right to an initial administrative
 32 appeal hearing before a an appeal panel hearing officer or to intervene in such hearing.
 33 Such request for hearing or intervention shall be ~~made~~ filed with the chairperson of the
 34 appeal panel within 30 days of the date of the decision made pursuant to Code Section
 35 31-6-43. In the event an appeal is filed by a competing applicant, or any competing health
 36 care facility, or any county or municipal government, the appeal shall be accompanied by
 37 payment of such fee as is established by the appeal panel. In the event that an appeal is

1 requested, the chairperson of the ~~review board~~ appeal panel shall appoint a hearing officer
 2 for each such hearing within ~~50~~ 30 days after the date of the decision made pursuant to
 3 ~~Code Section 31-6-43~~ the appeal is received. Within 14 days after the appointment of the
 4 hearing officer, such hearing officer shall confer with the parties and set the date or dates
 5 for the hearing, provided that no hearing shall be scheduled less than 60 days nor more than
 6 120 days after and shall provide the parties with written notice mailed at least 14 days
 7 ~~before the date of commencement of such hearing. The hearing shall be commenced~~
 8 ~~within 120 days of the filing of the request for a hearing, unless the applicant consents or,~~
 9 in the case of competing applicants, all applicants consent to an extension of this time
 10 period to a specified date. Unless the applicant consents or, in the case of competing
 11 applicants, all applicants consent to an extension of said 120 day period, any hearing
 12 officer who regularly fails to commence a hearing within the required time period shall not
 13 be eligible for continued service as a hearing officer for the purposes of this Code section.
 14 The hearing officer shall have the authority to dispose of all motions made by any party
 15 before the issuance of the hearing officer's decision and shall make such rulings as may be
 16 required for the conduct of the hearing.

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

26 ~~(e)~~(f) The appeal hearing conducted by the appeal panel hearing officer shall be a de novo
 27 review of the decision of the department. The issue for the decision by the hearing officer
 28 shall be whether, and the hearing officer shall order the issuance of a certificate of need if,
 29 in the hearing officer's judgment, the application is consistent with the considerations as
 30 set forth in Code Section 31-6-42 and the department's rules, as the hearing officer deems
 31 such considerations and rules applicable to the review of the project. The hearing officer
 32 shall also consider:

33 (1) Whether ~~whether~~ the department committed prejudicial procedural error in its
 34 consideration of the application;

35 (2) Whether. ~~The hearing officer shall also consider whether~~ the appeal lacks substantial
 36 justification; and

37 (3) Whether ~~whether~~ such appeal was undertaken solely for the purpose of delay or

1 harassment.

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

9 ~~(f)~~(g) All evidence shall be presented at the initial administrative appeal hearing conducted
10 by the appointed hearing officer. A party or intervenor may present any relevant evidence
11 on all issues raised by the hearing officer or any party to the hearing or revealed during
12 discovery. A party or intervenor shall present all relevant need studies and analysis as
13 early in the process as is practicable., except that, unless in response to an issue raised by
14 an opponent or the hearing officer or revealed during discovery, a party or intervenor may
15 not present a new need study or analysis that is substantially different from any such study
16 or analysis submitted to the department prior to its decision and that could reasonably have
17 been available for submission to the department prior to its decision. Except for such
18 limitation on new studies or analyses, ~~the~~ The hearing officer may consider the latest data
19 available, including updates of studies previously submitted, in deciding whether an
20 application is consistent with the applicable considerations or rules. The hearing officer
21 shall consider the applicable considerations and rules in effect on the date the application
22 for certificate of need was received by the department, even if the provisions of those
23 considerations or rules were changed after the department's decision. The hearing officer
24 may remand a matter to the department if the hearing officer determines that it would be
25 beneficial for the department to consider new data, studies, or analyses that were not
26 available before the decision or changes to the provisions of the applicable considerations
27 or rules made after the department's decision. The hearing officer shall establish the time
28 deadlines for completion of the remand and shall retain jurisdiction of the matter
29 throughout the completion of the remand.

30 (h) After the issuance of a decision by the department pursuant to Code Section 31-6-43,
31 no party to an appeal hearing, nor any person on behalf of such party, including the
32 department, shall make any ex parte contact with the appeal panel hearing officer appointed
33 to conduct the appeal hearing, any other member of the appeal panel, or the commissioner
34 in regard to a decision under appeal.

35 ~~(g)~~(i) Within 30 days after the conclusion of the hearing, the hearing officer shall make
36 written findings of fact and conclusions of law as to each consideration as set forth in Code
37 Section 31-6-42 and the department's rules, including a detailed statement of the reasons

1 for the decision of the hearing officer. If any party has alleged that an appeal lacks
 2 substantial justification ~~and~~ or was undertaken solely for the purpose of delay or
 3 harassment, the decision of the hearing officer shall make findings of fact addressing the
 4 merits of the allegation. ~~Immediately upon rendering a decision, the~~ The hearing officer
 5 shall file such decision with the chairperson of the review board appeal panel who shall;
 6 serve such decision upon all parties, and shall transmit the administrative record to the
 7 ~~chairperson of the review board~~ commissioner. Any party, including the department,
 8 which disputes any finding of fact or conclusion of law rendered by the hearing officer in
 9 such hearing officer's decision and which wishes to appeal that decision may appeal to the
 10 ~~review board~~ commissioner and shall file such party's its specific objections thereto with
 11 the ~~review board~~ commissioner or his or her designee within 30 days of such party's receipt
 12 of the date of the hearing officer's decision pursuant to rules adopted by the department.

