

The House Special Committee on Certificate of Need offers the following substitute to HB 568:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state  
2 health planning and development, so as to enact the "Health Care Competition,  
3 Transparency, and Improvement Act"; to provide for extensive revision of the certificate of  
4 need program; to revise the declaration of policy for state health planning; to revise and add  
5 definitions; to establish the Health Strategies Advisory Council as the successor to the Health  
6 Strategies Council; to provide for its composition and duties; to revise provisions relating to  
7 the Department of Community Health; to provide for a temporary moratorium on certificate  
8 of need applications under certain circumstances; to provide for penalties, sanctions, and  
9 enforcement actions relating to certificates of need; to provide for automatic revocation of  
10 a certificate of need by operation of law; to require all health care related projects to receive  
11 a certificate of need; to repeal certain provisions relating to certificates of need for perinatal  
12 services; to provide for requirements and conditions on certificate holders; to provide for  
13 review criteria for certificates of need; to provide for required contents of a certificate of  
14 need application; to provide for timetables and review cycles for certificate of need  
15 applications; to provide for letters of intent; to establish review procedures; to establish the  
16 Certificate of Need Appeal Panel; to provide for administrative hearings and judicial review  
17 of department decisions; to provide for additional exemptions from certificate of need  
18 requirements; to provide for contingent exemptions based on meeting certain conditions; to  
19 abolish the Health Planning Review Board; to abolish the Health Strategies Council and  
20 transfer pending matters to the Health Strategies Advisory Council; to revise provisions  
21 relating to required reports from health care facilities; to provide for the acquisition of a  
22 health care facility; to provide for annual reports; to amend Title 31 of the Official Code of  
23 Georgia Annotated, relating to health, so as to establish a new article with respect to the  
24 powers of the Department of Community Health relating to licensing of health care facilities;  
25 to provide for legislative findings; to provide for applicability; to provide for hearings and  
26 appeals; to provide for rules; to authorize the Department of Community Health to obtain  
27 inspection warrants; to authorize the Department of Community Health to impose sanctions  
28 relating to health care facility licensing; to amend Chapter 7 of Title 31 of the Official Code

1 of Georgia Annotated, relating to the regulation and construction of hospitals and other  
2 health care institutions, so as to transfer licensing functions for health care facilities from the  
3 Department of Human Resources to the Department of Community Health; to provide for  
4 transition; to amend various other titles for purposes of conformity; to provide for related  
5 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **PART I**

8 **SECTION 1-1.**

9 This Act shall be known and may be cited as the "Health Care Competition, Transparency,  
10 and Improvement Act."

11 **PART II**

12 **SECTION 2-1.**

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

15 **"ARTICLE 1**

16 31-6-1.

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

27 31-6-2. Definitions.

28 As used in this chapter, the term:

29 (1) 'Ambulatory surgical or obstetrical facility' means a public or private facility, not a  
30 part of a hospital, which provides surgical or obstetrical treatment performed under

1 general or regional anesthesia in an operating room environment to patients not requiring  
2 hospitalization.

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

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

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

12 ~~(4)~~(5) 'Certificate of need' means an official determination by the department, evidenced  
13 by certification issued pursuant to an application, that the action proposed in the  
14 application satisfies and complies with the criteria contained in this chapter and rules  
15 promulgated pursuant hereto.

16 ~~(5)~~(6) 'Clinical health services' means diagnostic, treatment, or rehabilitative services  
17 provided in a health care facility, or parts of the physical plant where such services are  
18 located in a health care facility, and includes, but is not limited to, the following:  
19 radiology and diagnostic imaging, such as magnetic resonance imaging and positron  
20 emission tomography; radiation therapy; biliary lithotripsy; surgery; intensive care;  
21 coronary care; pediatrics; gynecology; obstetrics; general medical care; medical/surgical  
22 care; inpatient nursing care, whether intermediate, skilled, or extended care; cardiac  
23 catheterization; open-heart surgery; inpatient rehabilitation; and alcohol, drug abuse, and  
24 mental health services.

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

26 ~~(6)~~(8) 'Consumer' means a person who is not employed by any health care facility or  
27 provider and who has no financial or fiduciary interest in any health care facility or  
28 provider.

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

35 ~~(6.1)~~(10) 'Department' means the Department of Community Health established under  
36 Chapter 5A of this title.

37 ~~(7)~~(11) 'Develop,' with reference to a project, means:

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

(B) The expenditure or commitment of funds exceeding ~~\$500,000.00~~ \$1,500,000.00 for orders, purchases, leases, or acquisitions through other comparable arrangements of major medical equipment by a health care facility located in an urban county.

Notwithstanding subparagraphs (A) and (B) of this paragraph, the expenditure or commitment or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications, or working drawings or to acquire, develop, or prepare sites shall not be considered to be the developing of a project. The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount as adjusted for the preceding year by the annual percentage change in a composite construction index representing national construction prices published by the United States government for the preceding calendar year, commencing on October 1, 2008, and on each anniversary thereafter of publication of such index.

~~(7.1)(12)~~ (12) 'Diagnostic, treatment, or rehabilitation center' means any professional or business undertaking, whether for profit or not for profit, which offers or proposes to offer any clinical health service in a setting which is not part of a hospital and in which patients shall not remain for over 23 hours.

~~(8)(13)~~ (13) 'Health care facility' means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers, but only to the extent that ~~subparagraph (G) or (H), or both subparagraphs (G) and (H), of paragraph (14) of this Code section are~~ paragraph (10) of subsection (a) of Code Section 31-6-40 is applicable thereto; ~~and facilities which are devoted to the provision of treatment and rehabilitative care for periods continuing for 24 hours or longer for persons who have traumatic brain injury, as defined in Code Section 37-3-1.~~

~~(9)(14)~~ (14) 'Health maintenance organization' means a public or private organization organized under the laws of this state which:

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

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

(C) Provides physicians' services primarily:

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

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

~~(10)~~(15) 'Health Strategies Advisory Council' or 'council' means the body created by this chapter to advise the Department of Community Health ~~and adopt the state health plan.~~

~~(11)~~(16) 'Home health agency' means a public agency or private organization, or a subdivision of such an agency or organization, which is primarily engaged in providing to individuals who are under a written plan of care of a physician, on a visiting basis in the places of residence used as such individuals' homes, part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse, and one or more of the following services:

(A) Physical therapy;

(B) Occupational therapy;

(C) Speech therapy;

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

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

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

(18) 'Hospital owned limited purpose ambulatory surgical facility' means an ambulatory surgical facility that is owned by a hospital and that provides surgery by physicians that are solely employed by the hospital and practice in a single surgical field as may be verified by utilization of procedure codes appropriate for such surgical field. Such surgical fields shall include, but are not limited to, general surgery, oral surgery, obstetrics/gynecology, urology, gastroenterology, ophthalmology, orthopedics, otorhinolaryngology, neurology, plastic surgery, podiatry, and pulmonary medicine. Such facility shall have no more than four operating rooms, excluding treatment and minor procedures rooms.

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)~~ '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    ~~which, under generally accepted accounting principles consistently applied, is a capital~~  
11    ~~expenditure, except expenditures for acquisition of an existing health care facility not~~  
12    ~~owned or operated by or on behalf of a political subdivision of this state, or any~~  
13    ~~combination of such political subdivisions, or by or on behalf of a hospital authority,~~  
14    ~~as defined in Article 4 of Chapter 7 of this title or certificate of need owned by such~~  
15    ~~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;~~

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 or~~  
26    ~~more items of functionally related diagnostic or therapeutic equipment shall be~~  
27    ~~considered as one project;~~

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

32       ~~(i) Radiation therapy;~~

33       ~~(ii) Biliary lithotripsy;~~

34       ~~(iii) Surgery in an operating room environment, including but not limited to~~  
35       ~~ambulatory surgery; provided, however, this provision shall not apply to surgery~~  
36       ~~performed in the offices of an individual private physician or single group practice of~~  
37       ~~private physicians if such surgery is performed in a facility that is owned, operated,~~

1 and utilized by such physicians who also are of a single specialty and the capital  
2 expenditure associated with the construction, development, or other establishment of  
3 the clinical health service does not exceed the amount of \$1 million; and

4 (iv) Cardiac catheterization; or

5 (H) The purchase, lease, or other use by or on behalf of a diagnostic, treatment, or  
6 rehabilitation center of diagnostic or therapeutic equipment with a value in excess of  
7 \$500,000.00. The acquisition of one or more items of functionally related diagnostic  
8 or therapeutic equipment shall be considered as one project.

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

26 (20) 'Joint venture limited purpose ambulatory surgical facility' means an ambulatory  
27 surgical facility that is owned by a hospital and a single group of physicians practicing  
28 in the facility that are not employed by the hospital and that provide surgery in a single  
29 surgical field as may be verified by utilization of procedure codes appropriate for such  
30 surgical field. Such surgical fields shall include, but are not limited to, general surgery,  
31 oral surgery, obstetrics/gynecology, urology, gastroenterology, ophthalmology,  
32 orthopedics, otorhinolaryngology, neurology, plastic surgery, podiatry, and pulmonary  
33 medicine. Such facility shall have no more than four operating rooms, excluding  
34 treatment and minor procedures rooms.

35 ~~(15)~~(21) 'Nonclinical health services' means services or functions provided or performed  
36 by a health care facility, and the parts of the physical plant where they are located in a

1 health care facility that are not diagnostic, therapeutic, or rehabilitative services to  
2 patients and are not clinical health services defined in this chapter.

3 ~~(16)~~(22) 'Offer' means that the health care facility is open for the acceptance of patients  
4 or performance of services and has qualified personnel, equipment, and supplies  
5 necessary to provide specified clinical health services.

6 ~~(16.1)~~(23) 'Operating room environment' means an environment which meets the  
7 minimum physical plant and operational standards specified for ambulatory surgical  
8 treatment centers in the permit and licensure rules of the department. ~~on January 1, 1991,~~  
9 ~~for ambulatory surgical treatment centers in Section 290-5-33-.10 of the rules of the~~  
10 ~~Department of Human Resources.~~

11 ~~(17)~~(24) 'Person' means any individual, trust or estate, partnership, limited liability  
12 company or partnership, corporation (including associations, joint-stock companies, and  
13 insurance companies), state, political subdivision, hospital authority, or instrumentality  
14 (including a municipal corporation) of a state as defined in the laws of this state. This  
15 term shall include all related parties and entities, including business corporations, general  
16 partnerships, limited partnerships, limited liability companies, limited liability  
17 partnerships, joint ventures, nonprofit corporations, or any other for profit or not for profit  
18 entity that owns or controls, is owned or controlled by, or operates under common  
19 ownership or control with a person.

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

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

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

32 ~~(19) Reserved.~~

33 ~~(20)~~(26) 'Project' means a proposal to take an action for which a certificate of need is  
34 required under this chapter. A project or proposed project may refer to the proposal from  
35 its earliest planning stages up through the point at which the new ~~institutional~~ clinical  
36 health service is offered or health facility established.

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



1 (27) 'Rural county' means a county having a population of less than 35,000 according to  
 2 the United States decennial census of 2000 or any future such census.

3 (28) 'Single practice limited purpose ambulatory surgical facility' means an ambulatory  
 4 surgical facility that is owned and utilized by a sole physician or a single group practice  
 5 of physicians and that provides surgery in a single surgical field as may be verified by  
 6 utilization of procedure codes appropriate for such surgical field. Such surgical fields  
 7 shall include, but are not limited to, general surgery, oral surgery, obstetrics/gynecology,  
 8 urology, gastroenterology, ophthalmology, orthopedics, otorhinolaryngology, neurology,  
 9 plastic surgery, podiatry, and pulmonary medicine. Such facility shall have no more than  
 10 four operating rooms, excluding treatment and minor procedures rooms.

11 ~~(22)~~(29) 'Skilled nursing facility' means a public or private institution or a distinct part  
 12 of an institution which is primarily engaged in providing inpatient skilled nursing care  
 13 and related services for patients who require medical or nursing care or rehabilitation  
 14 services for the rehabilitation of injured, disabled, or sick persons.

15 (30) 'Specialty hospital' means an acute care facility qualified to be licensed as a hospital  
 16 owned by physicians and dedicated to the provision of a single area of medicine or  
 17 surgery, including but not limited to surgery, cardiology, orthopedics, or spine surgery,  
 18 but excluding hospitals dedicated to psychiatric treatment, substance abuse, rehabilitation,  
 19 long-term acute care, traumatic brain injury, or services to children.

20 ~~(23)~~(31) 'State health plan' means a comprehensive program ~~adopted~~ based on  
 21 recommendations by the Health Strategies Advisory Council and the board, approved by  
 22 the Governor, and implemented by the State of Georgia for the purpose of providing  
 23 adequate health care services and facilities throughout the state.

24 (32) 'Urban county' means a county having a population equal to or greater than 35,000  
 25 according to the United States decennial census of 2000 or any future such census.

## 26 ARTICLE 2

27 31-6-20.

28 (a) There is created a Health Strategies Advisory Council to be appointed by the Governor,  
 29 subject to confirmation by the Senate. Any appointment made when the Senate is not in  
 30 session shall be effective until the appointment is acted upon by the Senate. The Health  
 31 Strategies Advisory Council shall be the successor to the Health ~~Policy~~ Strategies Council.  
 32 Those members of the previously existing Health ~~Policy~~ Strategies Council who ~~are~~ were  
 33 serving as such on January 1, ~~1991~~ 2007, shall continue to serve until ~~July 1, 1991,~~  
 34 September 30, 2007 at which time their terms shall expire and that council shall be  
 35 abolished. On and after that date the council shall be composed of ~~25~~ 15 members. Of those

members, at least one shall be appointed from each congressional district. The council shall be composed as follows:

~~(1) One member representing county governments;~~

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

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

~~(A)(1) One member~~ Two members each representing rural hospitals a hospital in a rural county;

~~(B)(2) One member~~ Two members each representing urban hospitals a hospital in an urban county;

~~(C)(3) One member who is a board certified primary care physician in active practice;~~

~~(D)(4) One member who is a physician in a board certified surgical specialty, including the practice of general surgery;~~

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

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

~~(G)(5) One member representing nursing homes;~~

~~(H)(6) One member representing home health agencies;~~

~~(7) One member representing a physician owned freestanding ambulatory surgical facility;~~

~~(8) One member representing the private insurance industry;~~

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

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

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

~~(A)(9) One member representing health care needs of women and children and is a board certified pediatrician, obstetrician, or obstetrician/gynecologist in active practice;~~

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

~~(C)(10) One member representing health care needs of the disabled and elderly;~~

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

~~(E)(11) One member representing health care needs of low-income persons the indigent;~~

~~(12) One member representing mental health care needs; and~~

~~(F)(13) One member representing health care needs of small business personnel;~~

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

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

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

~~and~~

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

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

(c) The members of the council who are appointed to succeed those members whose terms expire ~~July 1, 1991~~ September 30, 2007, shall take office ~~July 1, 1991~~ October 1, 2007, and ~~12~~ seven of them shall be designated in such appointment to serve initial terms of office of two years and ~~13~~ eight of them shall be designated in such appointment to serve initial terms of office of four years. If ~~two~~ an additional ~~members are~~ member is appointed to the council to represent a new congressional district as provided in subsection (b) of this Code section, ~~one~~ said member shall be designated to serve an initial term of office which expires when the above initial two-year terms of office expire ~~and one shall be designated to serve an initial term of office which expires when the above initial four-year terms of office expire.~~ After the initial terms provided in this subsection, members of the council shall be appointed to serve for four-year terms of office. Members of the council shall serve out their terms of office and until their respective successors are appointed and qualified.

(d) Members of the council shall be subject to removal: by

(1) By the Governor after notice and opportunity for hearing for: incompetence, neglect of duty, or for failing

(A) Inability or neglect to perform the duties required of members;

(B) Incompetence; or

(C) Dishonest conduct; or

(2) For failure to attend at least 75 percent of the meetings of the council in any year; provided, however, that an absence caused by a medical condition or death of a family member shall constitute an excused absence and shall not provide grounds for removal.

Vacancies on the council shall be filled by appointment by the Governor, subject to confirmation by the Senate.

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

(f) The members of the council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall receive no salary but shall be reimbursed for their expenses in attending meetings and for transportation costs as

1 authorized by Code Section 45-7-21, which provides for the compensation and allowances  
2 of certain state officials.

3 (g) The functions of the council shall be to:

4 (1) ~~Adopt~~ Review, comment, and make recommendations to the board on components  
5 of the state health plan and submit it to the board for approval which shall include all of  
6 the components of the council's functions and be regularly updated;

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

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

13 (4) Study long-term comprehensive approaches to providing health insurance coverage  
14 to the entire population; and

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

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

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

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

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

30 (2) 'Department' means the Department of Community Health established under Chapter  
31 5A of this title.

32 31-6-21.

33 (a) The Department of Community Health, established under Chapter 5A of this title, is  
34 authorized to administer the certificate of need program established under this chapter and,  
35 within the appropriations made available to the department by the General Assembly of  
36 Georgia and consistently with the laws of the State of Georgia, a state health plan adopted

1 recommended by the Health Strategies Advisory Council and the board and approved by  
 2 the ~~board~~ Governor. The department shall provide, by rule, for procedures to administer  
 3 its functions until otherwise provided by the Board of Community Health.

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

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

7 (2) To prepare and revise a ~~draft~~ components of the state health plan for review by and  
 8 input from the Health Strategies Advisory Council and for state health plan for submission  
 9 ~~to the Health Strategies Council for adoption and~~ submission to the Governor;

10 ~~(3) To assist the Health Strategies Council in the performance of its functions;~~

11 ~~(4)~~(3) With the prior advice, ~~comment, and recommendations~~ as needed, of the Health  
 12 Strategies Advisory Council, except with respect to emergency rules and regulations, to  
 13 adopt, promulgate, and implement rules and regulations sufficient to administer the  
 14 provisions of this chapter including the certificate of need program;

15 ~~(5)~~(4) To define, by rule, the form, content, schedules, and procedures for submission  
 16 of applications for certificates of need and periodic reports;

17 ~~(6)~~(5) To establish time periods and procedures consistent with this chapter to hold  
 18 hearings and to obtain the viewpoints of interested persons prior to issuance or denial of  
 19 a certificate of need;

20 ~~(7) To provide, by rule, for such fees as may be necessary to cover the costs of preparing~~  
 21 ~~the record for appeals before the hearing officers and review board of the decisions of the~~  
 22 ~~department, which costs may include reasonable sharing between the department and the~~  
 23 ~~parties to appeal hearings;~~

24 ~~(8)~~(6) To provide, by rule, for a reasonable and equitable fee schedule for certificate of  
 25 need applications and other health planning determinations;

26 (7) To establish, by rule, uniform need methodologies for new institutional health  
 27 services and health facilities. In developing such uniform need methodologies, the  
 28 department shall, at a minimum, consider the demographic characteristics of the  
 29 population, the health status of the population, service use patterns, standards and trends,  
 30 financial and geographic accessibility, and market economics;

31 ~~(9)~~(8) To grant, deny, ~~or suspend~~, revoke in whole or in part, or place conditions upon  
 32 a certificate of need as applied for or as amended; and

33 ~~(10)~~(9) 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.