13 ~~(h)~~(j) The decision of the appeal panel hearing officer will become the final decision of the
 14 department upon the sixty-first day following the receipt date of the decision by the review
 15 board unless an objection thereto is filed with the commissioner within the time limit
 16 established in subsection ~~(g)~~(i) of this Code section, ~~and within 60 days of the receipt of~~
 17 ~~the hearing officer's decision by the review board:~~

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

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

26 ~~The chairperson or vice chairperson shall set the date for the review board meeting and~~
 27 ~~provide the parties with written notice mailed at least 14 days prior to such meeting. Within~~
 28 ~~30 days after meeting to review such hearing officer's decision, either the chairperson or~~
 29 ~~the vice chairperson of the review board shall, on behalf of the review board members~~
 30 ~~present at such meeting, issue a written order which memorializes the decision of the~~
 31 ~~review board reached by such majority vote. In the event the review board reverses or~~
 32 ~~modifies the hearing officer's decision, the review board shall issue a written decision~~
 33 ~~explaining why such changes were made. However, the review board shall not reverse~~
 34 ~~findings of fact made by the hearing officer unless the review board specifically finds that~~
 35 ~~the hearing officer's findings of fact are not supported by substantial evidence, which shall~~
 36 ~~mean that the record does not contain such relevant evidence as a reasonable mind might~~
 37 ~~accept as adequate to support such findings, inferences, conclusions, or decisions, which~~

1 ~~such evidentiary standard shall be in excess of the 'any evidence' standard contained in~~
2 ~~other statutory provisions.~~

3 (k)(1) In the event an appeal of the appeal panel hearing officer's decision is filed, the
4 commissioner may adopt the hearing officer's order as the final order of the department
5 or the commissioner may reject or modify the conclusions of law over which the
6 department has substantive jurisdiction and the interpretation of administrative rules over
7 which it has substantive jurisdiction. By rejecting or modifying such conclusion of law
8 or interpretation of administrative rule, the department must state with particularity its
9 reasons for rejecting or modifying such conclusion of law or interpretation of
10 administrative rule and must make a finding that its substituted conclusion of law or
11 interpretation of administrative rule is as or more reasonable than that which was rejected
12 or modified. Rejection or modification of conclusions of law may not form the basis for
13 rejection or modification of findings of fact. The commissioner may not reject or modify
14 the findings of fact unless the commissioner first determines from a review of the entire
15 record, and states with particularity in the order, that the findings of fact were not based
16 upon any competent substantial evidence or that the proceedings on which the findings
17 were based did not comply with the essential requirements of law.

18 (2) If, before the date set for the review board's meeting commissioner's decision,
19 application is made to the chairperson commissioner for leave to present additional
20 evidence and it is shown to the satisfaction of the chairperson commissioner that the
21 additional evidence is material and there were good reasons for failure to present it in the
22 proceedings before the hearing officer, the chairperson commissioner may order that the
23 additional evidence be taken before the same hearing officer who rendered the initial
24 decision upon conditions determined by the chairperson commissioner. The hearing
25 officer may modify the initial decision by reason of the additional evidence and shall file
26 that evidence and any modifications, new findings, or decision with the review board
27 commissioner. Unless leave is given by the chairperson commissioner in accordance
28 with the provisions of this subsection, the review board appeal panel may not consider
29 new evidence under any circumstances. In all circumstances, the review board's
30 commissioner's decision shall be based upon considerations as set forth in Code Section
31 31-6-42 and the department's rules.

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

36 ~~(j) Unless the hearing officer's decision becomes the department's decision by operation~~
37 ~~of law as provided in subsection (h) of this Code section, the final decision of the review~~

1 board shall become the department's decision by operation of law. Such final decision shall
 2 be the final department decision for purposes of Chapter 13 of Title 50, the 'Georgia
 3 Administrative Procedure Act.' The appeals process provided by this Code section shall be
 4 the administrative remedy only for decisions made by the department pursuant to Code
 5 Section 31-6-43 which involve the approval or denial of applications for certificates of
 6 need.

7 ~~(k) In the event that the review board or its chairperson or vice chairperson requires legal
 8 counsel, the chairperson or vice chairperson shall make a request for such advice to the
 9 Attorney General.~~

10 (l) If, based upon the findings of fact by the hearing officer, the ~~review board~~
 11 commissioner determines that the appeal filed by any party of a decision of the department
 12 lacks substantial justification and was undertaken solely for the purpose of delay or
 13 harassment, the ~~review board~~ commissioner may enter an award in its his or her written
 14 order against such party and in favor of the successful party or parties, including the
 15 department, of all or any part of their respective reasonable and necessary attorney's fees
 16 and expenses of litigation, as the ~~review board~~ commissioner deems just. Such award may
 17 be enforced by any court undertaking judicial review of the final decision. In the absence
 18 of any petition for judicial review, then such award shall be enforced, upon due application,
 19 by any court having personal jurisdiction over the party against whom such an award is
 20 made.

21 ~~(m) Any party to the initial administrative appeal hearing conducted by the appointed
 22 hearing officer, excluding the department, may seek judicial review of the final decision
 23 in accordance with the method set forth in Chapter 13 of Title 50, the 'Georgia
 24 Administrative Procedure Act'; provided, however, that in conducting such review, the
 25 court may reverse or modify the final decision only if substantial rights of the appellant
 26 have been prejudiced because the procedures followed by the department, the hearing
 27 officer, or the review board or the administrative findings, inferences, and conclusions
 28 contained in the final decision are:~~

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

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

31 ~~(3) Made upon unlawful procedures;~~

32 ~~(4) Affected by other error of law;~~

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

37 ~~(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted~~

1 ~~exercise of discretion.~~

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

10 (n) In the event that the commissioner requires legal counsel, the commissioner shall make
11 a request for such advice to the Attorney General.

12 31-6-44.1

13 (a) Any party to the initial administrative appeal hearing conducted by the appointed
14 appeal panel hearing officer, excluding the department, may seek judicial review of the
15 final decision in accordance with the method set forth in Chapter 13 of Title 50, the
16 'Georgia Administrative Procedure Act,' except as otherwise modified by this Code section;
17 provided, however, that in conducting such review, the court may reverse or modify the
18 final decision only if substantial rights of the appellant have been prejudiced because the
19 procedures followed by the department, the hearing officer, or the commissioner or the
20 administrative findings, inferences, and conclusions contained in the final decision are:

21 (1) In violation of constitutional or statutory provisions;

22 (2) In excess of the statutory authority of the department;

23 (3) Made upon unlawful procedures;

24 (4) Affected by other error of law;

25 (5) Not supported by any evidence; or

26 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
27 exercise of discretion.

28 (b) In the event a party seeks judicial review, the department shall, within 30 days of the
29 filing of the notice of appeal with the superior court, transmit certified copies of all
30 documents and papers in its file together with a transcript of the testimony taken and its
31 findings of fact and decision to the clerk of the superior court to which the case has been
32 appealed. The case so appealed may then be brought by either party upon ten days' written
33 notice to the other before the superior court for a hearing upon such record, subject to an
34 assignment of the case for hearing by the court; provided, however, if the court does not
35 hear the case within 120 days of the date of docketing in the superior court, the decision
36 of the department shall be considered affirmed by operation of law unless a hearing

1 originally scheduled to be heard within the 120 days has been continued to a date certain
 2 by order of the court. In the event a hearing is held later than 90 days after the date of
 3 docketing in the superior court because same has been continued to a date certain by order
 4 of the court, the decision of the department shall be considered affirmed by operation of
 5 law if no order of the court disposing of the issues on appeal has been entered within 30
 6 days after the date of the continued hearing. If a case is heard within 120 days from the
 7 date of docketing in the superior court, the decision of the department shall be considered
 8 affirmed by operation of law if no order of the court dispositive of the issues on appeal has
 9 been entered within 30 days of the date of the hearing.

10 31-6-45.

11 (a) The department may revoke a certificate of need, in whole or in part, after notice to the
 12 holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia
 13 Administrative Procedure Act,' for the following reasons:

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

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

17 (3) Failure to comply substantially with conditions imposed on the certificate of need by
 18 the department when the certificate was granted; or

19 (4) Failure to fully implement the approved project with conditions specified by the
 20 department and in a time frame specified in the rules of the department.

21 The department may not, however, revoke a certificate of need if the applicant changes the
 22 defined location of the project within the same county less than three miles from the
 23 location specified in the certificate of need for financial reasons or other reasons beyond
 24 its control, including but not limited to, failure to obtain any required approval from zoning
 25 or other governmental agencies or entities, provided such change in location is otherwise
 26 consistent with the considerations and rules applied in the evaluation of the project.

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

30 ~~(c) In the event that a new institutional health service is knowingly offered or developed~~
 31 ~~without having obtained a certificate of need as required by this chapter, or the certificate~~
 32 ~~of need for such service is revoked according to the provisions of this Code section, a~~
 33 ~~facility or applicant may be fined an amount not to exceed \$5,000.00 per day for every day~~
 34 ~~that the violation of this chapter has existed and knowingly and willingly continues; It shall~~
 35 ~~be unlawful for any person to offer or develop a new institutional health service that is~~
 36 ~~subject to review under this chapter without first obtaining a valid certificate of need. Any~~

1 person violating this subsection may be fined for each day that such violation occurs. The
 2 amount of the maximum fine shall be as follows: (1) \$5,000.00 per day of violation up to
 3 30 days, (2) \$10,000.00 per day of violation for the thirty-first day through the sixtieth day,
 4 and (3) \$25,000.00 per day of violation from the sixty-first day and each day thereafter;
 5 provided, however, that the expenditure or commitment of or incurring an obligation for
 6 the expenditure of funds to take or perform actions not subject to this chapter or to acquire,
 7 develop, or prepare a health care facility site for which a certificate of need application is
 8 denied shall not be a violation of this chapter and shall not be subject to such a fine. The
 9 commissioner of the department shall determine, after notice and a hearing in accordance
 10 with procedures adopted by the department, whether the fines provided in this Code section
 11 shall be levied and shall provide for an expedited review of such fine. A person fined
 12 pursuant to this subsection shall have the right to judicial review of such fine in accordance
 13 with Code Section 50-13-19. The department shall not levy any fines pursuant to this Code
 14 section against any person who, in good faith, relies on a written notice from the
 15 department, including a letter of nonreviewability or a letter of determination prior to
 16 beginning the project, that the project is not reviewable or subject to certificate of need
 17 requirements under this chapter where the person has provided full and accurate
 18 information to the department regarding his or her proposal and has implemented the
 19 proposal in strict compliance with the description of such proposal provided to the
 20 department.

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

25 31-6-45.1.

26 (a) A health care facility which has a certificate of need or is otherwise authorized to
 27 operate pursuant to this chapter shall have such certificate of need or authority to operate
 28 automatically revoked by operation of law without any further action by the ~~Department~~
 29 ~~of Community Health~~ department when that facility's permit to operate pursuant to Code
 30 Section 31-7-4 is finally revoked by order of the ~~Department of Human Resources~~
 31 department. For purposes of this subsection, the date of such final revocation shall be as
 32 follows:

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

36 (2) When there is an appeal of the order pursuant to Chapter 5 of this title, the date upon

1 which expires the time to appeal the last administrative or judicial order affirming or
2 approving the revocation or revocation order without such appeal being filed.

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

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

10 31-6-45.2.