~~31-6-21.1.~~ 31-6-22.

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

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

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

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

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

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

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

(c) Any rule or part thereof to which an objection is made by both committees within the 30 day objection period under subsection (b) of this Code section shall not be adopted by the department and shall be invalid if so adopted. A rule or part thereof thus prohibited from being adopted shall be deemed to have been withdrawn by the department unless the department, within the first 15 days of the next regular session of the General Assembly,

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

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

1 of ~~his~~ a veto, the rule shall remain in effect. In the event of ~~his~~ the Governor's approval,  
2 the rule shall be void on the day after the date of his approval.

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

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

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

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

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

23 (j) The department may implement a temporary moratorium on the submission and review  
24 of certificate of need applications at such times when the department is considering  
25 developing review standards and criteria specific to a particular clinical health service or  
26 emerging technology, as defined by the department. Any such moratorium shall be  
27 implemented by issuance of a written policy statement approved and authorized by the  
28 board and shall not be in effect for a time period exceeding six months, except that the  
29 board may authorize a single extension of any such moratorium for an additional  
30 three-month period following expiration of the initial six-month period. Written policy  
31 statements implementing moratoriums pursuant to this subsection shall not be subject to  
32 subsections (b), (c), (d), (e), and (f) of this Code section.

33 (k) Beginning on July 1, 2008, the department shall not consider applications for specialty  
34 hospitals for a period of five years.

35 ~~31-6-22.~~ 31-6-23.

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



1 ~~31-6-45.~~ 31-6-24.

2 (a) The department may revoke a certificate of need in whole or in part, may suspend any  
3 certificate of need for a definite period or for a period of time until any condition which  
4 may be attached to the restoration of said certificate of need has been satisfied, or may  
5 impose a fine in connection with any condition under which a certificate of need was  
6 issued. Such actions may be taken after notice to the holder of the certificate and a fair  
7 hearing, if requested, held in accordance with subsection (i) of this Code section for any  
8 of the following reasons:

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

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

12 (3) Failure to substantially comply with any condition, including minimal volume and  
13 quality standards, upon which the certificate of need was granted.

14 The department may not, however, revoke a certificate of need if a certificate holder, prior  
15 to the implementation of a project for which a certificate of need has been granted, changes  
16 the defined location of the project within the same county less than three miles from the  
17 location specified in the certificate of need for financial reasons or other reasons beyond  
18 its control, including, but not limited to, failure to obtain any required approval from  
19 zoning or other governmental agencies or entities, provided such change in location is  
20 otherwise consistent with the considerations and rules applied in the evaluation of the  
21 project.

22 (b) Any health care facility offering a new clinical health service without having obtained  
23 a certificate of need and which has not previously received a certificate of need for such  
24 health care facility shall be denied a review of an application subject to a hearing pursuant  
25 to subsection (i) of this Code section. In addition, any health care facility that offers a  
26 service requiring a certificate of need pursuant to Code Section 31-6-40 without having  
27 obtained a certificate of need for such service shall be subject to suspension or revocation  
28 of its underlying certificate of need.

29 (c) In the event a service that requires a certificate of need pursuant to Code Section  
30 31-6-40 is knowingly offered without having obtained a certificate of need as required by  
31 this chapter, or the certificate of need for such service is revoked according to the  
32 provisions of this Code section, a facility or applicant may be fined an amount not to  
33 exceed \$5,000.00 per day for every day that the violation of this chapter has existed and  
34 knowingly and willingly continues for the first 30 days, an amount not to exceed  
35 \$10,000.00 per day for every day that the violation of this chapter exists and knowingly and  
36 willingly continues beyond the first 30 days and through 60 days, and an amount not to  
37 exceed \$25,000.00 per day for every day that the violation of this chapter exists and

1 knowingly and willingly continues beyond 60 days; provided, however, that the  
2 expenditure or commitment of or incurring an obligation for the expenditure of funds to  
3 take or perform actions not subject to this chapter or to acquire, develop, or prepare a  
4 health care facility site for which a certificate of need application is denied shall not be a  
5 violation of this chapter and shall not be subject to such a fine. Any fine levied as provided  
6 in this Code section shall not be collected until an opportunity for a fair hearing has been  
7 provided pursuant to subsection (i) of this Code section.

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

12 (e) Pursuant to a condition placed upon the issuance of a certificate of need or exemption  
13 pursuant to paragraph (1) of subsection (e) of Code Section 31-6-41, paragraph (9) or (10)  
14 of subsection (a) of Code Section 31-6-47, or paragraph (1) of subsection (e) of Code  
15 Section 31-6-47, a certificate holder or exemption holder may be fined an amount equal to  
16 the difference in the monetary amount of clinical health services to indigent and charity  
17 care patients on which the certificate of need was predicated and the monetary amount  
18 actually provided by the certificate holder or exemption holder. Any fine levied as  
19 provided in this subsection shall not be collected until an opportunity for a fair hearing has  
20 been provided pursuant to subsection (i) of this Code section.

21 (f) For purposes of this Code section, the State of Georgia, acting by and through the  
22 department, may in its discretion by settlement dispose of an enforcement or sanctioning  
23 action enforced pursuant to this Code section. In such cases, all parties, successors, and  
24 assigns to any settlement agreement shall be bound by the terms specified in the settlement,  
25 and violation thereof by any certificate holder or any exemption holder shall constitute  
26 grounds for any action enumerated in subsection (a) of this Code section.

27 (g) The department shall have the authority to make public or private investigations or  
28 examinations inside or outside of this state to determine whether all provisions of this Code  
29 section or any other law, rule, regulation, or formal order relating to the provisions of Code  
30 Section 31-6-40 has been violated. Such investigations may be initiated at any time in the  
31 discretion of the department and may continue during the pendency of any action initiated  
32 by the department pursuant to subsection (a) of this Code section. For the purpose of  
33 conducting any investigation or inspection pursuant to this subsection, the department shall  
34 have the authority to require the production of any books, records, papers, or other  
35 information related to any certificate of need issue.

36 (h) Pursuant to the investigation, enforcement, and sanctioning powers given to the  
37 department by this Code section and other applicable laws, the department may assess

against any health care facility reasonable and necessary expenses incurred by the department during any administrative or legal action required by the failure of the health care facility to fully comply with the provisions of any law, rule, regulation, or formal order related to its certificate of need or application. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, enforcement, or sanctioning actions result in adverse findings, as finally determined by the department.

(i) Any enforcement action or sanction undertaken by the department pursuant to this Code section shall be reviewable by a fair hearing, if requested, pursuant to the provisions of Chapter 13 of Title 50, except that such hearing must be requested within ten business days of the date of the enforcement or sanctioning action and a timely requested hearing shall then be convened within 20 days.

(j) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(k) The department is authorized to promulgate rules and regulations to implement the provisions of this Code section.

31-6-25.

A health care facility which has a certificate of need or is otherwise authorized to operate pursuant to this chapter shall have such certificate of need automatically revoked by operation of law without any action by the department when that facility's permit to operate is finally revoked pursuant to Code Section 31-7-4 by order of the department. For purposes of this subsection, the date of such final revocation shall be as follows:

(1) When there is no appeal of the order pursuant to Article 2 of Chapter 5A of this title, the one hundred and eightieth day after the date upon which expires the time for appealing the revocation order without such an appeal being filed; or

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

### ARTICLE 3

31-6-40.

~~(a) From and after July 1, 1999, only such new institutional health services or health care facilities as are found by the department to be needed shall be offered in the state. Prior to~~

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

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

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

20 ~~(1.1) Any person who, on July 1, 1999:~~

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

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

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

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

32 ~~(2) A person claiming an exemption under paragraph (1) or (1.1) of this subsection shall~~  
33 ~~apply to the Health Planning Agency for that exemption no later than July 1, 1992. The~~  
34 ~~application shall be in such form and manner as established by the Health Planning~~  
35 ~~Agency to provide sufficient proof that the applicant qualifies for the exemption claimed.~~  
36 ~~The Health Planning Agency shall notify the applicant within 90 days after the required~~  
37 ~~application and proof have been properly submitted that the application for exemption is~~

1 ~~denied; otherwise, the application shall be deemed granted by operation of law upon the~~  
2 ~~ninety-first day. Such a grant of the exemption shall be final and no appeal therefrom~~  
3 ~~shall be authorized. A denial of such application for exemption shall constitute a~~  
4 ~~contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'~~  
5 ~~Any person having a certificate of need or authorization to offer the services for which~~  
6 ~~an application for exemption has been denied may intervene in the contested case if such~~  
7 ~~person offers those services within the same service area as the service area in which~~  
8 ~~were to be offered the services for which the application for exemption was denied.~~

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

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

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

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

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

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

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

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

34 (a) Unless exempt under Code Section 31-6-47, from and after October 1, 2007, all health  
35 care related projects, as described in this subsection, are subject to review and must file an  
36 application for a certificate of need with the department. The department is exclusively

1 authorized to determine whether a health care related project is subject to review under this  
2 chapter. Health care related projects include:

3 (1) The construction, development, or other establishment of a new health care facility;

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

12 (B) The purchase or lease by or on behalf of a health care facility or a diagnostic,  
13 treatment, or rehabilitation center located in an urban county of diagnostic or  
14 therapeutic equipment with a value in excess of \$1,500,000.00. The acquisition of one  
15 or more items of functionally related diagnostic or therapeutic equipment shall be  
16 considered as one project.

17 The dollar amounts specified in this paragraph shall be adjusted annually by an amount  
18 calculated by multiplying each such dollar amount as adjusted for the preceding year by  
19 the annual percentage change in a composite construction index representing national  
20 construction prices published by the United States government for the preceding calendar  
21 year, commencing on October 1, 2008, and on each anniversary thereafter of publication  
22 of such index. In calculating the dollar amount of a proposed project for purposes of this  
23 paragraph, the costs of all items subject to review by this chapter and items not subject to  
24 review by this chapter associated with and simultaneously developed or proposed with the  
25 project shall be counted, except for the expenditure or commitment of or incurring an  
26 obligation for the expenditure of funds to develop certificate of need applications, studies,  
27 reports, schematics, or preliminary plans and specifications or working drawings or to  
28 acquire sites;

29 (3) The provision of diagnostic imaging services in a rural county utilizing equipment  
30 that includes, but is not limited to, magnetic resonance imaging, computed tomography  
31 (CT) scanning, positron emission tomography (PET) scanning, positron emission  
32 tomography/computed tomography, and other advanced imaging services as defined by  
33 the department by rule, but such term shall not include X-rays, fluoroscopy, or ultrasound  
34 services;

35 (4) Any increase in the bed capacity of a health care facility or in the bed capacity of a  
36 clinical health service except as provided in Code Section 31-6-47;

1 (5) Any increase in the number of freestanding ambulatory surgery operating rooms  
2 except as provided in Code Section 31-6-47;

3 (6) Any increase in the number of units of major radiation therapy or radiosurgical  
4 equipment;

5 (7) Any increase in the counties served by a home health agency, except for the transfer  
6 of counties from one licensed home health agency to another as may be provided for by  
7 the department's rules;

8 (8) Clinical health services which are offered in or through a health care facility, except  
9 for a diagnostic, treatment, or rehabilitation center, which were not offered on a regular  
10 basis in or through such health care facility within the 12 month period prior to the time  
11 such services would be offered;

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

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

19 (A) Radiation therapy;

20 (B) Biliary lithotripsy;

21 (C) Birthing services;

22 (D) Surgery in an operating room environment; and

23 (E) Cardiac catheterization.

24 (b) It shall be unlawful for any person to undertake a project subject to review pursuant  
25 to subsection (a) of this Code section without a valid certificate of need.

26 ~~31-6-40.1:~~

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

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

35 ~~(1) Skilled nursing facilities;~~

36 ~~(2) Intermediate care facilities; and~~

1     ~~(3) Home health agencies,~~  
2     ~~to only such times after the department has determined there is an unmet need for such~~  
3     ~~facilities. The department shall make a determination as to whether or not there is an unmet~~  
4     ~~need for each type of facility at least every six months and shall notify those requesting~~  
5     ~~such notification of that determination.~~

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

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

16    ~~31-6-40.2.~~

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

31-6-41.

(a) Subject to conditions placed on a A certificate of need, such certificate shall be valid only for the defined scope, location, cost, service area, and person named in an application, as it may be amended, and as such scope, location, area, cost, and person are approved by the department, unless such certificate of need owned by an existing health care facility is transferred to a person who acquires such existing facility. In such case, the certificate of need shall be valid for the person who acquires such a facility and for the scope, location, cost, and service area approved by the department. In addition, a certificate of need shall be valid for an alternate location if the existing facility that holds the certificate of need is relocated pursuant to an exemption contained in Code Section 31-6-47. For purposes of a home health agency, the defined location shall be the individual counties approved to be served in the certificate of need application.

(b) ~~A certificate of need shall be valid and effective for a period of 12 months after it is issued, or such greater period of time as may be specified by the department at the time the certificate of need is issued. Within the effective period after the grant of a certificate of need, the applicant of a proposed project~~ A certificate holder shall implement a project for which a certificate of need has been obtained within 12 months of the issuance of the certificate of need. Implementation means that a certificate holder shall fulfill reasonable performance and scheduling requirements specified by the department, by rule, to assure reasonable progress toward timely completion of a project.

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

(c) A certificate holder shall complete the project and begin offering the clinical health service, if applicable, within five years of the issuance of the certificate of need for hospitals and hospital related projects and within three years of the issuance of the certificate of need for all other projects. By rule, the department may provide for extension of the completion period of a certificate of need when a certificate holder, by petition,

1 makes a good faith showing that the project will be completed within the extended period  
2 and that the reasons for the extension are beyond the control of the applicant.

3 (d) Provided that a certificate holder has complied with subsections (b) and (c) of this  
4 Code section, a certificate of need shall be valid and effective until the certificate holder  
5 ceases offering a service authorized by the certificate of need for a period in excess of 12  
6 months or until the certificate of need is revoked or suspended pursuant to Code Section  
7 31-6-24.

8 (e) On or after October 1, 2007, the department may issue a certificate of need predicated  
9 upon statements of intent expressed by an applicant in the application for a certificate of  
10 need or predicated upon conditions to which an applicant has agreed during the review  
11 process. Any conditions imposed on a certificate of need based on such statements of intent  
12 or upon such agreement shall be stated on the face of the certificate of need. Pursuant to  
13 this subsection, the department may issue one or more conditions as a condition for the  
14 grant of a certificate of need, including, but not limited to, the following:

15 (1) An agreement to provide a specified amount of clinical health services to indigent  
16 and charity care patients the amount of which may range from 1 percent to 6 percent of  
17 the adjusted gross revenue of the applicant as may be specified by rule by the department.  
18 For purposes of this paragraph, the department shall apply the medicare allowable  
19 amount or, if no such amount exists, the Medicaid allowable amount plus 10 percent;

20 (2) An agreement to participate in Medicaid or the PeachCare for Kids Program;

21 (3) An agreement to provide a clinical health service for which the department, by  
22 written policy statement, has designated as underrepresented. The department shall issue  
23 written policy statements at least annually delineating the services which are designated  
24 as underrepresented in this state; and

25 (4) An intent to obtain minimum volumes associated with the offering of a clinical health  
26 service, except that the department may not revoke a certificate of need for failure to meet  
27 this condition unless a certificate holder has failed to substantially comply with the  
28 minimum volume condition. For purposes of this paragraph, 'substantial compliance'  
29 shall mean that the department has notified the certificate holder or exemption holder in  
30 writing of the failure to meet the minimum volume condition and the certificate holder  
31 has obtained 80 percent compliance with the minimum volume condition within one year  
32 of notification from the department. Notwithstanding this paragraph, the department shall  
33 allow a certificate holder a reasonable amount of time to meet minimum volumes after  
34 a certificate of need has been awarded to the certificate holder.

35 Nothing in this subsection shall prohibit the department from predicated a certificate of  
36 need on conditions not listed in this subsection.

1 (f) A certificate holder may apply to the department for a modification of conditions  
2 imposed under subsection (e) of this Code section. If the holder of a certificate of need  
3 demonstrates good cause why the conditions of the certificate of need should be modified,  
4 the department shall be authorized to reissue the certificate of need with such modifications  
5 as may be appropriate. The department shall by rule define the factors constituting good  
6 cause for modification.

7 (g) Failure to annually report compliance with any condition upon which the issuance of  
8 the certificate was predicated shall constitute noncompliance with the condition.

9 (h) The department may initiate any sanctioning or enforcement action pursuant to Code  
10 Section 31-6-24 for failure to adhere to a condition upon which a certificate of need was  
11 issued.

12 (i) Any condition upon which a certificate of need is predicated shall transfer to any person  
13 acquiring a health care facility that made assurances regarding the conditions.

14 31-6-42.