11 (a) Any proposed or existing health care facility which obtains a certificate of need on or
12 after April 6, 1992, based in part upon assurances or conditions that it will participate as
13 a provider of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, and
14 which terminates its participation as a provider of medical assistance, shall be subject to
15 a monetary penalty in the amount of the difference between the Medicaid covered services
16 which the facility agreed to provide in its certificate of need application and the amount
17 actually provided; provided, however, that this Code section shall not apply if:

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

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

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

26 (A) Changes in the adequacy of medical assistance payments, as defined in paragraph
27 (5) of Code Section 49-4-141, provided that at least 10 percent of the facility's
28 utilization during the preceding 12 month period was attributable to services to
29 recipients of medical assistance, as defined in paragraph (7) of Code Section 49-4-141.
30 Medical assistance payments to a facility shall be presumed adequate unless the
31 revenues received by the facility from all sources are less than the total costs set forth
32 in the cost report for the preceding full 12 month period filed by such facility pursuant
33 to the state plan as defined in paragraph (8) of Code Section 49-4-141 which are
34 allowed under the state plan for purposes of determining such facility's reimbursement
35 rate for medical assistance and the aggregate amount of such facility's medical
36 assistance payments (including any amounts received by the facility from recipients of

1 medical assistance) during the preceding full 12 month cost reporting period is less than
 2 85 percent of such facility's Medicaid costs for such period. Medicaid costs shall be
 3 determined by multiplying the allowable costs set forth in the cost report, less any audit
 4 adjustments, by the percentage of the facility's utilization during the cost reporting
 5 period which was attributable to recipients of medical assistance;

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

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

12 (b) A facility seeking to terminate its enrollment as a provider of medical assistance shall
 13 submit a written request to the Department of Community Health documenting good cause
 14 for termination. ~~The Department of Community Health, after consultation with the~~
 15 ~~department,~~ shall grant or deny the facility's request within 30 days. If the ~~Department of~~
 16 ~~Community Health~~ department denies the facility's request, the facility shall be entitled to
 17 a hearing conducted in the same manner as an evidentiary hearing conducted by the
 18 ~~Department of Community Health~~ department pursuant to the provisions of Code Section
 19 49-4-153 within 30 days of the ~~Department of Community Health's~~ department's decision.

20 (c) The imposition of the monetary penalty provided in this Code section shall commence
 21 upon ~~notification to the commissioner of the department by the commissioner of~~
 22 ~~community health that said facility has terminated its~~ termination of a facility's
 23 participation as a provider of medical assistance. The monetary penalty shall be levied and
 24 collected by the department on an annual basis for every year in which the facility fails to
 25 participate as a provider of medical assistance. Penalties authorized under this Code section
 26 shall be subject to the same notices and hearings as provided for levy of fines under Code
 27 Section 31-6-45.

28 31-6-46.

29 The department shall prepare and submit an annual report to the Health and Human
 30 Services Committee of the Senate and the Health and Human Services Committee of the
 31 House of Representatives about its operations and decisions for the preceding 12 month
 32 period, not later than 30 days prior to each convening of the General Assembly in regular
 33 session. Either committee may request any additional reports or information, including
 34 decisions, from the department at any time, including a period in which the General
 35 Assembly is not in regular session. The annual report of the department shall include the
 36 department's assessment of the adequacy of the department's rules in meeting the policy

1 and purposes of this chapter and the adequacy of all existing need methodologies in
 2 promoting access to health care and the appropriate distribution of health care services.
 3 The annual report shall also identify new and emerging technologies for which the
 4 department anticipates the development of a new need methodology and service-specific
 5 rules in the upcoming year.

6 31-6-47.

7 (a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to:

8 (1) Infirmaries operated by educational institutions for the sole and exclusive benefit of
 9 students, faculty members, officers, or employees thereof;

10 (2) Infirmaries or facilities operated by businesses for the sole and exclusive benefit of
 11 officers or employees thereof, provided that such infirmaries or facilities make no
 12 provision for overnight stay by persons receiving their services;

13 (3) Institutions operated exclusively by the federal government or by any of its agencies;

14 (4) Offices of private physicians or dentists whether for individual or group practice,
 15 except as otherwise provided in ~~subparagraphs (G) and (H)~~ subparagraph (F) of
 16 paragraph ~~(14)~~(20) of Code Section 31-6-2;

17 ~~(5) Christian Science sanatoriums operated or listed and certified by the First Church of~~
 18 ~~Christ Scientist, Boston, Massachusetts;~~

19 ~~(6)~~(5) Site acquisitions for health care facilities or preparation or development costs for
 20 such sites prior to the decision to file a certificate of need application;

21 ~~(7)~~(6) Expenditures related to adequate preparation and development of an application
 22 for a certificate of need;

23 ~~(8)~~(7) The commitment of funds conditioned upon the obtaining of a certificate of need;

24 ~~(9)~~(8) Expenditures for the acquisition of existing health care facilities by stock or asset
 25 purchase, merger, consolidation, or other lawful means unless the facilities are owned or
 26 operated by or on behalf of a:

27 (A) Political subdivision of this state;

28 (B) Combination of such political subdivisions; or

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

30 ~~(9.1)~~(9) Expenditures for the restructuring of or for the acquisition by stock or asset
 31 purchase, merger, consolidation, or other lawful means of an existing health care facility
 32 which is owned or operated by or on behalf of any entity described in subparagraph (A),
 33 (B), or (C) of paragraph ~~(9)~~(8) of this subsection only if such restructuring or acquisition
 34 is made by any entity described in subparagraph (A), (B), or (C) of paragraph ~~(9)~~(8) of
 35 this subsection;

36 (10) Expenditures for ~~the minor repair~~ nonclinical projects, including parking decks,

1 medical office buildings, repairs to the physical plant of a health care facility, or parts
 2 thereof or nonclinical services provided or equipment used therein, or replacement of
 3 equipment, ~~including, but not limited to, CT scanners~~ previously approved under a
 4 certificate of need;

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

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

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

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

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

26 (16) Capital expenditures for a project otherwise requiring a certificate of need if those
 27 expenditures are for a project to remodel, renovate, replace, or any combination thereof,
 28 a medical-surgical hospital and:

29 (A) That hospital:

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

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

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

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

36 (B) That project:

37 (i) Does not result in any of the following:

1 (I) The offering of any new clinical health services;

2 (II) Any increase in bed capacity;

3 (III) Any redistribution of existing beds among existing clinical health services; or

4 (IV) Any increase in capacity of existing clinical health services;

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

8 (iii) Is located within a three-mile radius of and within the same county as the
9 hospital's existing facility;

10 (17) The relocation of a nursing home within a five-mile radius of and within the same
11 county as the existing facility; of a hospital within a three-mile radius of and within the
12 same county as the existing facility; and of a diagnostic, treatment, or rehabilitation
13 center or other health care facility subject to certificate of need requirements pursuant to
14 this chapter within a one-mile radius of and within the same county as the existing
15 facility; and

16 (18) Continuing care retirement communities which contain sheltered nursing beds, as
17 defined by the department.