15 ~~(a) The written findings of fact and decision, with respect to the department's grant or~~  
16 ~~denial of a certificate of need, shall be based on the applicable considerations specified in~~  
17 ~~this Code section and reasonable rules promulgated by the department interpretive thereof.~~  
18 ~~The department shall issue a certificate of need to each applicant whose application is~~  
19 ~~consistent with the following considerations and such rules deemed applicable to a project,~~  
20 ~~except as specified in subsection (d) of Code Section 31-6-43: The department shall~~  
21 ~~determine if an application is reviewable and shall review applications for certificate of~~  
22 ~~need determinations for clinical health services and health care facilities pursuant to the~~  
23 ~~following criteria:~~

24 (1) ~~The proposed new institutional health services are~~ clinical health service or health  
25 care facility is reasonably consistent with the relevant general goals and objectives of the  
26 state health plan;

27 (2) The population residing in the area served, or to be served, by the ~~new institutional~~  
28 ~~health service~~ clinical health service or health care facility has a need for such services;

29 (3) Existing alternatives for providing services in the service area the same as the ~~new~~  
30 ~~institutional health service~~ clinical health service or health care facility proposed are  
31 ~~neither~~ not currently available, implemented, similarly utilized, ~~nor~~ capable of providing  
32 a less costly alternative, or capable of providing a similar quality of care or no certificate  
33 of need to provide such alternative services has been issued by the department and is  
34 ~~currently valid~~ in the process of being implemented or is pending administrative or  
35 judicial review;

1 (4) The applicant has demonstrated an ability to provide quality of care and, if  
 2 applicable, the applicant has a positive record of providing quality of care;

3 ~~(4)(5)~~ The project clinical health service or health care facility can be adequately  
 4 financed and is, in the immediate and long term, financially feasible;

5 (6) The clinical health service or health care facility can obtain the necessary resources,  
 6 including health care personnel and management personnel;

7 (7) The clinical health service or health care facility will enhance access to services for  
 8 residents of the proposed service area;

9 ~~(5)(8)~~ The effects of ~~new institutional health service~~ the clinical health service or health  
 10 care facility on payors for health services, including governmental payors, are not  
 11 unreasonable;

12 ~~(6)(9)~~ The costs and methods of a proposed construction project, including the costs and  
 13 methods of energy provision and conservation, are reasonable and adequate for quality  
 14 health care;

15 ~~(7)(10)~~ The ~~new institutional health service~~ clinical health service or health care facility  
 16 proposed is reasonably financially and physically accessible to the residents of the  
 17 proposed service area;

18 ~~(8)(11)~~ The proposed ~~new institutional health service~~ clinical health service or health  
 19 care facility has a positive relationship to the existing health care delivery system in the  
 20 service area;

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

23 ~~(10)(12)~~ The proposed ~~new institutional health service~~ clinical health service or health  
 24 care facility provides, or would provide, a substantial portion of its services to individuals  
 25 not residing in its defined service area or the adjacent service area;

26 ~~(11)(13)~~ The proposed ~~new institutional health service~~ clinical health service or health  
 27 care facility conducts biomedical or behavioral research projects or new service  
 28 development which is designed to meet a national, regional, or state-wide need;

29 ~~(12)(14)~~ The proposed ~~new institutional health service~~ clinical health service or health  
 30 care facility meets the clinical needs of health professional training programs which  
 31 request assistance; and

32 ~~(13)(15)~~ The proposed ~~new institutional health service~~ clinical health service or health  
 33 care facility fosters improvements or innovations in the financing or delivery of health  
 34 services, promotes health care quality assurance or cost effectiveness, or fosters  
 35 competition that is shown to result in lower patient costs without a loss of the quality of  
 36 care; and.

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

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

10    ~~(c) In the case of applications that are joined for comparative review, the department may~~  
11    ~~give favorable consideration to projects and applicants where the applicant agrees to~~  
12    ~~provide a clinical health service that is underrepresented in the service area of the proposed~~  
13    ~~project, and the department shall condition the award of a certificate of need upon the~~  
14    ~~applicant's providing such underrepresented clinical health service. Such favorable~~  
15    ~~consideration shall only be available where each applicant competing in the comparative~~  
16    ~~review may provide such underrepresented clinical health services.~~

17    ~~(d) In the case of applications for ambulatory surgical facilities, the department is~~  
18    ~~authorized to provide favorable consideration to applicants proposing joint ventures~~  
19    ~~between hospitals and physicians.~~

20    ~~(c)(e)~~ (e) If the denial of an application for a certificate of need for a ~~new institutional health~~  
21    ~~service~~ clinical health service or health care facility proposed to be offered or developed  
22    by a:

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

25     (2) Minority administered hospital facility utilized for the training of minority medical  
26     practitioners

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

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

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

(h) In instances where there is a numerical need methodology, the department shall not determine need based on an applicant's own utilization.

31-6-42.1.

(a) An application for a certificate of need must contain:

(1) Identification of the applicant, including ownership and corporate information;

(2) Identification of the site and documentation relating to the applicant's entitlement to the site;

(3) A detailed description of the proposed project and a statement of its purpose and need in relation to the service area;

(4) A detailed description of the staffing and operation of the proposed clinical health service or health care facility;

(5) A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement must include:

(A) A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate of need program or a capital expenditure review program. This listing shall include the applicant's actual or proposed financial commitment to those projects and an assessment of their impact on the applicant's ability to provide the proposed project;

(B) A detailed listing of the needed capital expenditures, including sources of funds; and

(C) A detailed financial projection, including a statement of the projected revenue and expenses for the first two years of operation after completion of the proposed project. This statement shall include a detailed evaluation of the impact of the proposed project on the cost of other services provided by the applicant;

(6) Financial statements of the applicant. In an application submitted by an existing health care facility, financial condition documentation shall include, but need not be

1 limited to, a balance sheet and a profit and loss statement of the two previous years'  
2 operation; and

3 (7) Project design and construction schedules, if applicable.

4 (b) The applicant must certify that it will license, if applicable, and operate the clinical  
5 health service or health care facility. For an existing health care facility, the applicant must  
6 be the license holder of the facility.

7 (c) The department shall further define the application requirements by rule and by form.

8 31-6-43.

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

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

34 ~~(c) Except as provided in subsection (d) of this Code section, there shall be a time limit of~~  
35 ~~90 days for review of a project, beginning on the day the department declares the~~  
36 ~~application complete for review. The department may adopt rules for determining when it~~



1 is not practicable to complete a review in 90 days and may extend the review period upon  
2 written notice to the applicant but only for an extended period of not longer than an  
3 additional 30 days.

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

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

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

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

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

33 (f) In the event that the department's initial review of an application indicates that an  
34 application is not consistent with the applicable considerations contained in Code Section  
35 31-6-42 and in the department's applicable rules, on or before the sixtieth day after an  
36 application, or the last application joined pursuant to subsection (d) of this Code section,  
37 is declared complete for review, the department shall provide the applicant an opportunity

~~to meet with the department to discuss the application and an opportunity to submit additional information. Such additional information shall be submitted prior to the seventy-fifth day after the application, or the last application joined pursuant to subsection (d) of this Code section, is declared complete for review.~~

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

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

(a) The department by rule shall provide for certificate of need applications to be submitted on a timetable or cycle basis no less than two times per calendar year for each clinical health service; provide for review on a timely basis; and provide for all completed applications pertaining to similar types of services or facilities affecting the same service area to be considered in relation to each other.

(b) At least 25 days prior to filing a certificate of need application, the applicant shall file with the department a letter of intent regarding the development of a project subject to review. No letter of intent shall be required for expedited projects as defined by rule by the department. Letters of intent must describe the proposal; specify the number of beds or

1 units sought, if any; identify the services to be provided and the specific service area; and  
2 identify the applicant.

3 (c) The department shall adopt rules setting minimum and maximum filing fees for  
4 certificate of need applications based on the proposed cost of a project. A nonrefundable  
5 filing fee shall be paid at the time an application is filed with the department. If the  
6 approved capital expenditure or operating cost upon which the fees were based is higher  
7 than the initially proposed capital expenditure, then the filing fee shall be recalculated and  
8 the difference in fees, if any, shall be paid before the certificate of need may be issued.

9 (d) An applicant shall file an application with the department. Within five business days  
10 after the applicable application filing deadline established by department rule, the  
11 department shall determine if the application is complete. If the application is incomplete,  
12 the department shall request specific information from the applicant necessary for the  
13 application to be complete; provided, however, the department may make only one such  
14 request. If the requested information is not filed with the department within five business  
15 days after the date of the department's request, the application shall be deemed incomplete  
16 and deemed withdrawn from consideration.

17 (e) Except as provided in subsection (o) of this Code section, the department shall issue  
18 a notice of intent to grant or deny a certificate of need no later than 120 days following the  
19 date all applications pertaining to similar types of services or facilities affecting the same  
20 service area have been deemed complete. Should the department fail to provide a notice  
21 of intent within 120 days, all applications shall be deemed to be approved as of the one  
22 hundred and twenty-first day following notification that all applications pertaining to  
23 similar types of services or facilities affecting the same service area have been deemed  
24 complete. The notice of intent shall set forth in writing the department's findings of fact  
25 and determinations upon which its decision is based.

26 (f) By rule, the department shall define appropriate timetables for the following events  
27 during the 120 day review process provided for in subsection (e) of this Code section and  
28 the 45 day review process provided for in subsection (o) of this Code section:

29 (1) An opportunity for an applicant to meet with the department to discuss its  
30 application;

31 (2) An opportunity for an applicant to submit supplemental information; and

32 (3) An opportunity for any party that is opposed to an application to meet with the  
33 department to discuss reasons for opposing such application. Such a meeting shall allow  
34 parties reasonable time to present information and allow the applicant an opportunity to  
35 present rebuttal information at that meeting.

36 (g) Upon the request of any interested party within ten business days after an application  
37 has been determined to be complete for review, a public hearing may be held at the

1 department's discretion if the department determines that a proposed project involves  
2 issues of great local public interest. The department is authorized to promulgate rules to  
3 provide when a project involves issues of great local public interest.

4 (h) The department's review of and final action on applications shall be in accordance with  
5 criteria set out in this chapter and administrative rules.

6 (i) Notwithstanding other provisions of this article, when the Governor has declared a state  
7 of emergency in a region of the state, existing health care facilities in the affected region  
8 may seek emergency approval from the department to make expenditures in excess of the  
9 capital expenditure threshold or to offer services that may otherwise require a certificate  
10 of need. The department shall give special expedited consideration to such requests and  
11 may authorize such requests for good cause. Once the state of emergency has been lifted,  
12 any services offered by an affected health care facility under this subsection shall cease to  
13 be offered until such time as the health care facility that received the emergency  
14 authorization has requested and received a certificate of need. For purposes of this  
15 subsection, 'good cause' means that authorization of the request shall directly resolve a  
16 situation posing an immediate threat to the health and safety of the public.

17 (j) As to each application, the notice of intent issued by the department pursuant to  
18 subsection (e) or (o) of this Code section shall:

19 (1) Give notice of intent to grant a certificate of need for the project in its entirety;

20 (2) Give notice of intent to grant a certificate of need for identifiable portions of the  
21 project; or

22 (3) Give notice of intent to deny a certificate of need.

23 When the department is considering multiple applications pertaining to similar types of  
24 services or facilities affecting the same service area in the same cycle, the department shall  
25 have the discretion to issue no certificate of need or one or more certificates of need.

26 (k) If the department intends to grant a certificate of need, the notice of intent shall also  
27 include any conditions which the department intends to attach to the certificate of need.

28 (l) The department shall define by rule the appropriate mechanism for publication of the  
29 notice of intent.

30 (m) If no administrative hearing is requested pursuant to Code Section 31-6-44, the notice  
31 of intent shall become the final order of the department. The agency shall provide a copy  
32 of the final order to the appropriate regional development center and the chief elected  
33 official of the county and municipal governments, if any, in whose boundaries an approved  
34 project will be located.

35 (n) The department shall establish, by rule, procedures whereby requirements for the  
36 process of review and issuance of a certificate of need may be modified and expedited as  
37 a result of emergency situations.

1 (o) Applications solely reviewable pursuant to paragraph (2) of subsection (a) of Code  
2 Section 31-6-40 shall not be subject to the requirements of subsections (b), (e), and (g) of  
3 this Code section. Such applications may be submitted on any business day, and the  
4 department shall issue a notice of intent to grant a certificate of need no later than 45 days  
5 following the date the application has been deemed complete. Should the department fail  
6 to provide a notice of intent within 45 days, the application shall be deemed to be approved  
7 as of the forty-sixth day following notification that the application has been deemed  
8 complete. The notice of intent shall set forth in writing the department's findings of fact  
9 and determinations upon which its decision is based.

10 31-6-44.

11 ~~(a) There is created the Health Planning Review Board, which shall be an agency separate~~  
12 ~~and apart from the department. That review board which existed on June 30, 1994, is~~  
13 ~~continued in existence after that date but on and after July 1, 1994, shall be constituted as~~  
14 ~~provided in this subsection. Those members of the Health Planning Review Board serving~~  
15 ~~as such on January 1, 1994, or any person selected to fill a vacancy in such membership~~  
16 ~~shall continue to serve as such members until July 1, 1994, at which time the terms of~~  
17 ~~office of such members shall expire. On and after July 1, 1994, the review board shall be~~  
18 ~~composed of 11 members appointed by the Governor, with one from each congressional~~  
19 ~~district. The Governor shall appoint persons to the review board who are familiar with the~~  
20 ~~health care industry but who do not have a financial interest in or represent or have any~~  
21 ~~compensation arrangement with any health care facility. The Governor shall also name~~  
22 ~~from among such members a chairperson and a vice chairperson of the review board, both~~  
23 ~~of whom shall be attorneys licensed to practice law in this state. The vice chairperson shall~~  
24 ~~have the same authority as the chairperson; provided, however, the vice chairperson shall~~  
25 ~~not exercise such authority unless expressly delegated by the chairperson or in the event~~  
26 ~~the chairperson becomes incapacitated, as determined by the Governor. Vacancies on the~~  
27 ~~board caused by resignation, death, or any other cause shall be filled for the unexpired term~~  
28 ~~in the same manner as the original appointment. No person required to register with the~~  
29 ~~Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the~~  
30 ~~Governor to the board.~~

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

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

19 (c) Any applicant for a project, or any competing applicant, or any competing health care  
20 facility that has notified the department prior to its decision that such facility is opposed  
21 to the application before the department, or any county or municipal government in whose  
22 boundaries the proposed project will be located, who is aggrieved by a decision of the  
23 department shall have the right to an initial administrative appeal hearing before a hearing  
24 officer or to intervene in such hearing. Such request for hearing or intervention shall be  
25 made within 30 days of the date of the decision made pursuant to Code Section 31-6-43.  
26 In the event that an appeal is requested, the chairperson of the review board shall appoint  
27 a hearing officer for each such hearing within 50 days after the date of the decision made  
28 pursuant to Code Section 31-6-43. Within 14 days after the appointment of the hearing  
29 officer, such hearing officer shall set the date or dates for the hearing and shall provide the  
30 parties with written notice mailed at least 14 days before the date of commencement of  
31 such hearing. The hearing shall be commenced within 120 days of the filing of the request  
32 for a hearing, unless the applicant consents or, in the case of competing applicants, all  
33 applicants consent to an extension of this time period to a specified date. Unless the  
34 applicant consents or, in the case of competing applicants, all applicants consent to an  
35 extension of said 120 day period, any hearing officer who fails to commence a hearing  
36 within the required time period shall not be eligible for continued service as a hearing  
37 officer for the purposes of this Code section. The hearing officer shall have the authority

1 ~~to dispose of all motions made by any party before the issuance of the hearing officer's~~  
2 ~~decision and shall make such rulings as may be required for the conduct of the hearing.~~

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

12 ~~(e) The issue for the decision by the hearing officer shall be whether, and the hearing~~  
13 ~~officer shall order the issuance of a certificate of need if, in the hearing officer's judgment~~  
14 ~~the application is consistent with the considerations as set forth in Code Section 31-6-42~~  
15 ~~and the department's rules, as the hearing officer deems such considerations and rules~~  
16 ~~applicable to the review of the project. The hearing officer shall also consider whether the~~  
17 ~~department committed prejudicial procedural error in its consideration of the application.~~  
18 ~~The hearing officer shall also consider whether the appeal lacks substantial justification and~~  
19 ~~whether such appeal was undertaken solely for the purpose of delay or harassment.~~  
20 ~~Appellants or applicants shall proceed first with their cases before the hearing officer in the~~  
21 ~~order determined by the hearing officer, and the department, if a party, shall proceed last.~~  
22 ~~In the event of a consolidated hearing on applications which were joined pursuant to~~  
23 ~~subsection (d) of Code Section 31-6-43, the hearing officer shall have the same powers~~  
24 ~~specified for the department in subsection (d) of Code Section 31-6-43 to order the~~  
25 ~~issuance of no certificate of need or one or more certificates of need.~~

26 ~~(f) All evidence shall be presented at the initial administrative appeal hearing conducted~~  
27 ~~by the appointed hearing officer. A party or intervenor may present any relevant evidence~~  
28 ~~on all issues raised by the hearing officer or any party to the hearing or revealed during~~  
29 ~~discovery, except that, unless in response to an issue raised by an opponent or the hearing~~  
30 ~~officer or revealed during discovery, a party or intervenor may not present a new need~~  
31 ~~study or analysis that is substantially different from any such study or analysis submitted~~  
32 ~~to the department prior to its decision and that could reasonably have been available for~~  
33 ~~submission to the department prior to its decision. Except for such limitation on new~~  
34 ~~studies or analyses, the hearing officer may consider the latest data available, including~~  
35 ~~updates of studies previously submitted, in deciding whether an application is consistent~~  
36 ~~with the applicable considerations or rules.~~

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

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

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

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

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



1 ~~accept as adequate to support such findings, inferences, conclusions, or decisions, which~~  
2 ~~such evidentiary standard shall be in excess of the 'any evidence' standard contained in~~  
3 ~~other statutory provisions. If, before the date set for the review board's meeting, application~~  
4 ~~is made to the chairperson for leave to present additional evidence and it is shown to the~~  
5 ~~satisfaction of the chairperson that the additional evidence is material and there were good~~  
6 ~~reasons for failure to present it in the proceedings before the hearing officer, the~~  
7 ~~chairperson may order that the additional evidence be taken before the same hearing officer~~  
8 ~~who rendered the initial decision upon conditions determined by the chairperson. The~~  
9 ~~hearing officer may modify the initial decision by reason of the additional evidence and~~  
10 ~~shall file that evidence and any modifications, new findings, or decision with the review~~  
11 ~~board. Unless leave is given by the chairperson in accordance with the provisions of this~~  
12 ~~subsection, the review board may not consider new evidence under any circumstances. In~~  
13 ~~all circumstances, the review board's decision shall be based upon considerations as set~~  
14 ~~forth in Code Section 31-6-42 and the department's rules.~~

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

19 ~~(j) Unless the hearing officer's decision becomes the department's decision by operation~~  
20 ~~of law as provided in subsection (h) of this Code section, the final decision of the review~~  
21 ~~board shall become the department's decision by operation of law. Such final decision shall~~  
22 ~~be the final department decision for purposes of Chapter 13 of Title 50, the 'Georgia~~  
23 ~~Administrative Procedure Act.' The appeals process provided by this Code section shall be~~  
24 ~~the administrative remedy only for decisions made by the department pursuant to Code~~  
25 ~~Section 31-6-43 which involve the approval or denial of applications for certificates of~~  
26 ~~need.~~

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

30 ~~(l) If, based upon the findings of the hearing officer, the review board determines that the~~  
31 ~~appeal filed by any party of a decision of the department lacks substantial justification and~~  
32 ~~was undertaken solely for the purpose of delay or harassment, the review board may enter~~  
33 ~~an award in its written order against such party and in favor of the successful party or~~  
34 ~~parties, including the department, of all or any part of their respective reasonable and~~  
35 ~~necessary attorney's fees and expenses of litigation, as the review board deems just. Such~~  
36 ~~award may be enforced by any court undertaking judicial review of the final decision. In~~  
37 ~~the absence of any petition for judicial review, then such award shall be enforced, upon due~~

1 application, by any court having personal jurisdiction over the party against whom such an  
2 award is made.

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

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

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

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

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

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

19 ~~(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted~~  
20 ~~exercise of discretion.~~

21 (a) Effective October 1, 2007, there is created the Certificate of Need Appeal Panel, which  
22 shall be an agency separate and apart from the department and shall consist of a panel of  
23 independent hearing officers. The purpose of the appeal panel shall be to serve as a panel  
24 of independent hearing officers to review the department's initial decision to grant or deny  
25 a certificate of need application. The appeal panel shall be composed of five members  
26 appointed by the Governor, for a term of up to four years each. The Governor shall appoint  
27 to the appeal panel attorneys who practice law in this state and who are familiar with the  
28 health care industry but who do not have a financial interest in or represent or have any  
29 compensation arrangement with any health care facility. Each member of the appeal panel  
30 shall be an active member of the State Bar of Georgia in good standing, and each attorney  
31 shall have maintained such active status for the five years immediately preceding such  
32 person's appointment. The Governor shall name from among such members a chairperson  
33 and a vice chairperson of the appeal panel. The vice chairperson shall have the same  
34 authority as the chairperson; provided, however, the vice chairperson shall not exercise  
35 such authority unless expressly delegated by the chairperson or in the event the chairperson  
36 becomes incapacitated, as determined by the Governor. Vacancies on the appeal panel  
37 caused by resignation, death, or any other cause shall be filled for the unexpired term in the

1 same manner as the original appointment. No person required to register with the Secretary  
2 of State as a lobbyist or registered agent shall be eligible for appointment by the Governor  
3 to the appeal panel. All persons appointed by the Governor shall, to the greatest extent  
4 possible, conform to the Georgia Code of Judicial Conduct in discharging their duties  
5 under this chapter.

6 (b) The appeal panel shall promulgate reasonable rules for its operation and rules of  
7 procedure for the conduct of initial administrative appeal hearings held by the appointed  
8 hearing officers, including an appropriate fee schedule for filing such appeals. Members  
9 of the appeal panel shall serve as hearing officers for appeals that are assigned to them on  
10 a random basis by the chairperson of the appeal panel. The members of the appeal panel  
11 shall receive no salary but shall be reimbursed for their expenses in attending meetings and  
12 for transportation costs as authorized by Code Section 45-7-21, which provides for  
13 compensation and allowances of certain state officials; provided, however, that the  
14 chairperson and vice chairperson of the appeal panel shall also be compensated for their  
15 services rendered to the appeal panel outside of attendance at an appeal panel meeting, such  
16 as for time spent assigning hearing officers, the amount of which compensation shall be  
17 determined according to regulations of the Department of Administrative Services. Appeal  
18 panel members shall receive compensation for the administration of the cases assigned to  
19 them, including prehearing, hearing, and posthearing work, in an amount determined to be  
20 appropriate and reasonable by the department. Such compensation to the members of the  
21 appeal panel shall be made by the Department of Administrative Services.

22 (c) Within 21 days after publication of a notice of intent or with the approval deemed by  
23 operation of law, as provided for in subsection (e) or (o) of Code Section 31-6-43, any  
24 person authorized under subsection (d) of this Code section to participate in a hearing may  
25 file a written request for an administrative hearing on a final decision of the department;  
26 failure to file a written request for a hearing within such 21 days shall constitute a waiver  
27 of any right to a hearing and a waiver of the right to contest the final decision of the  
28 department. A copy of the request for hearing shall be served on the applicant.

29 (d) In administrative proceedings challenging the issuance or denial of a certificate of  
30 need, only applicants considered by the department in the same batching cycle are entitled  
31 to a comparative hearing on their applications. Existing health care facilities located in the  
32 same service area may initiate or intervene in an administrative hearing upon a showing  
33 that such existing facility will be substantially affected by the issuance of any certificate  
34 of need, provided that the health care facility participated in an opposition meeting as  
35 provided for by paragraph (3) of subsection (f) of Code Section 31-6-43. The county and  
36 municipal governments of the location in which the new clinical health service or health

1 care facility is to be located may also initiate or intervene in an administrative proceeding  
2 pursuant to this Code section.

3 (e) Appellants shall be assessed a hearing request fee as established by the appeal panel  
4 pursuant to subsection (b) of this Code section. Appellants shall submit the appropriate fee  
5 before a hearing is conducted. Any fees assessed under this subsection shall be deposited  
6 into the state treasury.

7 (f) Except as otherwise provided in this Code section, all administrative hearings under  
8 this Code section shall be conducted by the hearing officer in accordance with the  
9 provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act' relating  
10 to contested cases.

11 (g) Administrative hearings under this Code section shall be held in Atlanta.

12 (h) Administrative hearings shall commence within 60 days after the hearing officer has  
13 been assigned.

14 (i) Administrative hearings conducted pursuant to this Code section shall be conducted as  
15 a full evidentiary hearing.

16 (j) The issue for the hearing officer's consideration at the administrative hearing shall be  
17 whether in the hearing officer's judgment the application is consistent with the criteria set  
18 forth in subsection (a) of Code Section 31-6-42 and the department's rules as the hearing  
19 officer deems such criteria and rules applicable to the project. The hearing officer shall  
20 also consider whether the department committed prejudicial procedural error in its  
21 consideration of the application; provided, however, the applicant's failure to strictly  
22 comply with the requirements of Code Section 31-6-42.1 shall not be cause for dismissal  
23 of the application unless the failure to comply impairs the fairness of the proceeding or  
24 affects the correctness of the action taken by the department.

25 (k) A party may present any relevant evidence on all issues raised by the hearing officer  
26 or any party to the hearing, except that, unless in response to an issue raised by an opposing  
27 party or the hearing officer, a party may not present a new need study or analysis that is  
28 substantially different from any such study or analysis submitted at a meeting or in writing  
29 to the department prior to its decision and that could reasonably have been available for  
30 submission to the department at a meeting or in writing prior to its decision.

31 (l) To the extent not inconsistent with this Code section, for the purpose of administrative  
32 review of the department's decision to issue or deny a certificate of need, the hearing  
33 officer shall conduct proceedings in conformance with the Georgia rules of civil procedure  
34 for trial courts of record and the local rules for use in the civil courts of Fulton County.

35 (m) The hearing officer shall issue a recommended order in writing within 30 days after  
36 the receipt of proposed recommended orders or the deadline for submission of such  
37 proposed recommended orders, whichever is earlier; however, in no case shall the deadline

1 for issuance of the recommended order exceed 60 days from the conclusion of the hearing.  
2 The hearing officer shall file such order with the chairperson of the appeal panel. The  
3 chairperson shall send the written recommended order to the person who requested the  
4 review, to the person proposing the new clinical health service or health care facility, and  
5 to the department. The department shall make available the order to others upon request.

6 (n) The written recommended order of the hearing officer shall become the final order of  
7 the department unless appealed to the commissioner within 14 days by any party to the  
8 administrative hearing.

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

24 (p) The hearing officer or the commissioner, as applicable, shall award reasonable  
25 attorney's fees and costs to the prevailing party if the hearing officer or commissioner, as  
26 applicable, finds that there was a complete absence of a justiciable issue of law or fact  
27 raised by the losing party; provided, however, the department shall not be required to pay  
28 attorney's fees and costs.

29 31-6-45.

30 (a) A party to an administrative hearing for an application for a certificate of need has the  
31 right, within not more than 30 days after the date of the final order, to seek judicial review  
32 of the final order in the Superior Court of Fulton County or the superior court of the county  
33 in which the applicant's health care facility will be or is located. The department shall be  
34 a party in any such proceeding.

35 (b) In such judicial review, the court shall not substitute its judgment for that of the  
36 department as to the weight of the evidence on questions of fact. The court may affirm the

1 decision of the department or remand the case for further proceedings. The court may  
2 reverse or modify the decision if substantial rights of the appellant have been prejudiced  
3 because the administrative findings, inferences, conclusions, or decisions are:

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

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

6 (3) Made upon unlawful procedure;

7 (4) Affected by other error of law;

8 (5) Clearly erroneous in view of reliable, probative, and substantial evidence on the  
9 whole record; or

10 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
11 exercise of discretion.

12 (c) If the court does not hear the case within 60 days of the date of docketing in the  
13 superior court, the final order of the department shall be considered affirmed by operation  
14 of law unless a hearing originally scheduled to be heard within the 60 days has been  
15 continued to a date certain by order of the court. In the event a hearing is held later than  
16 60 days after the date of docketing in the superior court because the same has been  
17 continued to a date certain by order of the court, the final order of the department shall be  
18 considered affirmed by operation of law if no order of the court disposing of the issues on  
19 appeal has been entered within 20 days after the date of the continued hearing. If a case  
20 is heard within 60 days from the date of docketing in the superior court, the final order of  
21 the department shall be considered affirmed by operation of law if no order of the court  
22 dispositive of the issues on appeal has been entered within 20 days of the date of the  
23 hearing.

24 (d) In the event a hearing is not held and a decision is not rendered by the superior court  
25 within the time provided in subsection (c) of this Code section, the final order of the  
26 department shall be affirmed by operation of law. The date of entry of judgment for  
27 purposes of appeal pursuant to Code Section 5-6-35 of a decision affirmed by operation of  
28 law without action of the superior court shall be the last date on which the superior court  
29 could have taken action under subsection (c) of this Code section.

30 (e) The court shall award reasonable attorney's fees and costs to any party that responds  
31 to a petition for judicial review and prevails by obtaining a final order; provided, however,  
32 the department shall not be required to pay attorney's fees and costs.

33 ~~31-6-45.2. Termination by health care facility of participation as provider of medical~~  
34 ~~assistance; monetary penalty:~~

35 ~~(a) Any proposed or existing health care facility which obtains a certificate of need on or~~  
36 ~~after April 6, 1992, based in part upon assurances that it will participate as a provider of~~

1 ~~medical assistance, as defined in paragraph (6) of Code Section 49-4-141, and which~~  
2 ~~terminates its participation as a provider of medical assistance, shall be subject to a~~  
3 ~~monetary penalty in the amount of the difference between the Medicaid covered services~~  
4 ~~which the facility agreed to provide in its certificate of need application and the amount~~  
5 ~~actually provided; provided, however, that this Code section shall not apply if:~~

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

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

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

14 ~~(A) Changes in the adequacy of medical assistance payments, as defined in paragraph~~  
15 ~~(5) of Code Section 49-4-141, provided that at least 10 percent of the facility's~~  
16 ~~utilization during the preceding 12 month period was attributable to services to~~  
17 ~~recipients of medical assistance, as defined in paragraph (7) of Code Section 49-4-141.~~  
18 ~~Medical assistance payments to a facility shall be presumed adequate unless the~~  
19 ~~revenues received by the facility from all sources are less than the total costs set forth~~  
20 ~~in the cost report for the preceding full 12 month period filed by such facility pursuant~~  
21 ~~to the state plan as defined in paragraph (8) of Code Section 49-4-141 which are~~  
22 ~~allowed under the state plan for purposes of determining such facility's reimbursement~~  
23 ~~rate for medical assistance and the aggregate amount of such facility's medical~~  
24 ~~assistance payments (including any amounts received by the facility from recipients of~~  
25 ~~medical assistance) during the preceding full 12 month cost reporting period is less than~~  
26 ~~85 percent of such facility's Medicaid costs for such period. Medicaid costs shall be~~  
27 ~~determined by multiplying the allowable costs set forth in the cost report, less any audit~~  
28 ~~adjustments, by the percentage of the facility's utilization during the cost reporting~~  
29 ~~period which was attributable to recipients of medical assistance;~~

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

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

36 ~~(b) A facility seeking to terminate its enrollment as a provider of medical assistance shall~~  
37 ~~submit a written request to the Department of Community Health documenting good cause~~

1 ~~for termination. The Department of Community Health, after consultation with the~~  
2 ~~department, shall grant or deny the facility's request within 30 days. If the Department of~~  
3 ~~Community Health denies the facility's request, the facility shall be entitled to a hearing~~  
4 ~~conducted in the same manner as an evidentiary hearing conducted by the Department of~~  
5 ~~Community Health pursuant to the provisions of Code Section 49-4-153 within 30 days of~~  
6 ~~the Department of Community Health's decision.~~

7 ~~(c) The imposition of the monetary penalty provided in this Code section shall commence~~  
8 ~~upon notification to the commissioner of the department by the commissioner of~~  
9 ~~community health that said facility has terminated its participation as a provider of medical~~  
10 ~~assistance. The monetary penalty shall be levied and collected by the department on an~~  
11 ~~annual basis for every year in which the facility fails to participate as a provider of medical~~  
12 ~~assistance. Penalties authorized under this Code section shall be subject to the same notices~~  
13 ~~and hearings as provided for levy of fines under Code Section 31-6-45.~~

14 31-6-46.

15 ~~The department shall prepare and submit an annual report to the Health and Human~~  
16 ~~Services Committee of the Senate and the Health and Human Services Committee of the~~  
17 ~~House of Representatives about its operations and decisions for the preceding 12 month~~  
18 ~~period, not later than 30 days prior to each convening of the General Assembly in regular~~  
19 ~~session. Either committee may request any additional reports or information, including~~  
20 ~~decisions, from the department at any time, including a period in which the General~~  
21 ~~Assembly is not in regular session. Reserved.~~

22 31-6-47.

23 (a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to the  
24 following facilities:

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

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

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

31 (4) Offices of private physicians or dentists whether for individual or group practice,  
32 except as otherwise provided in ~~subparagraphs (G) and (H) of paragraph (14)~~  
33 paragraph (10) of subsection (a) of Code Section 31-6-2 31-6-40 and provided that the  
34 office does not provide a clinical health service that would otherwise require a certificate  
35 of need;



1 (5) Mental health facilities and hospitals operated by the Department of Human  
2 Resources;

3 (6) Personal care homes;

4 (7) Continuing care retirement communities, provided that the skilled nursing component  
5 of the facility is for the exclusive use of residents of the continuing care retirement  
6 community and that a written exemption is obtained from the department; provided,  
7 however, that new sheltered nursing home beds may be used on a limited basis by  
8 persons who are not residents of the continuing care retirement community for a period  
9 up to five years after the date of issuance of the initial nursing home license. For the first  
10 year, the continuing care retirement community sheltered nursing facility may utilize not  
11 more than 50 percent of its licensed beds for patients who are not residents of the  
12 continuing care retirement community. In the second year of operation, the continuing  
13 care retirement community shall allow not more than 40 percent of its licensed beds for  
14 new patients who are not residents of the continuing care retirement community. In the  
15 third year of operation, the continuing care retirement community shall allow not more  
16 than 30 percent of its licensed beds for new patients who are not residents of the  
17 continuing care retirement community. In the fourth year of operation, the continuing  
18 care retirement community shall allow not more than 20 percent of its licensed beds for  
19 new patients who are not residents of the continuing care retirement community. In the  
20 fifth year of operation, the continuing care retirement community shall allow not more  
21 than 10 percent of its licensed beds for new patients who are not residents of the  
22 continuing care retirement community. At no time during the first five years shall the  
23 continuing care retirement community sheltered nursing facility occupy more than 50  
24 percent of its licensed beds with patients who are not residents under contract with the  
25 continuing care retirement community; provided, however, that at no time shall any  
26 existing patient be forced to leave the continuing care retirement community to comply  
27 with this paragraph. At the end of the five-year period, the continuing care retirement  
28 community sheltered nursing facility shall be utilized exclusively by residents of the  
29 continuing care retirement community, and at no time shall a resident of a continuing care  
30 retirement community be denied access to the sheltered nursing facility. The department  
31 is authorized to promulgate rules and regulations regarding the use and definition of  
32 'sheltered nursing facility' in a manner consistent with this Code section.

33 (8) Facilities which are devoted to the provision of treatment and rehabilitative care for  
34 periods continuing for 24 hours or longer for persons who have traumatic brain injury,  
35 as defined in Code Section 37-3-1;

1 (9) Single practice limited purpose ambulatory surgical facilities, provided that it obtains  
2 a written exemption from the department and provided that it commits to the following  
3 conditions:

4 (A) The provision of services to patients that cannot pay for service by committing to  
5 one of the following:

6 (i) The provision of services to Medicaid and PeachCare for Kids Program recipients  
7 at a level similar to other providers in the community who offer a similar limited  
8 surgical purpose or at a standard established by the department by rule based on other  
9 providers in the community and the limited surgical purpose; or

10 (ii) The provision of uncompensated services to Medicaid and PeachCare for Kids  
11 Program recipients and to patients classified as indigent or charity at a rate of up to  
12 6 percent of adjusted gross revenue of the facility if the facility is not a participant in  
13 Medicaid and the PeachCare for Kids Program.

14 For purposes of this subparagraph, the department shall consider the cost of  
15 uncompensated charity and indigent care provided in the ambulatory surgical facility  
16 as the medicare allowable amount including the professional and technical components,  
17 or, if no such amount exists, the cost of the Medicaid allowable amount including the  
18 professional and technical components plus 10 percent. The department shall consider  
19 the cost of uncompensated care provided to Medicaid and PeachCare for Kids Program  
20 recipients in the ambulatory surgical facility as twice the Medicaid allowable amount  
21 including the professional and technical components. The department shall also  
22 consider the medicare allowable professional component, or, if no such amount exists,  
23 the Medicaid allowable professional component plus 10 percent for uncompensated  
24 surgery performed at a hospital by physician members of the facility;

25 (B) The provision of complete and accurate annual reports to the department pursuant  
26 to Code Section 31-6-70; and

27 (C) Generally, physicians authorized to perform procedures within the facility shall  
28 demonstrate a willingness to become a member of a medical staff at a hospital within  
29 a reasonable distance from the facility at the time the facility submits an application for  
30 review as determined by the department. In no case shall a pending investigation or  
31 temporary suspension of privileges of a physician by a hospital be considered by the  
32 department as grounds to suspend, deny, or revoke a written exemption under this  
33 paragraph. The facility shall have the capability to transfer a patient immediately to a  
34 hospital with adequate emergency room services;

35 (10) Hospital owned and joint venture limited purpose ambulatory surgical facilities  
36 owned or jointly owned by a hospital in the same county as the hospital, provided that it

1 obtains a written exemption from the department and provided that it commits to the  
2 following conditions:

3 (A) The provision of services to patients that cannot pay for service by committing to  
4 one of the following:

5 (i) The provision of services to Medicaid and PeachCare for Kids Program recipients  
6 at a level similar to other providers in the community who offer a similar limited  
7 surgical purpose or at a standard established by the department by rule based on other  
8 providers in the community and the limited surgical purpose; or

9 (ii) The provision of uncompensated services to Medicaid and PeachCare for Kids  
10 Program recipients and to patients classified as indigent or charity at a rate of up to  
11 6 percent of adjusted gross revenue of the facility if the facility is not a participant in  
12 Medicaid and the PeachCare for Kids Program.