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

21 (c) ~~By rule, the~~ The department shall establish by rule a procedure for expediting or
22 ~~waiving~~ reviews of certain projects ~~the nonreview of which~~ where it deems such expedited
23 review compatible with the purposes of this chapter; ~~in addition to expenditures exempted~~
24 ~~from review by this Code section.~~

25 31-6-47.1

26 (a) The department shall require prior notification of activities that are excluded from
27 certificate of need requirements pursuant to division (20)(F)(iii) of Code Section 31-6-2
28 and may require prior notification of activities exempt from certificate of need
29 requirements pursuant to paragraphs (8) through (18) of subsection (a) of Code Section
30 31-6-47 for purposes of determining whether such activity is compatible with the purposes
31 of this chapter.

32 (b) On and after July 1, 2007, any diagnostic, treatment, or rehabilitation center offering
33 diagnostic or other imaging services or offering ambulatory surgery pursuant to the
34 exclusion provided in division (20)(F)(iii) of Code Section 31-6-2 or as formerly
35 designated as division (14)(F)(iii) of Code Section 31-6-2 and any diagnostic treatment or
36 rehabilitation centers offering such services prior to July 1, 2007, shall be required to:

1 (1) Provide uncompensated indigent and charity care in minimum amounts as established
 2 by the department;

3 (2) Participate as a provider of medical assistance for Medicaid purposes pursuant to
 4 Article 7 of Chapter 4 of Title 49 and provide care to Medicaid beneficiaries in a
 5 minimum amount determined by the department to be the proportion of services provided
 6 to Medicaid or PeachCare beneficiaries by the general acute care hospital located closet
 7 to the DTRC in the most recent year for which the department has collected data; and

8 (3) Provide annual reports in the same manner and in accordance with Code Section
 9 31-6-70

10 to be excluded from the certificate of need requirements contained in this chapter. Any
 11 person or entity not complying with this subsection shall be subject to the sanctions in the
 12 same manner as provided in subsection (c) of Code Section 31-6-45.2 or subsection (g) of
 13 Code Section 31-6-70, as appropriate; and for indigent and charity care, the department
 14 shall fine the person or entity in an amount equal to three times the difference between the
 15 minimum requirement established by the department and the amount of indigent and
 16 charity care actually provided.

17 31-6-48.

18 The State Health Planning and Development Agency, the State-wide Health Coordinating
 19 Council, and the State Health Planning Review Board existing immediately prior to July
 20 1, 1983, are abolished, and their respective successors on and after July 1, 1983, shall be
 21 the Health Planning Agency, the Health Policy Council, and the Health Planning Review
 22 Board, as established in this chapter, except that on and after July 1, 1991, the Health
 23 Strategies Council shall be the successor to the Health Policy Council and except that on
 24 and after July 1, 1999, the Department of Community Health shall be the successor to the
 25 Health Planning Agency, and except that on and after July 1, 2007, the Board of
 26 Community Health shall be the successor to the duties of the Health Strategies Council
 27 with respect to adoption of the state health plan, and except that on and after July 1, 2007,
 28 the Certificate of Need Appeal Panel shall be the successor to the duties of the Health
 29 Planning Review Board. For purposes of any existing contract with the federal
 30 government, or federal law referring to such abolished agency, council, or board, the
 31 successor department, council, or board established in this chapter or in Chapter 5A of this
 32 title shall be deemed to be the abolished agency, council, or board and shall succeed to the
 33 abolished agency's, council's, or board's functions. The State Health Planning and
 34 Development Commission is abolished.

1 31-6-49.

2 All matters transferred to the Health Strategies Council and the Health Planning Review
3 Board by the previously existing provisions of this Code section and that are in effect on
4 June 30, ~~1999~~ 2007, shall automatically remain in such council or board on and after July
5 1, ~~1999~~ 2007, until otherwise disposed of. All matters transferred to the Health Planning
6 Agency by the previously existing provisions of this Code section and that are in effect on
7 June 30, 1999, shall automatically be transferred to the Department of Community Health
8 on July 1, 1999. All matters of the Health Planning Review Board that are pending on June
9 30, 2007, shall automatically be transferred to the Certificate of Need Appeal Panel
10 established pursuant to Code Section 31-6-44 on July 1, 2007.

11 31-6-50.

12 ~~From and after July 1, 1983, the~~ The review and appeal considerations and procedures set
13 forth in Code Sections 31-6-42 through 31-6-44, respectively, shall apply to and govern the
14 review of capital expenditures under the Section 1122 program of the federal Social
15 Security Act of 1935, as amended, including, but not limited to, any application for
16 approval under Section 1122 which is under consideration by the Health Planning Agency
17 or on appeal before the ~~review board~~ Certificate of Need Appeal Panel, successor to the
18 former Health Planning Review Board as of July 1, ~~1983~~ 2007.

19 ARTICLE 4

20 31-6-70.

21 (a) There shall be required from each ~~hospital in this state~~ health care facility and each
22 diagnostic, treatment, and rehabilitation center in this state, including all ambulatory
23 surgical centers and imaging centers in this state, whether or not exempt from obtaining a
24 certificate of need under this chapter, an annual report of certain health care information
25 to be submitted to the department. The report shall be due on the last day of January and
26 shall cover the 12 month period preceding each such calendar year.

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

29 (1) Total gross revenues and expenses;

30 (2) Bad debts;

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

32 (4) Contractual adjustments for governmental and private payors;

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

34 (6) Amounts of charity care provided to indigent persons or persons eligible for charity

1 care;

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

5 (8) For cases involving indigent or charity persons:

6 (A) The number of persons treated;

7 (B) The number of inpatients and outpatients;

8 (C) Total patient days;

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

10 (E) The indigent and charity care costs incurred by the ~~hospital~~ health care facility by
11 county of residence;

12 (9) Utilization data relating to numbers of procedures or services, numbers and origin of
13 patients, charges, and other similar data; and

14 (10) Other financial, demographic, or utilization data as specified by the department by
15 rule.

16 (c) As used in subsection (b) of this Code section, the term:

17 (1) 'Indigent ~~indigent~~ persons' means persons having as a maximum allowable income
18 level an amount corresponding to 125 percent of the federal poverty guideline.

19 (2) 'Persons eligible for charity care' means persons having an income level
20 corresponding to the upper percentage of the federal poverty guidelines specified in
21 policies of the health care facility filed with the department but who have no other
22 governmental or private health insurance support.

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

26 (e) In the event that the department does not receive an annual report from a ~~hospital~~
27 health care facility within 30 days following the date such report was due or receives a
28 timely but incomplete report, the department shall notify the hospital regarding the
29 deficiencies.

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

33 (g) The department may assess an administrative fine against the health care facility for
34 failure to submit the data required by this Code section in an amount not to exceed \$500.00
35 per day for the first through the thirtieth day of noncompliance and up to \$1,000.00 per day
36 for the thirty-first day of noncompliance and each day thereafter. The department may
37 revoke a certificate of need or exemption if the facility, having been notified pursuant to

1 subsection (e) of this Code section, fails to submit such data within 180 days of the date
 2 due."

3 **SECTION 2-2.**

4 Code Section 50-13-42 of the Official Code of Georgia Annotated, relating to the
 5 applicability of the article regarding the Office of State Administrative Hearings, is amended
 6 by revising subsection (a) as follows:

7 "(a) In addition to those agencies expressly exempted from the operation of this chapter
 8 under paragraph (1) of Code Section 50-13-2, this article shall not apply to the
 9 Commissioner of Agriculture, the Public Service Commission, the ~~Health Planning Review~~
 10 ~~Board~~ Certificate of Need Appeal Panel, or the Department of Community Health or to the
 11 Department of Labor with respect to unemployment insurance benefit hearings conducted
 12 under the authority of Chapter 8 of Title 34. Such exclusion does not prohibit such office
 13 or agencies from contracting with the Office of State Administrative Hearings on a
 14 case-by-case basis."

15 **PART III**

16 Transfer of Licensing Functions from the Department of Human Resources to the
 17 Department of Community Health.

18 **SECTION 3-1.**

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

21 "19-10A-2.

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

27 **SECTION 3-2.**

28 Code Section 20-3-476, relating to the authorization and administration of a loan program
 29 for attendance at colleges of osteopathic medicine, is amended by revising subsection (e) as
 30 follows:

31 "(e) Loans made pursuant to this subpart shall be conditioned upon the recipients'
 32 agreements in writing to repay the loans in services to the public through the practice of
 33 primary care medicine in an area of the state that is approved by the authority for purposes

1 of this subpart as being a medically underserved area or in a hospital or facility operated
 2 by or under the jurisdiction of the Department of ~~Human Resources~~ Community Health or
 3 the Department of Corrections. Loans shall bear interest at the rate of 12 percent per annum
 4 from each date of disbursement of loan proceeds by the authority. For each year of practice
 5 by a loan recipient of primary care medicine in an authority approved area, hospital, or
 6 facility, the loan recipient shall be given credit for repayment of loan amounts received by
 7 the recipient under this subpart for one academic year of study or its equivalent as a
 8 full-time student. To the extent that loans made under this subpart are repaid in approved
 9 services rendered, all interest due the authority on such loans shall likewise be canceled.
 10 Loans made under this subpart that are not repaid in approved services rendered shall,
 11 together with interest thereon, be repaid to the authority in cash at times prescribed by the
 12 authority. Each applicant shall, before receiving the proceeds of a loan, enter into a written
 13 agreement with the authority, execute a promissory note, or sign such other documents as
 14 may be required by the authority, the terms and conditions of which shall be in accordance
 15 with and designed to accomplish the purposes of this subpart."

16 **SECTION 3-3.**

17 Code Section 20-3-513, relating to determination of amount of medical scholarships by the
 18 State Medical Education Board, is amended as follows:

19 "20-3-513.

20 Students whose applications are approved shall receive a loan or scholarship in an amount
 21 to be determined by the State Medical Education Board to defray the tuition and other
 22 expenses of the applicant in an accredited four-year medical school in the United States
 23 which has received accreditation or provisional accreditation by the Liaison Committee on
 24 Medical Education of the American Medical Association or the Bureau of Professional
 25 Education of the American Osteopathic Association for a program in medical education
 26 designed to qualify the graduate for licensure by the Composite State Board of Medical
 27 Examiners of Georgia. The loans and scholarships shall be paid in such manner as the
 28 State Medical Education Board shall determine and may be prorated so as to pay to the
 29 medical college or school to which any applicant is admitted such funds as are required by
 30 that college or school with the balance being paid directly to the applicant; all of which
 31 shall be under such terms and conditions as may be provided under rules and regulations
 32 of the State Medical Education Board. The loans or scholarships to be granted to each
 33 applicant shall be based upon the condition that the full amount of the loans or scholarships
 34 shall be repaid to the State of Georgia in services to be rendered by the applicant by
 35 practicing his or her profession in a State Medical Education Board approved rural county
 36 in Georgia of 35,000 population or less according to the United States decennial census of

1 1990 or any future such census or at any hospital or facility operated by or under the
 2 jurisdiction of the Department of ~~Human Resources~~ Community Health or at any facility
 3 operated by or under the jurisdiction of the Department of Corrections or at any facility
 4 operated by or under the jurisdiction of the Department of Juvenile Justice. For each year
 5 of practicing his or her profession in such State Medical Education Board approved
 6 location, the applicant shall receive credit for the amount of the scholarship received during
 7 any one year in medical school, with the interest due on such amount."