13 For purposes of this subparagraph, the department shall consider the cost of  
14 uncompensated charity and indigent care provided in the ambulatory surgical facility  
15 as the medicare allowable amount including the professional and technical components,  
16 or, if no such amount exists, the cost of the Medicaid allowable amount including the  
17 professional and technical components plus 10 percent. The department shall consider  
18 the cost of uncompensated care provided to Medicaid and PeachCare for Kids Program  
19 recipients in the ambulatory surgical facility as twice the Medicaid allowable amount  
20 including the professional and technical components. The department shall also  
21 consider the medicare allowable professional component, or, if no such amount exists,  
22 the Medicaid allowable professional component plus 10 percent for uncompensated  
23 surgery performed at a hospital by physician members of the facility;

24 (B) The provision of complete and accurate annual reports to the department pursuant  
25 to Code Section 31-6-70; and

26 (C) Generally, physicians authorized to perform procedures within the facility shall  
27 demonstrate a willingness to become a member of a medical staff at a hospital within  
28 a reasonable distance from the facility at the time the facility submits an application for  
29 review as determined by the department. In no case shall a pending investigation or  
30 temporary suspension of privileges of a physician by a hospital be considered by the  
31 department as grounds to suspend, deny, or revoke a written exemption under this  
32 paragraph. The facility shall have the capability to transfer a patient immediately to a  
33 hospital with adequate emergency room services; and

34 (11) Religious nonmedical health care institutions, as defined in 42 U.S.C. 1395x(ss)(1)  
35 on October 1, 2007, listed and certified by a national accrediting organization.

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

(b) Notwithstanding the other provisions of this chapter, this chapter shall not apply to the following expenditures:

~~(6)~~(1) ~~Site acquisitions~~ Expenditures to acquire sites for health care facilities or preparation or development costs for such sites prior to the decision to file a certificate of need application;

~~(7)~~(2) Expenditures related to adequate preparation and development of an application for a certificate of need;

~~(8)~~(3) The commitment of funds conditioned upon the obtaining of a certificate of need;

~~(9)~~(4) Expenditures for the acquisition of existing health care facilities by stock or asset purchase, merger, consolidation, or other lawful means unless the facilities are owned or operated by or on behalf of a:

(A) Political subdivision of this state;

(B) Combination of such political subdivisions; or

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

~~(9.1)~~(5) Expenditures for the restructuring of or for the acquisition by stock or asset purchase, merger, consolidation, or other lawful means of an existing health care facility which is owned or operated by or on behalf of any entity described in subparagraph (A), (B), or (C) of paragraph ~~(9)~~(4) of this subsection only if such restructuring or acquisition is made by any entity described in subparagraph (A), (B), or (C) of paragraph ~~(9)~~(4) of this subsection;

~~(10)~~(6) Expenditures for the minor repair of a health care facility, or parts thereof or services provided or equipment used therein, ~~or replacement of equipment, including, but not limited to, CT scanners;~~

(7) Expenditures for the replacement of equipment that previously obtained a certificate of need or was exempt from certificate of need requirements under previously existing provisions of this chapter;

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

~~(12)~~(9) Cost overruns whose percentage of the cost of a project is equal to or less than the cumulative annual rate of increase in the composite construction index, ~~published by the Bureau of the Census of the Department of Commerce, of the United States government;~~ percentage of change in a composite construction index representing national construction prices, published by the United States government, calculated from

1 the date of approval of the project, provided that a written exemption is obtained from the  
2 department;

3 (10) Capital expenditures for the development or construction of nonclinical projects,  
4 including parking lots, parking decks, or other parking facilities; computer systems,  
5 hardware, software, and other information technology; construction of medical office  
6 buildings and addition of nonclinical space within medical office buildings; and  
7 renovation of physical infrastructure when clinical health services are not being added or  
8 affected;

9 (11) Provided that a written exemption is obtained from the department, capital  
10 expenditures for a project otherwise requiring a certificate of need if those expenditures  
11 are for a project to remodel, renovate, replace, or any combination thereof, a  
12 medical-surgical hospital and:

13 (A) That hospital:

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

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

16 (iii) Has at any time been designated as a disproportionate share hospital by the  
17 department; and

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

20 (B) That project:

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

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

23 (II) Any increase in bed capacity;

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

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

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

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

31 (12) The purchase or lease by or on behalf of a health care facility or a diagnostic,  
32 treatment, or rehabilitation center located in an urban county of diagnostic or therapeutic  
33 equipment with a value less than or equal to \$1,500,000.00, provided that the facility or  
34 center provides complete and accurate annual reports to the department pursuant to Code  
35 Section 31-6-70. Such amount shall be adjusted annually as set forth in paragraph (11)  
36 of Code Section 31-6-2. The acquisition of one or more items of functionally related  
37 diagnostic or therapeutic equipment shall be considered as one project; and

1 (13) Any expenditure that is made by a facility that has agreed to the provisions of  
2 subsection (e) of this Code section and that is related to the provision of a clinical health  
3 service that is exempt pursuant to subsection (c) of this Code section.

4 (c) Notwithstanding the other provisions of this chapter, this chapter shall not apply to the  
5 following clinical health services, provided that the facility offering the service has  
6 complied with the requirements of subsection (e) of this Code section:

7 (1) Increases in the general or medical-surgical bed capacity of an existing short-stay  
8 hospital, provided that:

9 (A) The bed increase is not an expansion of the bed capacity of a clinical health service  
10 that would otherwise require a certificate of need;

11 (B) The hospital has no uncorrected licensure deficiencies; and

12 (C) The hospital is accredited by the Joint Commission on Accreditation of Healthcare  
13 Organizations;

14 (2) Hospital based basic maternal and newborn services as defined by the Council on  
15 Maternal & Infant Health on October 1, 2007;

16 (3) The provision of diagnostic imaging services utilizing fluoroscopy, X-ray, and  
17 ultrasound;

18 (4) For urban counties, the provision of diagnostic imaging services utilizing equipment  
19 and functionally related items that includes, but is not limited to, magnetic resonance  
20 imaging, computed tomography, and nuclear imaging so long as the expenditure to obtain  
21 such equipment is less than \$1,000,000.00. Such amount shall be adjusted annually as  
22 set forth in paragraph (11) of Code Section 31-6-2; and

23 (5) The provision of diagnostic imaging services utilizing positron emission tomography,  
24 regardless of cost, in a hospital that provides treatment for patients with cancer.

25 (d) Notwithstanding the other provisions of this chapter, this chapter shall not apply to the  
26 following:

27 ~~(13)~~(1) Transfers from one health care facility to another such facility of major medical  
28 equipment previously approved under or exempted from certificate of need review,  
29 except where such transfer results in the institution of a new clinical health service for  
30 which a certificate of need is required in the facility acquiring said equipment, provided  
31 that such transfers are recorded at net book value of the medical equipment as recorded  
32 on the books of the transferring facility;

33 ~~(14)~~(2) ~~New institutional health services~~ Health care related projects that might  
34 otherwise be subject to review pursuant to Code Section 31-6-40 that are to be provided  
35 by or on behalf of health maintenance organizations or related health care facilities in  
36 circumstances defined by the department pursuant to federal law; and

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

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

~~(A) That hospital:~~

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

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

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

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

~~(B) That project:~~

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

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

~~(II) Any increase in bed capacity;~~

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

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

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

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

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

(3) The relocation and replacement of existing health care facilities that have obtained a certificate of need or were exempt from certificate of need requirements under previously existing provisions of this chapter, provided that the replacement facility is located within a reasonable distance, as defined by department rule, from the existing facility; provided, however, that any skilled nursing facility or intermediate care facility or hospital in a rural county shall be authorized to relocate anywhere within the same county. The department shall promulgate rules pursuant to this paragraph to establish appropriate distances based on the nature of the facility and whether the existing service area of the health care facility is rural or urban. In the event a skilled nursing facility or intermediate care facility relocates in whole or in part pursuant to this Code section, the

department may allow such facility to divide into two or more facilities in the same county if the department determines that the proposed division is financially feasible and would result in improved patient care, notwithstanding any minimum size requirements in the department's rules promulgated pursuant to this chapter. Any such relocation pursuant to this paragraph shall not be considered as creating a new health care facility. Where applicable, a relocation pursuant to this paragraph shall include the transfer of a portion of existing patients or residents in an amount to be prescribed by rule by the department. Any health care facility to be exempt under this paragraph shall not propose to offer any new or expanded clinical health services at the new location.

(e) A person shall obtain a written exemption from the department prior to offering any clinical health service pursuant to subsection (c) of this Code section and shall provide the following as a condition of the exemption:

(1) The provision of services to patients that cannot pay for service by committing to one of the following:

(i) The provision of services to Medicaid and PeachCare for Kids Program recipients at a level similar to other providers in the community, or at a standard established by the department by rule, and the provision of services to patients classified as indigent or charity at a rate of up to 6 percent of adjusted gross revenue of the exemption holder; or

(ii) The provision of services to patients classified as indigent or charity at a rate of up to 10 percent of adjusted gross revenue of the exemption holder if the exemption holder is not a participant in Medicaid and the PeachCare for Kids Program; and

For purposes of this paragraph, the department shall apply the medicare allowable amount or, if no such amount exists, the Medicaid allowable amount plus 10 percent;

(2) The provision of complete and accurate annual reports to the department pursuant to Code Section 31-6-70.

The written exemption shall be predicated upon the exemption holder's assurance that such services and reports will be provided by the exemption holder.

(f) An exemption holder may apply to the department for a modification of conditions imposed under subsection (e) of this Code section or paragraph (9) or (10) of subsection (a) of this Code section. If the holder of an exemption demonstrates good cause why the conditions of the exemption should be modified, the department shall reissue the written exemption with such modifications as may be appropriate. The department shall by rule define the factors constituting good cause for modification.

(g) Failure to annually report compliance with any condition upon which the issuance of an exemption was predicated pursuant to subsection (e) of this Code section or paragraph



1 (9) or (10) of subsection (a) of this Code section shall constitute noncompliance with the  
2 condition.

3 (h) The department may initiate any sanctioning or enforcement action pursuant to Code  
4 Section 31-6-24 for failure to adhere to a condition upon which an exemption was issued.

5 ~~(e)~~(i) By rule, the department shall establish a procedure for expediting or waiving reviews  
6 of certain projects the nonreview of which it deems compatible with the purposes of this  
7 chapter, in addition to expenditures exempted from review by this Code section.

8 (j) A request for exemption under this Code section may be made at any time and shall not  
9 be subject to batching requirements. The request shall be supported by such documentation  
10 as the department requires by rule. The department shall assess a fee of \$250.00 for each  
11 request for an exemption submitted under this Code section.

12 (k) Any condition upon which a written exemption is predicated shall transfer to any  
13 person acquiring a facility that made assurances regarding the conditions.

#### 14 ARTICLE 4

15 ~~31-6-48.~~ 31-6-60.

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

~~31-6-49. 31-6-61.~~

~~All matters transferred to the Health Strategies Council and the Health Planning Review Board by the previously existing provisions of this Code section and that are in effect on June 30, 1999, shall automatically remain in such council or board on and after July 1, 1999, until otherwise disposed of. All matters transferred to the Health Planning Agency by the previously existing provisions of this Code section and that are in effect on June 30, 1999, shall automatically be transferred to the Department of Community Health on July 1, 1999. All matters of the Health Strategies Council that are pending on September 30, 2007, shall automatically be transferred to the Health Strategies Advisory Council for disposition in accordance with this chapter. All matters of the Health Planning Review Board that are pending on September 30, 2007, shall automatically be transferred to the Certificate of Need Appeal Panel or to the commissioner, as appropriate, on October 1, 2007.~~

~~31-6-50. Application of review procedures to expenditures under Section 1122 of the Social Security Act.~~

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

#### ARTICLE 4

#### ARTICLE 5

~~31-6-70.~~

~~(a) There shall be required from each hospital health care facility in this state, including all ambulatory surgical centers, imaging centers, and specialty hospitals, whether or not exempt from obtaining a certificate of need under this chapter, an annual report of certain health care information to be submitted to the department. ~~The report shall be due on the last day of January and shall cover the 12 month period preceding each such calendar year.~~ The report shall cover the 12 month period preceding each such calendar year. The department shall, by rule, define the time periods for submission of an annual report.~~

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

~~(1) Total gross revenues;~~

- 1 (2) Bad debts;
- 2 (3) Amounts of free care extended, excluding bad debts;
- 3 (4) Contractual adjustments;
- 4 (5) Amounts of care provided under a Hill-Burton commitment;
- 5 (6) Amounts of charity care provided to indigent persons;
- 6 (7) Amounts of outside sources of funding from governmental entities, philanthropic
- 7 groups, or any other source, including the proportion of any such funding dedicated to the
- 8 care of indigent persons; ~~and~~
- 9 (8) For cases involving indigent persons:
  - 10 (A) The number of persons treated;
  - 11 (B) The number of inpatients and outpatients;
  - 12 (C) Total patient days;
  - 13 (D) The number of patients categorized by county of residence; and
  - 14 (E) The indigent care costs incurred by the ~~hospital~~ health care facility by county of
  - 15 residence;
- 16 (9) The public, profit, or nonprofit status of the health care facility and whether or not
- 17 the facility is a teaching hospital;
- 18 (10) The number of board certified physicians, by specialty, on the staff of the health
- 19 care facility;
- 20 (11) Inpatient or outpatient acquired infection rates;
- 21 (12) For ambulatory surgical or obstetrical facilities:
  - 22 (A) The number of nursing hours per day for each health care facility and per patient
  - 23 visit; and
  - 24 (B) The types of surgery performed and emergency back-up systems available for that
  - 25 surgery;
- 26 (13) For hospitals:
  - 27 (A) The availability of emergency services, trauma centers, intensive care units, and
  - 28 neonatal intensive care units;
  - 29 (B) Procedures hospitals specialize in and the number of such procedures performed
  - 30 annually; and
  - 31 (C) Cesarean section rates by number and as a percentage of deliveries; and
- 32 (14) Data available on a recognized uniform billing statement or substantially similar
- 33 form generally used by health care providers which reflect, but are not limited to, the
- 34 following type of data obtained during a 12 month period during each reporting period:
- 35 unique longitudinal nonidentifying patient code, the patient's birth date, sex, race,
- 36 geopolitical subdivision code, ZIP Code, county of residence, type of bill, beginning and
- 37 ending service dates, date of admission, discharge date, disposition of the patient, medical

or health record number, principal and secondary diagnoses, principal and secondary procedures and procedure dates, external cause of injury codes, diagnostic related group (DRG) number, DRG procedure coding used, revenue codes, total charges and summary of charges by revenue code, payor or plan identification, or both, place of service code such as the uniform hospital identification number and hospital name, attending physician and other ordering, referring, or performing physician identification number, and specialty code.

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

(d) In addition to facility annual reports, the department is authorized to obtain annual reports related to specific clinical health services that require a certificate of need and to clinical health services that are exempt predicated upon a condition of providing an annual report.

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

~~(e)~~(f) In the event ~~that~~ the department does not receive an annual report from a ~~hospital~~ health care facility within 30 days following the date such report was due or receives a timely but incomplete report, the department shall notify the ~~hospital~~ health care facility regarding the deficiencies by certified mail or statutory overnight delivery, return receipt requested. In the event such deficiency continues for 15 days after said notification has been given, the health care facility shall be liable for a penalty of \$1,000.00 for such violation and an additional penalty of \$500.00 for each day during which such violation continues. The department may revoke a certificate of need or exemption if the health care facility, having been notified pursuant to this subsection, fails to submit such data within 90 days of notification.

~~(f)~~(g) No application for a certificate of need under Article 3 of this chapter shall be considered as complete if the applicant has not submitted the annual ~~report~~ reports required by ~~subsection~~ subsections (a) and (d) of this Code section.

31-6-71.

(a) Any person who acquires a health care facility by stock or asset purchase, merger, consolidation, or other lawful means shall notify the department of such acquisition, the date thereof, and the name and address of the acquiring person. Such notification shall be made in writing to the department within 45 days following the acquisition and the

acquiring person may be fined by the department in the amount of \$500.00 for each day that such notification is late. Such fine shall be paid into the state treasury.

(b) Penalties authorized under this Code section shall be subject to the same notices and hearing for the levy of fines under Code Section 31-6-24.

31-6-72.

The department shall prepare and submit an annual report to the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House of Representatives about its operations and decisions for the preceding 12 month period, not later than 30 days prior to each convening of the General Assembly in regular session. Either committee may request any additional reports or information, including decisions, from the department at any time, including a period in which the General Assembly is not in regular session. The annual report of the department shall include the department's assessment of the adequacy of the department's rules in meeting the policy and purposes of this chapter and the adequacy of all existing need methodologies in promoting access to health care and the appropriate distribution of health care services. The annual report shall also identify new and emerging technologies for which the department anticipates the development of a new need methodology and service-specific rules in the upcoming year."

### **PART III**

#### **SECTION 3-1.**

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Chapter 5A, relating to the functions of the Department of Community Health, by designating Code Sections 31-5A-1 through 31-5A-6 as Article 1 and adding a new Article 2, to read as follows:

#### **"ARTICLE 2**

**31-5A-20.**

Given the complexities of the regulation of health care facilities and health services in this state, it is the intent of the General Assembly to simplify the effects of this regulation. Recognizing that the manner in which health care is currently regulated at the state level is fragmented and in order to decrease the burdens of such fragmentation, on and after October 1, 2007, those clinical health services and health care facilities that are required to obtain certificates of need from the Department of Community Health pursuant to

Chapter 6 of this title shall also obtain permits and be licensed by the Department of Community Health. On and after October 1, 2007, those health care related facilities that are not required to obtain a certificate of need shall continue to be licensed by the Department of Human Resources.

31-5A-21.

This article shall be applicable only to the functions of the Department of Community Health related to the licensure and permitting of health care facilities pursuant to Articles 1, 7, 11, and 14 of Chapter 7 of this title.

31-5A-22.

(a) Hearings shall be required with respect to any proceeding required by Article 1 of Chapter 7 of this title or the Constitution of Georgia. All such hearings shall be conducted as provided in this Code section.

(b) Where hearing is required or afforded, notice thereof as provided in this Code section shall be given in person or by registered or certified mail or statutory overnight delivery to all interested parties; provided, however, in proceedings where the number of interested parties is so numerous as to make individual notice impracticable, notice shall be given by publication or by such other means reasonably calculated to afford actual notice as may be prescribed by the department or person conducting such hearing. All notices shall state (1) the time and place of hearing and nature thereof and (2) the matters of fact and law asserted and must be given at least five days before the day set for hearing unless the department determines that an imminent threat to the public health exists which requires shorter notice.