8 **SECTION 3-4.**

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

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

- 15 (A) The name and address of that patient;
 16 (B) That such patient has been determined to be infected with HIV; and
 17 (C) The name and address of any other person whom the disclosing physician or
 18 administrator reasonably believes to be a person at risk of being infected with HIV by
 19 that patient."

20 **SECTION 3-5.**

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

23 "(1) 'Institution' shall have the meaning set forth in paragraph ~~(1)~~(4) of Code Section
 24 31-7-1 and shall also include a psychiatric hospital as defined in paragraph (7) of Code
 25 Section 37-3-1."

26 **SECTION 3-6.**

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

29 "(J) Personal care homes required to be licensed as such by the Department of ~~Human~~
 30 ~~Resources~~ Community Health and having at least seven beds for nonfamily adults, and
 31 the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum
 32 fire safety standards for those homes, and any structure constructed as or converted to
 33 a personal care home on or after April 15, 1986, shall be deemed to be a proposed
 34 building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be

1 required to be furnished with a sprinkler system meeting the standards established by
2 the Commissioner if he deems this necessary for proper fire safety."

3 SECTION 3-7.

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

6 "31-1-1.

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

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

11 SECTION 3-8.

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

14 "31-7-1.

15 As used in this chapter, the term:

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

20 (A) ~~Reserved;~~

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

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

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

32 ~~(E)~~(D) Any fixed or mobile specimen collection center or health testing facility where
33 specimens are taken from the human body for delivery to and examination in a licensed
34 clinical laboratory or where certain measurements such as height and weight
35 determination, limited audio and visual tests, and electrocardiograms are made,

1 excluding public health services operated by the state, its counties, or municipalities;
 2 ~~(F)~~(E) Any building or facility where human births occur on a regular and ongoing
 3 basis and which is classified by the ~~Department of Human Resources~~ department as a
 4 birthing center; or

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

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

11 ~~(2)~~(5) 'Medical facility' means any licensed general or specialized hospital, institutional
 12 infirmary, public health center, or diagnostic and treatment center.

13 ~~(3)~~(6) 'Permit' means a permit issued by the department upon compliance with the rules
 14 and regulations of the department.

15 ~~(4)~~(7) 'Provisional permit' means a permit issued on a conditional basis for one of the
 16 following reasons:

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

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

23 SECTION 3-9.

24 Said title is further amended by revising subsection (c) in Code Section 31-7-2.1, relating to
 25 rules and regulations relative to the regulation of hospitals and related institutions, as follows:

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

SECTION 3-10.

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

"31-7-5.

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

SECTION 3-11.

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 ~~(1)~~ (4) of Code Section 31-7-1."

SECTION 3-12.

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

"31-7-17.

The department shall provide for and issue regulations that require the license or permit of any institution that is subject to the certificate of need provisions of Chapter 6 of this title to include a specification of the clinical health services authorized to be provided by such institution pursuant to such chapter and that provide for the revocation of the license or permit of such institution for failure to substantially comply with any provisions of such chapter, notwithstanding any other provision of this chapter.

31-7-18.

(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

1 to this Code section. Such rules, regulations, policies, procedures, and administrative
2 orders shall remain in effect until amended, repealed, superseded, or nullified by the
3 Department of Community Health by proper authority or as otherwise provided by law.

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

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

30 **SECTION 3-13.**

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

33 "(1.1) 'Department' means the Department of Community Health."

SECTION 3-14.

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

"31-7-155.

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

(b) Concerning an exemption from a certificate of need pursuant to subsection (a) of this Code section, service areas which were the subject of litigation pending in any court of competent jurisdiction, whether by way of appeal, remand, stay, or otherwise, as of December 31, 1989, shall not be so exempt except as set forth in the final unappealed administrative or judicial decision rendered in such litigation.

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

SECTION 3-15.

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

"31-7-159.

(a) Effective July 1, 2007, all matters relating to the licensure and regulation of home health agencies 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,

1 and duties of the Department of Human Resources that are in effect on June 30, 2007,
2 which relate to the functions transferred to the Department of Community Health pursuant
3 to this Code section. Such rules, regulations, policies, procedures, and administrative
4 orders shall remain in effect until amended, repealed, superseded, or nullified by the
5 Department of Community Health by proper authority or as otherwise provided by law.

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

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

32 SECTION 3-16.

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

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

1 to this Code section. Such rules, regulations, policies, procedures, and administrative
2 orders shall remain in effect until amended, repealed, superseded, or nullified by the
3 Department of Community Health by proper authority or as otherwise provided by law.

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

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

30 **SECTION 3-19.**

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

34 "(3.1) 'Department' means the Department of Community Health."

SECTION 3-20.

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

"31-7-265.

(a) Effective July 1, 2007, all matters relating to facility licensing and employee records checks for personal care homes 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 policies of the Department of Community Health on and after July 1, 2007, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Merit System of Personnel Administration and who are transferred to the department shall retain all existing rights under the State Merit System of Personnel Administration. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30,

1 2007, shall not be impaired or interrupted by the transfer of such employees and
 2 membership in any such retirement system shall continue in the same status possessed by
 3 the transferred employees on June 30, 2007. Accrued annual and sick leave possessed by
 4 said employees on June 30, 2007, shall be retained by said employees as employees of the
 5 Department of Community Health."