(c) All interested parties at such hearings shall have, upon request, compulsory process as provided in Code Section 31-5A-24 and shall have the right to adduce evidence and conduct cross-examination of all adverse witnesses. Any member of the department, its authorized officials or agents, or any attorney at law may administer oaths to all witnesses. No witness shall be abused while under examination or required to incriminate himself or herself. Where possible, all evidence and proceedings shall be reported.

(d) The department is authorized and empowered to employ and appoint hearing examiners to conduct hearings, issue compulsory process, administer oaths, and submit their findings and recommendations to the department; provided, however, that any such examiner shall be a member in good standing of the State Bar of Georgia.

31-5A-23.

(a)(1) Any person who is a party to a proceeding and who is aggrieved or adversely affected by any final decision of the department may have review thereof by appeal to the

1 department. Any person who is a party to a proceeding and who is aggrieved or adversely  
2 affected by any final order or action of the department may have review thereof by appeal  
3 to the superior court in the county in which the action arose or to the Superior Court of  
4 Fulton County.

5 (2) Appeals to the department shall be heard by it after not less than 20 days' notice  
6 delivered by certified mail or statutory overnight delivery is given to all parties and their  
7 counsel of record, at such times and places as are set forth in such notice; provided,  
8 however, if such appeal is not heard and determined within a period of 90 days, the  
9 decision shall stand reversed unless all parties consent to an extension of time. Review  
10 on appeal to the department shall be confined to the record transmitted from below and  
11 the questions raised in the appeal. Orders, rules, regulations, or other decisions of the  
12 department shall not be set aside on appeal to the department unless contrary to law or  
13 rules and regulations of the department or unsupported by substantial evidence on the  
14 record as a whole or unreasonable.

15 (3) Appeal to the superior court shall be by petition which shall be filed in the clerk's  
16 office of such court within 30 days after the final order or action of the department; the  
17 petition shall set forth the names of the parties taking the appeal, the order, rule,  
18 regulation, or decision appealed from, and the reason it is claimed to be erroneous. The  
19 enforcement of the order or action appealed from shall not be stayed until and unless so  
20 ordered and directed by the reviewing court. A reviewing court may order a stay only if  
21 the court makes a finding that the public health, safety, and welfare will not be harmed  
22 by the issuance of the stay. Upon the filing of such petition, the petitioner shall serve on  
23 the commissioner a copy thereof in a manner prescribed by law for the service of process,  
24 unless such service of process is waived. The review shall be conducted by the court  
25 without a jury and shall be confined to the record. In cases of alleged irregularities in  
26 procedure before the department, not shown in the record, proof thereon may be taken in  
27 the court. The court, upon request, shall hear oral argument and receive written briefs.  
28 The court shall not substitute its judgment for that of the department as to the weight of  
29 the evidence on questions of fact. The court may affirm the decision of the department  
30 or remand the case for further proceedings. The court may reverse or modify the decision  
31 if substantial rights of the appellant have been prejudiced because the administrative  
32 findings, inferences, conclusions, or decisions are:

- 33 (A) In violation of constitutional or statutory provisions;
- 34 (B) In excess of the statutory authority of the department;
- 35 (C) Made upon unlawful procedure;
- 36 (D) Affected by other error of law;

(E) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(F) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(b) Upon perfection of the appeal as provided in subsection (a) of this Code section, it shall be the duty of the department to cause a transcript of all pleadings, orders, evidence, and other proceedings including a copy of the appeal and motion for reconsideration, if any, filed with it to be transmitted to the department or the superior court in not more than 30 days. For the proceedings not reported, the department shall cause to be written out a narrative transcript of all evidence and proceedings before it under certificate of the examiner or other official conducting such hearings.

31-5A-24.

The testimony of any witnesses or the production of any books, papers, records, documents, physical objects, or other evidence for inspection may be compelled by any superior court of competent jurisdiction on application of the department seeking such process.

31-5A-25.

(a) Any order, rule, regulation, or any other document, record, or entry contained in the official record or minutes of the department shall be admissible in evidence in any proceeding before any court or other tribunal in this state where otherwise admissible and not privileged or confidential under this Code section when certified as true and correct by and duly authorized by the examiner at the state level. It shall be the duty of the examiner, who shall be custodian of such records, to furnish and certify copies of the record or other evidence upon payment of reasonable costs therefor.

(b) The department is authorized by regulation to classify as confidential and privileged documents, reports and other information and data obtained by them from persons, firms, corporations, municipalities, counties, and other public authorities and political subdivisions, where such matters relate to secret processes, formulas, and methods or where such matters were obtained or furnished on a confidential basis. All matters so classified shall not be subject to public inspection or discovery and shall not be subject to production or disclosure in any court of law or elsewhere until and unless the judge of the court of competent jurisdiction, after in camera inspection, determines that the public interest requires such production and disclosure or that such production and disclosure may be necessary in the interest of justice.



1 31-5A-26.

2 The department is directed to prescribe and make available for distribution the rules of  
3 practice and procedure to implement this article.

4 31-5A-27.

5 (a) The department is empowered to institute appropriate proceedings for injunction in the  
6 courts of competent jurisdiction in this state for the purpose of enjoining a violation of any  
7 provision of Articles 1, 7, 11, and 14 of Chapter 7 of this title as now existing or as may  
8 be hereafter amended or of any regulation or order duly issued by the department. The  
9 department is also empowered to maintain action for injunction to abate any public  
10 nuisance which is injurious to the public health, safety, or comfort. Such actions may be  
11 maintained notwithstanding the fact that such violation also constitutes a crime and  
12 notwithstanding that other adequate remedies at law exist. Such actions may be instituted  
13 in the name of the department in the county in which a violation of any provision of  
14 Articles 1, 7, 11, and 14 of Chapter 7 of this title occurs.

15 (b) Notwithstanding the provisions of Code Section 5-6-13, an appeal or a notice of intent  
16 to appeal an adjudication of contempt of court of a party subject to an interlocutory or final  
17 judgment in a court action for an injunction instituted under authority of this Code section  
18 for a violation of a licensing requirement of Articles 1, 7, 11, and 14 of Chapter 7 of this  
19 title shall not operate as a supersedeas unless it is so ordered by the court; provided,  
20 however, that the court may grant a supersedeas in such a case after making a finding that  
21 the health, safety, or welfare of the recipients of the services will not be substantially  
22 harmed by the issuance of the stay.

23 (c) Unless otherwise ordered by the court pursuant to subsection (b) of this Code section,  
24 an interlocutory or final judgment in an action granting an injunction under this Code  
25 section may be enforced by attachment for contempt.

26 31-5A-28.

27 (a) The provisions of this Code section shall apply only in those counties of this state  
28 having a population of 450,000 or more according to the United States decennial census  
29 of 2000 or any future such census.

30 (b) Any person who knows or suspects that a condition exists on private property, which  
31 condition is injurious to the public health, safety, or comfort, shall immediately notify the  
32 department. Upon receiving such notice, the department shall be authorized to obtain an  
33 inspection warrant as provided in Code Section 31-5A-30. If the department determines  
34 that there exists a condition which is injurious to the public health, safety, or comfort, the  
35 department shall, by registered or certified mail or statutory overnight delivery with return

1 receipt requested, notify the occupants of the property and, if different from the occupant,  
2 the person, firm, or corporation which owns the property. Notice to the owner shall be sent  
3 to the address shown on the county or municipal property tax records.

4 (c) If the department brings an action for injunction to abate a public nuisance which is  
5 injurious to the public health, safety, or comfort, process shall be served on the occupants  
6 of the property and on any person, firm, or corporation having any interest in the property  
7 according to the county property records. Service shall be made in accordance with Code  
8 Section 9-11-4; and, if any person, firm, or corporation to be served resides outside the  
9 state, has departed the state, cannot, after due diligence, be found within the state, or  
10 conceals himself to avoid the service of summons, the judge or clerk may make an order  
11 that the service be made by publication of summons as provided in Code Section 9-11-4.

12 (d) In addition to any form of relief ordered by the court, the superior court may, as a part  
13 of its order, authorize the department to take appropriate action to abate such public  
14 nuisance. Any cost incurred by the department to abate such nuisance shall constitute a lien  
15 against the property, and such lien shall have the same status and priority as a lien for taxes.

16 31-5A-29.

17 As used in this article, the term 'inspection warrant' means a warrant authorizing a search  
18 or inspection of private property where such a search or inspection is one that is necessary  
19 for the enforcement of any of the provisions of laws authorizing licensure, inspection, or  
20 regulation by the department.

21 31-5A-30.

22 The commissioner or his or her delegate, in addition to other procedures now or hereafter  
23 provided, may obtain an inspection warrant under the conditions specified in this article.  
24 Such warrant shall authorize the commissioner or his or her agent to conduct a search or  
25 inspection of property, either with or without the consent of the person whose property is  
26 to be searched or inspected, if such search or inspection is one that is elsewhere authorized  
27 under the rules and regulations duly promulgated under Articles 1, 7, 11, and 14 of Chapter  
28 7 of this title or any provision of law which authorizes licensure, inspection, or regulation  
29 by the department.

30 31-5A-31.

31 (a) Inspection warrants shall be issued only by a judge of a court of record whose  
32 territorial jurisdiction encompasses the property to be inspected.

33 (b) The issuing judge shall issue the warrant when he or she is satisfied that the following  
34 conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this article.

31-5A-32.

The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers, in general terms, to the statutory or regulatory provisions sought to be enforced.

31-5A-33.

No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this article shall be competent as evidence in any criminal proceeding against any party.

31-5A-34.

(a) This Code section shall be applicable to any health care facility subject to regulation by the department under Articles 1, 7, 11, and 14 of Chapter 7 of this title. For purposes of this Code section, the term 'license' shall be used to refer to any license, permit, registration, or commission issued by the department pursuant to the provisions of law cited in this subsection.

(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or licensee has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the

1 department as part of an inspection, survey, or investigation, or in the alteration or  
2 falsification of records maintained by the health care facility;

3 (2) Failed or refused to provide the department with access to the premises subject to  
4 regulation or information pertinent to the initial or continued licensing of health care  
5 facility;

6 (3) Failed to comply with the licensing requirements of this state; or

7 (4) Failed to comply with any provisions of this Code section.

8 (c) When the department finds that any applicant or licensee has violated any provisions  
9 of subsection (b) of this Code section or laws, rules, regulations, or formal orders related  
10 to the initial or continued licensing of the health care facility, the department, subject to  
11 notice and opportunity for hearing, may take any of the following actions:

12 (1) Refuse to grant a license; provided, however, that the department may refuse to grant  
13 a license without holding a hearing prior to taking such action;

14 (2) Administer a public reprimand;

15 (3) Suspend any license, permit, registration, or commission for a definite period or for  
16 an indefinite period in connection with any condition which may be attached to the  
17 restoration of said license;

18 (4) Prohibit any applicant or licensee from allowing a person who previously was  
19 involved in the management or control, as defined by rule, of any health care facility  
20 which has had its license or application revoked or denied within the past 12 months to  
21 be involved in the management or control of such health care facility;

22 (5) Revoke any license;

23 (6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for  
24 each violation of a law, rule, regulation, or formal order related to the initial or ongoing  
25 licensing of any health care facility, except that no fine may be imposed against any  
26 nursing facility, nursing home, or intermediate care facility which is subject to  
27 intermediate sanctions under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as  
28 amended, whether or not those sanctions are actually imposed; or

29 (7) Limit or restrict any license as the department deems necessary for the protection of  
30 the public, including, but not limited to, restricting some or all services of or admissions  
31 into a health care facility for a time certain.

32 In taking any of the actions enumerated in this subsection, the department shall consider  
33 the seriousness of the violation, including the circumstances, extent, and gravity of the  
34 prohibited acts, and the hazard or potential hazard created to the health or safety of the  
35 public.

(d)(1) With respect to any facility classified as a nursing facility, nursing home, or intermediate care home, the department may not take an action to fine or restrict the license of any such facility based on the same act, occurrence, or omission for which:

(A) The facility has received an intermediate sanction under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as amended, or 42 U.S.C. Section 1395i-3(h)(2)(B); or

(B) Such facility has been served formal notice of intent to take such a sanction which the department based on administrative review or any other appropriate body based on administrative or judicial review determines not to impose; provided, however, that nothing in this subsection shall prohibit the department from utilizing the provisions authorized under subsection (f) of this Code section.

(2) When any civil monetary penalty is recommended and imposed against such facility, and the department does not resurvey the facility within 48 hours after the date by which all items on a plan of correction submitted by the facility are to be completed, the accrual of any resulting civil monetary penalties shall be suspended until the facility is resurveyed by the department.

(3) If the department resurveys such facility beyond 48 hours after the final date for completion of all items on the plan of correction submitted by the facility, and the facility is not in substantial compliance with the applicable standards, any civil monetary penalties imposed shall relate back to the date on which such penalties were suspended.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, nothing contained in said paragraphs (2) and (3) of this subsection shall be construed as requiring the state survey agency to act in violation of applicable federal law, regulations, and guidelines.

(e) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of a health care facility subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(f) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any settlement agreement shall be bound by the terms specified therein and violation thereof by any applicant or licensee shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(g) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of any health care facility has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(h) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any health care facility.

(i) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against a health care facility reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the health care facility to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspection, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(j) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(k) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(l) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(m) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(n) The department is authorized to promulgate rules and regulations to implement the provisions of this Code section."

**SECTION 3-2.**

Said title is further amended by revising paragraph (6) of subsection (c) of Code Section 31-2-6, relating to actions against applicants or licensees by the Department of Human Resources, as follows:

"(6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any ~~agency, facility, institution, or entity, except that no fine may be imposed against any nursing facility, nursing home, or intermediate care facility which is subject to intermediate sanctions under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as amended, whether or not those sanctions are actually imposed~~ health care related institution as defined in Code Section 31-7-18; or

**SECTION 3-3.**

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking subsection (d) of Code section 31-2-6, relating to actions against applicants or licensees by the Department of Human Resources, and inserting in lieu thereof:

~~"(d)(1) With respect to any facility classified as a nursing facility, nursing home, or intermediate care home, the department may not take an action to fine or restrict the license of any such facility based on the same act, occurrence, or omission for which:~~

~~(A) The facility has received an intermediate sanction under the provisions of 42 U.S.C. Section 1396r(h)(2)(A), as amended, or 42 U.S.C. Section 1395i-3(h)(2)(B); or~~

~~(B) Such facility has been served formal notice of intent to take such a sanction which the Department of Community Health based on administrative review or any other appropriate body based on administrative or judicial review determines not to impose; provided, however, that nothing in this subsection shall prohibit the department from utilizing the provisions authorized under subsection (f) of this Code section.~~

~~(2) When any civil monetary penalty is recommended and imposed against such facility, and the department does not resurvey the facility within 48 hours after the date by which all items on a plan of correction submitted by the facility are to be completed, the accrual of any resulting civil monetary penalties shall be suspended until the facility is resurveyed by the department.~~

~~(3) If the department resurveys such facility beyond 48 hours after the final date for completion of all items on the plan of correction submitted by the facility, and the facility is not in substantial compliance with the applicable standards, any civil monetary penalties imposed shall relate back to the date on which such penalties were suspended.~~

~~(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, nothing contained in said paragraphs (2) and (3) of this subsection shall be construed as requiring~~

1 ~~the state survey agency to act in violation of applicable federal law, regulations, and~~  
2 ~~guidelines. Reserved.~~

3 **PART IV**  
4 **SECTION 4-1.**

5 Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to the regulation  
6 and construction of hospitals and related institutions, is amended by revising Article 1,  
7 relating to the regulation of hospitals and related institutions, and by adding a new Article  
8 1A to read as follows:

9 "ARTICLE 1

10 31-7-1.

11 As used in this ~~chapter~~ article, the term:

12 (1) 'Board' means the Board of Community Health.

13 (2) 'Commissioner' means the commissioner of community health.

14 (3) 'Department' means the Department of Community Health.

15 (4) 'Institution Health care facility' means:

16 (A) ~~Reserved;~~

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

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

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

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



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

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

(F) Any building or facility, not under the operation or control of a hospital, which is primarily devoted to the provision of radiation therapy to patients not requiring hospitalization and which is classified by the department as a radiation therapy center;

(G) Any building, facility, or mobile service, not under the operation or control of a hospital, which is primarily devoted to the provision of diagnostic imaging services, including, but not limited to magnetic resonance, computed tomography, and positron emission tomography, and which is classified by the department as a diagnostic imaging center; or

(H) Any building or facility, not under the operation or control of a hospital, which is primarily devoted to the provision of diagnostic cardiac catheterization to patients not requiring hospitalization and which is classified by the department as a cardiac catheterization center.

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

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

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

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

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

(B) To allow an existing ~~institution~~ health care facility a reasonable length of time to comply with rules and regulations, provided the ~~institution~~ health care facility shall present a plan of improvement acceptable to the department.

#### 31-7-1.1

(a) On and after October 1, 2007, the Department of Community Health shall be the state agency responsible for the regulation and licensure of health care facilities, and the

1 Department of Human Resources shall be the state agency responsible for the regulation  
2 of health care related institutions as defined in Code Section 31-7-18.

3 (b) The Department of Community Health shall succeed to all rules, regulations, policies,  
4 procedures, and administrative orders of the Department of Human Resources which were  
5 in effect on September 30, 2007, or scheduled to go into effect on or after October 1, 2007,  
6 and which are related to the regulation of health care facilities. Such rules, regulations,  
7 policies, procedures, and administrative orders shall remain in effect until amended,  
8 repealed, superseded, or nullified by proper authority or as otherwise provided by law.

9 31-7-2.

10 The department shall classify ~~institutions~~ health care facilities and adopt and promulgate  
11 rules and regulations applicable thereto according to the type of services rendered.

12 31-7-2.1.

13 (a) The department shall adopt and promulgate such reasonable rules and regulations  
14 which in its judgment are necessary to protect the health and lives of patients and shall  
15 prescribe and set out the kind and quality of building, equipment, facilities, and  
16 institutional services which ~~institutions~~ health care facilities shall have and use in order to  
17 properly care for their patients. Such rules and regulations shall require that all nursing  
18 homes annually offer unless contraindicated, contingent on availability, an influenza virus  
19 vaccine to all medicare and Medicaid-eligible patients and private-pay patients in their  
20 facilities, in accordance with the rules and regulations established pursuant to this  
21 subsection. Such rules and regulations shall also require that all nursing homes annually  
22 offer unless contraindicated, contingent on availability, a pneumococcal bacteria vaccine  
23 to all medicare-eligible patients and all private-pay patients, 65 years of age or older, in  
24 their facilities, in accordance with the rules and regulations established pursuant to this  
25 subsection.

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

32 (c) Except as provided in Code Sections 31-8-86 and ~~31-5-5~~ 31-5A-25, all worksheets or  
33 documents prepared or compiled by ~~Department of Human Resources~~ department  
34 surveyors in the course of nursing home surveys shall be provided upon written request to  
35 a nursing home which has received notice of intent to impose a remedy or sanction

pursuant to 42 U.S.C. Section 1396r or Code Section ~~31-2-6~~ 31-5A-34; provided, however, that the names of residents and any other information that would reveal the identities of residents and the content of resident interviews shall not be disclosed except as provided in survey protocols of the federal Centers for Medicare and Medicaid Services. The department may charge a reasonable reproduction fee as provided in Code Section 50-18-70 et seq.

31-7-2.2.

(a)(1) The commissioner may order the emergency relocation of patients or residents from ~~an institution~~ a health care facility subject to licensure under this ~~chapter~~, ~~a community living arrangement subject to licensure under paragraph (16) of subsection (b) and subsection (c) of Code Section 37-1-20, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26~~ article or Articles 7 or 11 of this chapter when the commissioner has determined that the patients or residents are subject to an imminent and substantial danger.

(2) When an order is issued under this subsection, the commissioner shall provide for:

(A) Notice to the patient or resident, his or her next of kin or guardian, and his or her physician of the emergency relocation and the reasons therefor;

(B) Relocation to the nearest appropriate ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility; and

(C) Other protection designed to ensure the welfare and, when possible, the desires of the patient or resident.

(b)(1) The commissioner may order the emergency placement of a monitor in ~~an institution~~ a health care facility subject to licensure under this ~~chapter~~ article or Articles 7 or 11 of this chapter, ~~a community living arrangement subject to licensure under paragraph (16) of subsection (b) and subsection (c) of Code Section 37-1-20, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26~~ when one or more of the following conditions are present:

(A) The ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility is operating without a permit or a license;

(B) The department has denied application for a permit or a license or has initiated action to revoke the existing permit or license of the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility;

(C) The ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility is closing or plans to close and adequate arrangements for relocation of the patients or residents have not been made at least 30 days before the date of closure; or

(D) The health, safety, security, rights, or welfare of the patients or residents cannot be adequately assured by the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility.

(2) A monitor may be placed, pursuant to this subsection, in ~~an institution, community living arrangement, or drug abuse treatment and education program~~ a health care facility for no more than ten days, during which time the monitor shall observe conditions and compliance with any recommended remedial action of the department by the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility. The monitor shall report to the department. The monitor shall not assume any administrative responsibility within the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility nor shall the monitor be liable for any actions of the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility. The costs of placing a monitor in ~~an institution, community living arrangement, or drug abuse treatment and education program~~ a health care facility shall be paid by the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility unless the order placing the monitor is determined to be invalid in a contested case proceeding under subsection (d) of this Code section, in which event the costs shall be paid by the state.

(c)(1) The commissioner may order the emergency prohibition of admissions to ~~an institution~~ a health care facility subject to licensure under this ~~article~~ chapter, ~~a community living arrangement subject to licensure under paragraph (16) of subsection (b) and subsection (c) of Code Section 37-1-20, or program subject to licensure under Chapter 5 of Title 26 when an institution, community living arrangement, or drug abuse treatment and education program~~ a health care facility has failed to correct a violation of departmental permit rules or regulations within a reasonable period of time, as specified in the department's corrective order, and the violation:

(A) Could jeopardize the health and safety of the residents or patients in the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility if allowed to remain uncorrected; or

(B) Is a repeat violation over a 12 month period, which is intentional or due to gross negligence.

(2) Admission to ~~an institution, community living arrangement, or drug abuse treatment and education program~~ a health care facility may be suspended until the violation has been corrected or until the department has determined that the ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility has undertaken the action necessary to effect correction of the violation.

(d) The commissioner may issue emergency orders pursuant to this Code section only if authorized by rules and regulations of the department. Unless otherwise provided in the order, an emergency order shall become effective immediately. The department shall hold a preliminary hearing within ten days following a request therefor by any ~~institution, community living arrangement, or drug abuse treatment and education program~~ health care facility affected by an emergency order. If at the preliminary hearing the order is determined by the department to be invalid, that order shall thereupon become void and of no effect. If at the preliminary hearing the order is determined by the department to be valid, that determination shall constitute a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and that order shall remain in effect until determined invalid in a proceeding regarding the contested case or until rescinded by the commissioner, whichever is earlier. For purposes of this subsection, an emergency order is valid only if the order is authorized to be issued under this Code section and rules and regulations relating thereto.

(e) The powers provided by this Code section are cumulative of all other powers of the department, board, and commissioner.

31-7-3.

(a) Any person or persons responsible for the operation of any ~~institution~~ health care facility, or who may hereafter propose to establish and operate ~~an institution~~ a health care facility, shall submit an application to the department for a permit to operate the ~~institution~~ health care facility, such application to be made on forms prescribed by the department. No ~~institution~~ health care facility shall be operated in this state without such a permit, which shall be displayed in a conspicuous place on the premises. Failure or refusal to file an application for a permit shall constitute a violation of this ~~chapter~~ article and shall be dealt with as provided for in ~~Article 1 of Chapter 5~~ Article 2 of Chapter 5A of this title. Following inspection and classification of the ~~institution~~ health care facility for which a permit is applied for, the department may issue or refuse to issue a permit or a provisional permit. Permits issued shall remain in force and effect until revoked or suspended; provisional permits issued shall remain in force and effect for such limited period of time as may be specified by the department.

(b) The department may accept the certification or accreditation of ~~an institution~~ a health care facility by the Joint Commission on the Accreditation of Hospitals, the American Osteopathy Association, or other accreditation body, in accordance with specific standards, as evidence of that ~~institution's~~ health care facility's compliance with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance

1 or renewal of such permits. The department may not require an additional departmental  
2 inspection of any ~~institution~~ health care facility whose certification or accreditation has  
3 been accepted by the department, except to the extent that such specific standards are less  
4 rigorous or less comprehensive than departmental requirements. Nothing contained in this  
5 Code section shall prohibit departmental inspections for violations of such standards or  
6 requirements nor shall it prohibit the revocation of or refusal to issue or renew permits, as  
7 authorized by Code Section 31-7-4, or for violation of any other applicable law or  
8 regulation pursuant thereto.

9 (c) The department shall require a health care facility licensed under this article and rules  
10 and regulations adopted pursuant thereto to have a written and regularly rehearsed disaster  
11 preparedness plan, approved by the department, for staff and residents to follow in case of  
12 fire, explosion, or other emergency, including interruption of electrical power supply,  
13 gas-heating supply, and water supply. The plan shall include written procedures for  
14 personnel to follow in an emergency including care of the resident; notification of attending  
15 physician and other persons responsible for the resident; and arrangements for  
16 transportation, for hospitalization, for alternate living arrangements, for emergency energy  
17 sources, or for other appropriate services.

18 (d)(1) When an application for licensure to operate a personal care home, as defined in  
19 subsection (a) of Code Section 31-7-12, has been made, the department shall inform the  
20 office of the state long-term care ombudsman of the name and address of the applicant  
21 prior to issuing authority to operate or receive residents and shall provide to the  
22 ombudsman program an opportunity to provide to the department information relevant  
23 to the applicant's fitness to operate as a licensed personal care home.

24 (2) The department may consider any information provided under this subsection, where  
25 verified by appropriate licensing procedures, in determining whether an applicant meets  
26 the requirements for licensing.

27 (3) The department shall promulgate regulations setting forth the procedures by which  
28 the long-term care ombudsman program shall report information to the department or its  
29 designee as required by this subsection, including a consistent format for the reporting  
30 of information, safeguards to protect confidentiality, and specified types of information  
31 which shall be routinely provided by the long-term care ombudsman program.

32 (4) Nothing in this subsection shall be construed to provide any authority to the  
33 long-term care ombudsman program to license or refuse to license the operation of a  
34 personal care home.

35 (e) Any health care facility that proposes to establish and offer one or more of the  
36 following clinical health services:

37 (1) Diagnostic cardiac catheterization;

1 (2) Basic perinatal and obstetrical services;

2 (3) Intermediate perinatal and obstetrical services;

3 (4) Neonatal intensive care;

4 (5) Open heart surgery; and

5 (6) Radiation therapy

6 shall submit an application to the department prior to offering such service or services to  
7 have the department add the clinical health service or services to the permit of the health  
8 care facility, such application to be made on forms prescribed by the department. No  
9 health care facility shall offer a clinical health service delineated in this subsection without  
10 such services being added to the facility's permit, which shall be displayed in a  
11 conspicuous place on the premises. Failure or refusal to file an application for the addition  
12 of these clinical health services to the permit shall constitute a violation of this article and  
13 shall be dealt with as provided for in Article 2 of Chapter 5A of this title. Following  
14 inspection and classification of the clinical health service for which application is made,  
15 the department may issue or refuse to add the clinical health services to the health care  
16 facility's permit or may do so provisionally. The addition of these clinical health services  
17 to the permit shall remain in force and effect until revoked or suspended; if provisionally  
18 issued, the addition of these clinical health services shall remain in force and effect for such  
19 limited period of time as may be specified by the department. By rule the department may  
20 add to the list of clinical health services contained in this subsection.

21 31-7-3.1.

22 (a) As a condition of obtaining or retaining the permit required by Code Section 31-7-3 to  
23 operate such ~~institution~~ health care facility, any hospital which operates an emergency  
24 room shall post conspicuously therein a sign notifying the public of the rights of  
25 individuals under federal or state law with respect to examination and treatment for  
26 emergency medical conditions and women in active labor.

27 (b) On or after January 1, 2008, as a condition of obtaining or retaining the permit required  
28 by Code Section 31-7-3 to operate a facility for which the department had previously  
29 issued a letter of nonreviewability pursuant to Chapter 6 of this title, such facility shall:

30 (1) Provide complete and accurate reports to the department as required by Code Section  
31 31-6-70; provided, however, that such facility shall not have to submit a report before  
32 January 1, 2009;

33 (2) Generally demonstrate that physicians authorized to perform procedures within the  
34 facility have demonstrated a willingness to become a member of a medical staff at a  
35 hospital within a reasonable distance from the facility at the time the facility submits an  
36 application for review. In no case shall a pending investigation or temporary suspension

1 of privileges by a hospital be considered by the department as grounds to suspend, deny,  
2 or revoke a license; and  
3 (3) Commit to the provision of charity and indigent care or the treatment of Medicaid  
4 and PeachCare for Kids Program recipients as required by subparagraph (a)(9)(A) of  
5 Code Section 31-6-47 by January 1, 2012.

6 31-7-3.2.

7 (a) A nursing home or intermediate care home licensed under this article shall give notice  
8 in the event that such facility has been cited by the department for any deficiency for which  
9 the facility has received notice of the imposition of any sanction available under federal or  
10 state laws or regulations, except where a plan of correction is the only sanction to be  
11 imposed.

12 (b) A notice required under subsection (a) of this Code section shall be of a size and  
13 format prescribed by the department and shall contain the following:

14 (1) A list of each cited deficiency which has resulted in the notice being required;

15 (2) A description of any actions taken by or of any notices of intent to take action issued  
16 by federal or state entities as a result of such cited deficiencies;

17 (3) The telephone numbers of the state and community long-term care ombudsman  
18 programs; and

19 (4) A statement that a copy of the notice may be obtained upon written request  
20 accompanied by a self-addressed stamped envelope.

21 (c) A notice required by subsection (a) of this Code section shall be posted at the facility  
22 giving the notice:

23 (1) In an area readily accessible and continuously visible to the facility's residents and  
24 their representatives;

25 (2) Within 14 days after the facility receives notification of imposition of a sanction for  
26 a cited deficiency which requires the notice; and

27 (3) Until the department has determined such cited deficiencies no longer exist, at which  
28 time the notice may be removed.

29 (d) In addition to the posted notice required by subsection (c) of this Code section, a  
30 notice, containing the information set forth in subsection (b) of this Code section, shall also  
31 be provided by the facility upon written request. The facility shall be responsible for  
32 mailing a copy of such notice when the written request is accompanied by a postage paid  
33 self-addressed envelope.

34 (e) Each applicant to a facility shall receive upon written request with his or her  
35 application a copy of the most recent notice which has been distributed pursuant to this



~~subsection~~ Code section. The facility may inform the applicant of any corrective actions taken in response to the cited deficiencies contained in such notice.

(f) In the event that the facility previously has been required to have posted or provided notice of the same cited deficiency arising from the same act, occurrence, or omission, this Code section should not be construed to require the facility to post or provide duplicate notice of such cited deficiency so long as the notice is made in a manner consistent with subsections (b) and (c) of this Code section.

(g) In the case of a violation of this Code section, the department may impose administrative sanctions as otherwise provided by law in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(h) The department may promulgate rules and regulations to implement the provisions of this Code section.

31-7-4.

The department may refuse to grant a permit as provided for in Code Section 31-7-3 for the operation of any ~~institution~~ health care facility that does not fulfill the minimum requirements which the department may prescribe by rules and regulations and may revoke a permit which has been issued if ~~an institution~~ a health care facility violates any of such rules and regulations; provided, however, that before any order is entered refusing a permit applied for or revoking a permit previously granted, the applicant or permit holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in ~~Article 1 of Chapter 5~~ Article 2 of Chapter 5A of this title. All appeals from such orders and all rights of enforcement by injunction shall be governed by ~~Article 1 of Chapter 5~~ Article 2 of Chapter 5A of this title.

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~~ article apply to ~~institutions~~ health care facilities operated exclusively by the federal government or by any of its agencies.

31-7-6.

(a) Any hospital, health care related facility, medical or skilled nursing home, or other organization rendering patient care may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to research groups approved by the medical staff of the ~~institution~~ health care facility involved, to governmental health agencies, medical associations and societies, or to any

1 in-hospital medical staff committee, to be used in the course of any study for the purpose  
2 of reducing rates of morbidity or mortality; and no liability of any kind or character for  
3 damages or other relief shall arise or be enforced against any person or organization by  
4 reason of having provided such information or material, or by reason of having released  
5 or published the findings and conclusions of such groups to advance medical research or  
6 medical education or to achieve the most effective use of health manpower and facilities,  
7 or by reason of having released or published generally a summary of such studies.

8 (b) The research groups approved by the medical staff of the ~~institution~~ health care facility  
9 involved, governmental health agencies, medical associations and societies, or any  
10 in-hospital medical staff committee shall use or publish material described in subsection  
11 (a) of this Code section only for the purpose of advancing medical research or medical  
12 education, or to achieve the most effective use of health manpower and facilities, in the  
13 interest of reducing rates of morbidity or mortality, except that a summary of such studies  
14 may be released by any such group for general publication.

15 (c) In all events the identity of any person whose condition or treatment has been studied  
16 pursuant to this Code section shall be confidential and shall not be revealed under any  
17 circumstances.

18 31-7-7.

19 (a) Whenever any licensed doctor of medicine, doctor of podiatric medicine, doctor of  
20 osteopathic medicine, or doctor of dentistry shall make application for permission to treat  
21 patients in any hospital owned or operated by the state, any political subdivision thereof,  
22 or any municipality, the hospital shall act in a nondiscriminatory manner upon such  
23 application expeditiously and without unnecessary delay considering the applicant on the  
24 basis of the applicant's demonstrated training, experience, competence, and availability and  
25 reasonable objectives, including, but not limited to, the appropriate utilization of hospital  
26 facilities; but in no event shall final action thereon be taken later than 90 days following  
27 receipt of the application; provided, however, whenever the applicant is licensed by any  
28 governmental entity outside the continental limits of the United States, the hospital shall  
29 have 120 days to take action following receipt of the application. This subsection shall  
30 apply solely to applications by licensed doctors of medicine, doctors of podiatric medicine,  
31 doctors of osteopathic medicine, and doctors of dentistry who are not members of the staff  
32 of the hospital in which privileges are sought at the time an application is submitted and  
33 by those not privileged, at such time, to practice in such hospital under a previous grant of  
34 privileges. The provisions of this subsection shall not be construed so as to repeal the  
35 provisions of Code Section 31-7-15, to mandate hospitals to offer or provide any type of  
36 service or services not otherwise offered, or to prohibit a hospital with a clinical training

1 program affiliated with a school of medicine from requiring an applicant to have a faculty  
2 teaching appointment as a condition of eligibility.

3 (b) Whenever any hospital owned or operated by the state, any political subdivision  
4 thereof, or any municipality shall refuse to grant a licensed doctor of medicine, doctor of  
5 podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry the privilege of  
6 treating patients in the hospital, wholly or in part, or revoke the privilege of such licensed  
7 medical practitioner for treating patients in such hospital, wholly or in part, the hospital  
8 shall furnish to the licensed medical practitioner whose privilege has been refused or  
9 revoked, within ten days of such action, a written statement of the reasons therefor.

10 (c) The provisions of this Code section shall not be construed to mandate such hospital to  
11 grant or to prohibit such hospital from granting staff privileges to other licensed  
12 practitioners of the healing arts who are otherwise qualified for staff privileges pursuant  
13 to the bylaws of the governing body of the hospital and, in addition, shall not be construed  
14 to modify or restrict the rights of health service provider psychologists to be treated in a  
15 nondiscriminatory manner as provided in Code Sections 31-7-161 and 31-7-164.

16 31-7-7.1.

17 (a) Notwithstanding the provisions of Code Section 31-7-7, if a hospital offers or provides  
18 a service which is within the scope of practice of a person licensed as a doctor of podiatric  
19 medicine, doctor of osteopathic medicine, or doctor of dentistry, that hospital may not deny  
20 to any such licensee staff privileges at such hospital based solely upon that person's  
21 license, board certification, or specialty membership in a professional association or  
22 participation or affiliation with an ambulatory surgical or obstetrical facility.

23 (b) If any hospital or diagnostic, treatment, or rehabilitation center suspends or revokes a  
24 health care professional's staff privileges because of the health care professional's  
25 participation or affiliation with an ambulatory surgical or obstetrical facility, the health care  
26 professional or ambulatory surgical or obstetrical facility may bring a cause of action for  
27 damages caused by the suspension or revocation of privileges. If a court finds that the  
28 action is frivolous or brought in bad faith, it shall award the defendant attorney's fees and  
29 costs of the action.

30 (c) For purposes of this Code section, the term:

31 (1) 'Ambulatory surgical or obstetrical facility' shall have the same meaning as provided  
32 in Code Section 31-6-2.

33 (2) 'Diagnostic, treatment, or rehabilitation center' shall have the same meaning as  
34 provided in Code Section 31-6-2.

1 31-7-8.