6 **SECTION 3-21.**

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

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

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

11 ~~(1)(2)~~ (2) 'Health care provider' means any hospital or ambulatory surgical or obstetrical
 12 facility having a license or permit issued by the department under Article 1 of this
 13 chapter.

14 ~~(2)(3)~~ (3) 'Indigent person' means any person having as a maximum allowable income level
 15 an amount corresponding to 125 percent of the federal poverty guideline.

16 ~~(3)(4)~~ (4) 'Third-party payor' means any entity which provides health care insurance or a
 17 health care service plan, including but not limited to providers of major medical or
 18 comprehensive accident or health insurance, whether or not through a self-insurance plan,
 19 Medicaid, hospital service nonprofit corporation plans, health care plans, or nonprofit
 20 medical service corporation plans, but does not mean a specified disease or supplemental
 21 hospital indemnity payor."

22 **SECTION 3-22.**

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

25 "31-7-282.

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

- 28 (1) Health care providers;
- 29 (2) The Department of ~~Community Health~~ Human Resources;
- 30 (3) The Commissioner of Insurance;
- 31 (4) Reserved;
- 32 (5) Third-party payors;
- 33 (6) The Joint Commission on the Accreditation of Healthcare Organizations; and
- 34 (7) Other appropriate sources as determined by the department.

35 Any entity specified in paragraphs (1) through (4) of this Code section which has in its

1 custody or control data requested by the department pursuant to this Code section shall
 2 provide the department with such data, but any data regarding a health care provider which
 3 is already available in the records of any state officer, department, or agency specified in
 4 paragraph (2), (3), or (4) of this Code section shall not be required to be provided to the
 5 department by that health care provider."

6 **SECTION 3-23.**

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

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

10 **SECTION 3-24.**

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

12 "31-7-308.

13 (a) Effective July 1, 2007, all matters relating to the licensure and regulation of private
 14 home care providers pursuant to this article shall be transferred from the Department of
 15 Human Resources to the Department of Community Health.

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

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

35 (d) All persons employed by the Department of Human Resources in capacities which

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

17 **SECTION 3-25.**

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

19 "31-7-354.

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

22 **SECTION 3-26.**

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

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

28 **SECTION 3-27.**

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

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

1 thereof; provided, however, that the provisions of this subsection shall not apply to a
 2 crematory licensed by the State Board of Funeral Service pursuant to Chapter 18 of Title
 3 43 or to a hospital, clinic, laboratory, or other facility authorized by the Department of
 4 ~~Human Resources~~ Community Health and in a manner approved by the commissioner of
 5 ~~human resources~~ community health."

7 **SECTION 3-32.**

8 Said title is further amended by revising paragraph (1) of subsection (a) of Code Section
 9 31-33-2, relating to furnishing copies of health records to patients, providers, or other
 10 authorized persons, as follows:

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

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

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

19 (ii) A hospital which is an institution as defined in subparagraph ~~(B)~~(A) of paragraph
 20 ~~(1)~~(4) of Code Section 31-7-1, which shall retain patient records in accordance with
 21 rules and regulations for hospitals as issued by the department pursuant to Code
 22 Section 31-7-2."

23 **SECTION 3-33.**

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

26 "33-19-10.

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

29 **SECTION 3-34.**

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

32 "(6) 'Project' means the acquisition, construction, installation, modification, renovation,
 33 or rehabilitation of land, interests in land, buildings, structures, facilities, or other
 34 improvements located or to be located within the downtown development area, and the
 35 acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures,

1 machinery, equipment, furniture, or other property of any nature whatsoever used on, in,
 2 or in connection with any such land, interest in land, building, structure, facility, or other
 3 improvement, any undertaking authorized by Chapter 43 of this title as part of a city
 4 business improvement district, any undertaking authorized in Chapter 44 of this title, the
 5 'Redevelopment Powers Law,' when the downtown development authority has been
 6 designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of
 7 this title, the 'Urban Redevelopment Law,' when the downtown development authority
 8 has been designated as an urban redevelopment agency, all for the essential public
 9 purpose of the development of trade, commerce, industry, and employment opportunities
 10 in its authorized area of operation. A project may be for any industrial, commercial,
 11 business, office, parking, public, or other use, provided that a majority of the members
 12 of the authority determine, by a duly adopted resolution, that the project and such use
 13 thereof would further the public purpose of this chapter. Such term shall include any one
 14 or more buildings or structures used or to be used as a not for profit hospital, not for
 15 profit skilled nursing home, or not for profit intermediate care home subject to regulation
 16 and licensure by the Department of ~~Human Resources~~ Community Health and all
 17 necessary, convenient, or related interests in land, machinery, apparatus, appliances,
 18 equipment, furnishings, appurtenances, site preparation, landscaping, and physical
 19 amenities."

20 SECTION 3-35.

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

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

26 SECTION 3-36.

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

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

33 SECTION 3-37.

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

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

5 **SECTION 3-38.**

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

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

11 **SECTION 3-39.**

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

14 "(A) As used in this paragraph, the term 'medical facility' means any licensed general
 15 or specialized hospital, institutional infirmary, public health center, or diagnostic and
 16 treatment center. The term also includes, without being limited to, any building or
 17 facility, not under the operation or control of a hospital, which is primarily devoted to
 18 the provision of surgical treatment to patients not requiring hospitalization and which
 19 is classified by the Department of ~~Human Resources~~ Community Health as an
 20 ambulatory surgical treatment center."

21 **PART IV**

22 **Effective Dates and Repealer.**

23 **SECTION 4-1.**

24 This Act shall become effective on July 1, 2007; provided, however, that for purposes of
 25 requiring a certificate of need for diagnostic and other imaging services, such provisions shall
 26 become effective upon signature of the Governor or upon the Act becoming law without such
 27 approval.

28 **SECTION 4-2.**

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