2 (a) The hospital administrator or chief executive officer of each ~~institution~~ health care  
3 facility subject to this ~~chapter~~ article shall submit a written report to the appropriate  
4 licensing board when a person who is authorized to practice medicine, osteopathy,  
5 podiatry, or dentistry in this state under Chapter 34, Chapter 35, or Chapter 11,  
6 respectively, of Title 43 and who is a member of the medical staff at the ~~institution~~ health  
7 care facility, has medical staff privileges at the ~~institution~~ health care facility, or has  
8 applied for medical staff privileges at the ~~institution~~ health care facility has his or her  
9 medical staff privileges denied, restricted, or revoked for any reason involving the medical  
10 care given his or her patient. Each such administrator or officer shall also report to the  
11 appropriate licensing board resignations from practice in that ~~institution~~ health care facility  
12 by persons licensed under Chapter 34, Chapter 35, or Chapter 11 of Title 43. This Code  
13 section shall not require reports of temporary suspensions for failure to comply with  
14 medical record regulations.

15 (b) The written report required by subsection (a) of this Code section shall be made within  
16 20 working days following final action by the ~~institution~~ health care facility on the  
17 restriction, denial, or revocation of medical staff privileges. The results of any legal appeal  
18 of such action shall be reported within 20 working days following a final court decision on  
19 such appeal.

20 (c) The report required by this Code section shall contain a statement detailing the nature  
21 of the restriction, denial, or revocation of medical staff privileges, the date such action was  
22 taken, and the reasons for such action. If the action is a voluntary resignation or restriction  
23 of medical staff privileges which was the result of action initiated by the ~~institution~~ health  
24 care facility, the report shall contain the circumstances involved therein.

25 (d) There shall be no civil or criminal liability on the part of, and no cause of action for  
26 damages shall arise against, any hospital administrator, chief executive officer, or other  
27 authorized person who in good faith complies with this Code section.

28 (e) Except as provided in this subsection and Chapter 34A of Title 43, information  
29 contained in any report made to the appropriate licensing board pursuant to this Code  
30 section shall be confidential and shall not be disclosed to the public. Access to such reports  
31 shall be limited to members of the appropriate licensing board or its staff for their use and  
32 to interested ~~institutions~~ health care facilities for their use in the review of medical staff  
33 privileges at the ~~institution~~ health care facility.

34 (f) The failure of ~~an institution~~ a health care facility to comply with this Code section shall  
35 be grounds for the denial, refusal to renew, or revocation of the permit for the operation of  
36 the ~~institution~~ health care facility issued pursuant to this ~~chapter~~ article.

1 31-7-9.

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

5 (b) Any:

6 (1) Physician, including any doctor of medicine licensed to practice under the laws of  
7 this state;

8 (2) Licensed registered nurse employed by a medical facility;

9 (3) Security personnel employed by a medical facility; or

10 (4) Other personnel employed by a medical facility whose employment duties involve  
11 the care and treatment of patients therein

12 having cause to believe that a patient has had physical injury or injuries inflicted upon him  
13 or her other than by accidental means shall report or cause reports to be made in  
14 accordance with this Code section.

15 (c) An oral report shall be made immediately by telephone or otherwise and shall be  
16 followed by a report in writing, if requested, to the person in charge of the medical facility  
17 or his or her designated delegate. The person in charge of the medical facility or his or her  
18 designated delegate shall then notify the local law enforcement agency having primary  
19 jurisdiction in the area in which the medical facility is located of the contents of the report.  
20 The report shall contain the name and address of the patient, the nature and extent of the  
21 patient's injuries, and any other information that the reporting person believes might be  
22 helpful in establishing the cause of the injuries and the identity of the perpetrator.

23 (d) Any person or persons participating in the making of a report or causing a report to be  
24 made to the appropriate police authority pursuant to this Code section or participating in  
25 any judicial proceeding or any other proceeding resulting therefrom shall in so doing be  
26 immune from any civil liability that might otherwise be incurred or imposed, ~~providing~~  
27 provided such participation pursuant to this Code section shall be in good faith.

28 31-7-10.

29 The department shall (1) certify and approve hospitals applying therefor which may be  
30 found to be eligible to render hospital service under any group nonprofit hospital insurance  
31 plan, which plan may be approved and become effective, and (2) supervise the services  
32 rendered by hospitals operating under such plan, with authority to withdraw approval from  
33 any hospital which subsequently may, under rules and regulations of the board, become  
34 ineligible for rendering such services, provided that, in fixing rules and regulations in this  
35 connection or in enforcing such rules, hospitals interested therein shall be given  
36 opportunity to be heard.

31-7-11.

(a) Any hospital shall, upon request, provide a written summary of certain hospital and related services charges, including but not limited to:

(1) The average total charges per patient day for the facility's previous fiscal year;

(2) The daily rate for a room in said hospital, which rate shall include an explanation of the categories of services included in said charge;

(3) Anesthesia charges, with an explanation of the categories of services included in this charge;

(4) Operating room charges;

(5) Recovery room charges;

(6) Intravenous administration charges;

(7) Emergency room charges, with an explanation of the categories of services included in the charge;

(8) The charge for the patient care kit or admission kit or other such items furnished to the patient on admission;

(9) Charges for specific routine tests, including but not limited to a complete blood count, urinalysis, and chest X-ray; and

(10) Charges for specific special tests, including but not limited to electrocardiogram, electroencephalogram, CAT scan of the head, CAT scan of liver, CAT scan of lungs, CAT scan of skeletal system, spirometry, and complete pulmonary function.

Such written summary of charges shall be composed in a simple clear fashion so as to enable consumers to compare hospital charges and make cost-effective decisions in the purchase of hospital services.

(b) The department shall adopt rules and regulations to implement the provisions of this Code section and shall implement such regulations as provided in Code Section 31-7-2.1.

31-7-12.

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

(1) 'Personal care home' means any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage.

(2) 'Personal services' includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting.

(b) All personal care homes shall be licensed as provided for in Code Section 31-7-3, except that, in lieu of licensure, the department may require persons who operate personal

1 care homes with two or three beds for nonfamily adults to comply with registration  
2 requirements delineated by the department. Such registration requirements within this  
3 category shall authorize the department to promulgate pursuant to Chapter 13 of Title 50,  
4 the 'Georgia Administrative Procedure Act,' reasonable standards to protect the health,  
5 safety, and welfare of the occupants of such personal care homes.

6 (c) Upon the designation by the department and with the consent of county boards of  
7 health, such boards may act as agents to the department in performing inspections and other  
8 authorized functions regarding personal care homes licensed under this ~~chapter~~ article.  
9 With approval of the department, county boards of health may establish inspection fees to  
10 defray part of the costs of inspections performed for the department.

11 (d) The state ombudsman or community ombudsman, on that ombudsman's initiative or  
12 in response to complaints made by or on behalf of residents of a registered or licensed  
13 personal care home, may conduct investigations in matters within the ombudsman's powers  
14 and duties.

15 (e) The department shall promulgate procedures to govern the waiver, variance, and  
16 exemption process related to personal care homes pursuant to Chapter 2 of this title. Such  
17 procedures shall include published, measurable criteria for the decision process, shall take  
18 into account the need for protection of public and individual health, care, and safety, and  
19 shall afford an opportunity for public input into the process.

20 31-7-12.1.

21 (a) A facility shall be deemed to be an 'unlicensed personal care home' if it is unlicensed  
22 and not exempt from licensure and:

23 (1) The facility is providing personal services and is operating as a personal care home  
24 as those terms are defined in Code Section 31-7-12;

25 (2) The facility is held out as or represented as providing personal services and operating  
26 as a personal care home as those terms are defined in Code Section 31-7-12; or

27 (3) The facility represents itself as a licensed personal care home.

28 (b) Personal care homes in existence on July 1, 1994, which ~~obtain~~ obtained licenses from  
29 the ~~department~~ Department of Human Resources no later than October 1, 1994, shall not  
30 be subject to the penalties set out in this Code section.

31 (c) Except as provided in subsection (b) of this Code section, any unlicensed personal care  
32 home shall be assessed by the department, after opportunity for hearing in accordance with  
33 the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' a civil  
34 penalty in the amount of \$100.00 per bed per day for each day of violation of subsection  
35 (b) of Code Section 31-7-12. The department shall send a notice by certified mail or  
36 statutory overnight delivery stating that licensure is required and including a period for

obtaining licensure with an expiration date. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. For unlicensed personal care homes which were not in existence on July 1, 1994, the civil penalty provided by this subsection shall be calculated as beginning on the expiration date of the notice. For unlicensed personal care homes which were in existence on July 1, 1994, the civil penalty provided by this subsection shall be calculated as beginning on the expiration date of the notice or on October 1, 1994, whichever is later. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(d) The civil penalty authorized by subsection (c) of this Code section shall be doubled if:

(1) The operator of an unlicensed personal care home refuses to seek licensure; or

(2) The operator seeks licensure, the licensure application is denied, and the operator continues to operate the unlicensed personal care home.

(e) The operator of a personal care home who is assessed a civil penalty in accordance with this Code section may have review of such civil penalty by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County in accordance with the provisions of Code Section ~~31-5-3~~ 31-5A-23.

31-7-13.

(a) Whenever any person dies in a hospital licensed pursuant to ~~Chapter 7 of this title~~ this article, in any federal hospital operating within this state, or any nursing home operated within this state, such hospital or nursing home shall be authorized but shall not be required to transfer possession of any property, tangible or intangible, of such patient which is in the possession of the hospital or nursing home, to the following persons:

(1) To the person designated by the patient in writing upon admission to the hospital or nursing home, if any;

(2) To the surviving spouse of the patient, if any;

(3) If no surviving spouse, to any adult child of the patient, and if no such adult child, to any person acting in loco parentis of any minor child;

(4) If no surviving spouse or surviving children, to either parent of the patient;

(5) If none of the above, then to any brother or sister of the patient; or

(6) If none of the above, to the person assuming responsibility for burial of the patient.

(b) The transfer of possession to the surviving spouse or any of the other family members or persons listed in subsection (a) of this Code section shall operate as a complete acquittal and discharge to the hospital or nursing home of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the patient, or any other person as relates to the property transferred. Such distribution is authorized to be made as provided



1 in this Code section without the necessity of administration of the estate of the patient and  
2 without the necessity of obtaining an order that no administration of such estate is  
3 necessary.

4 (c) The transfer of possession provided for in this Code section shall in no way affect the  
5 legal ownership or title to any property so transferred.

6 (d) The provisions of any law of descent or distribution or any will or other instrument  
7 providing for disposition of property shall not be impaired by this Code section, and any  
8 person to whom property is transferred pursuant to this Code section may be required to  
9 transfer that property in conformity with the disposition of property required by such laws  
10 of descent or distribution or such will or other instrument.

11 31-7-14.

12 (a) When any person is admitted to a ~~medical facility~~ health care facility for surgical or  
13 medical treatment which has been scheduled in advance, neither the ~~medical~~ health care  
14 facility nor any licensed medical practitioner shall prohibit such person from providing a  
15 blood donor or donors to furnish blood which may be needed in such surgery or medical  
16 treatment, provided that:

17 (1) The blood donation will not be detrimental to the donor or the recipient of such blood  
18 or any of its components; and

19 (2) The donation is made not earlier than ten working days before the date of the  
20 anticipated transfusion and not later than the evening of the fourth full working day  
21 before the date of the anticipated transfusion.

22 (b) If the person receiving surgical or other medical treatment requires more blood than  
23 is furnished by the provided donor or donors, then the ~~medical~~ health care facility may  
24 utilize its regular sources to supply the necessary amount. If less blood than the amount that  
25 is furnished by the provided donor or donors is used in the surgery or medical treatment,  
26 then the excess blood may be retained by the ~~medical~~ health care facility or turned over to  
27 a community blood bank.

28 (c) This Code section shall not apply to any emergency surgical or medical treatment.

29 (d) This Code section shall not apply to any ~~medical~~ health care facility which does not  
30 maintain a system for the collection, processing, and storage of blood and its component  
31 parts or to any ~~medical~~ health care facility which allows through a community blood bank  
32 a person to provide a blood donor or donors to furnish blood which may be needed in the  
33 person's surgery or medical treatment.

34 (e) This Code section shall not apply to any person who is under the jurisdiction of the  
35 Department of Corrections.

1 (f) A ~~medical~~ health care facility or licensed medical practitioner providing health care to  
2 a person who utilizes the provisions of this Code section shall not be liable in damages for  
3 injury or death occurring during or as a result of the medical or surgical treatment if the  
4 injury or death results from use of the blood supplied by the donors selected by the patient,  
5 unless that facility or practitioner is grossly negligent with regard to such use.

6 (g) A ~~medical~~ health care facility or group of ~~medical~~ health care facilities may organize  
7 and operate short-term blood donor storage programs for the purpose of perpetuating a  
8 group of donors of a common blood type for emergency and planned surgical needs.

9 31-7-15.

10 (a) A hospital or ambulatory surgical center shall provide for the review of professional  
11 practices in the hospital or ambulatory surgical center for the purpose of reducing  
12 morbidity and mortality and for the improvement of the care of patients in the hospital or  
13 ambulatory surgical center. This review shall include, but shall not be limited to, the  
14 following:

15 (1) The quality of the care provided to patients as rendered in the hospital or ambulatory  
16 surgical center;

17 (2) The review of medical treatment and diagnostic and surgical procedures in order to  
18 foster safe and adequate treatment of patients in the hospital or ambulatory surgical  
19 center; and

20 (3) The evaluation of medical and health care services or the qualifications and  
21 professional competence of persons performing or seeking to perform such services.

22 (b) The functions required by subsection (a) of this Code section may be performed by a  
23 'peer review committee,' defined as a committee of physicians appointed by a state or local  
24 or specialty medical society or appointed by the governing board or medical staff of a  
25 licensed hospital or ambulatory surgical center or any other organization formed pursuant  
26 to state or federal law and engaged by the hospital or ambulatory surgical center for the  
27 purpose of performing such functions required by subsection (a) of this Code section.

28 (c) Compliance with the ~~above~~ provisions of subsection (a) of this Code section shall  
29 constitute a requirement for granting or renewing the permit of a hospital or ambulatory  
30 surgical center. The functions required by this Code section shall be carried out under the  
31 regulations and supervision of the department.

32 (d) Proceedings and records conducted or generated in an attempt to comply with the  
33 duties imposed by subsection (a) of this Code section shall not be subject to the provisions  
34 of either Chapter 14 or Article 4 of Chapter 18 of Title 50.

(e) Nothing in this or any other Code section shall be deemed to require any hospital or ambulatory surgical center to grant medical staff membership or privileges to any licensed practitioner of the healing arts.

31-7-16.

When a patient dies in any facility classified as a nursing home by the department and operating under a permit issued by the department, a physician's assistant or a registered professional nurse licensed in this state and employed by such nursing home at the time of apparent death of such person, in the absence of a physician, may make the determination and pronouncement of the death of said patient; provided, however, that, when said patient is a registered organ donor, only a physician may make the determination or pronouncement of death; provided, further, that when it appears that a patient died from other than natural causes, only a physician may make the determination or pronouncement of death. Such determination or pronouncement shall be made in writing on a form approved by the department.

31-7-17.

(a) Effective October 1, 2007, all matters relating to the licensure and regulation of health care facilities 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 September 30, 2007, or scheduled to go into effect on or after October 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 September 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 October 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 September 30, 2007, shall, on October 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 October 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 September 30, 2007, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on September 30, 2007. Accrued annual and sick leave possessed by said employees on September 30, 2007, shall be retained by said employees as employees of the Department of Community Health.

## ARTICLE 1A

31-7-18.

As used in this article, the term:

(1) 'Board' means the Board of Human Resources.

(2) 'Commissioner' means the commissioner of human resources.

(3) 'Department' means the Department of Human Resources.

(4) 'Health care related institution' means:

- (A) Any building, facility, or place in which are provided two or more beds and other facilities and services and which is classified by the department, as provided for in this article, as either a community living arrangement subject to licensure under paragraph (16) of subsection (b) and subsection (c) of Code Section 37-1-20, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26; or
- (B) Any fixed or mobile specimen collection center or health testing facility where specimens are taken from the human body for delivery to and examination in a licensed clinical laboratory or where certain measurements such as height and weight

determination, limited audio and visual tests, and electrocardiograms are made, excluding public health services operated by the state, its counties, or municipalities.

The term 'health care related institution' shall exclude all physicians' and dentists' private offices and treatment rooms in which such dentists or physicians primarily see, consult with, and treat patients.

(5) 'Permit' means a permit issued by the department upon compliance with the rules and regulations of the department.

(6) 'Provisional permit' means a permit issued on a conditional basis for one of the following reasons:

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

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

#### 31-7-18.1.

The department shall classify health care related institutions and adopt and promulgate rules and regulations applicable thereto according to the type of services rendered.

#### 31-7-18.2.

The department shall adopt and promulgate such reasonable rules and regulations which in its judgment are necessary to protect the health and lives of patients and shall prescribe and set out the kind and quality of building, equipment, facilities, and institutional services which health care related institutions shall have and use in order to properly care for their patients.

#### 31-7-18.3

(a)(1) The commissioner may order the emergency relocation of patients or residents from a health care related institution subject to licensure under this article, when the commissioner has determined that the patients or residents of such institutions are subject to an imminent and substantial danger.

(2) When an order is issued under this subsection, the commissioner shall provide for:

(A) Notice to the patient or resident, his or her next of kin or guardian, and his or her physician of the emergency relocation and the reasons therefor;

(B) Relocation to the nearest appropriate health care related institution, community living arrangement, or drug abuse treatment and education program; and

1 (C) Other protection designed to ensure the welfare and, when possible, the desires of  
2 the patient or resident.

3 (b)(1) The commissioner may order the emergency placement of a monitor in a health  
4 care related institution subject to licensure under this article when one or more of the  
5 following conditions are present:

6 (A) The health care related institution is operating without a permit or a license;

7 (B) The department has denied application for a permit or a license or has initiated  
8 action to revoke the existing permit or license of the health care related institution;

9 (C) The health care related institution is closing or plans to close and adequate  
10 arrangements for relocation of the patients or residents have not been made at least 30  
11 days before the date of closure; or

12 (D) The health, safety, security, rights, or welfare of the patients or residents cannot  
13 be adequately assured by the health care related institution.

14 (2) A monitor may be placed, pursuant to this subsection, in a health care related  
15 institution for no more than ten days, during which time the monitor shall observe  
16 conditions and compliance with any recommended remedial action of the department by  
17 the health care related institution. The monitor shall report to the department. The  
18 monitor shall not assume any administrative responsibility within the health care related  
19 institution nor shall the monitor be liable for any actions of the health care related  
20 institution. The costs of placing a monitor in a health care related institution shall be paid  
21 by such health care related institution, unless the order placing the monitor is determined  
22 to be invalid in a contested case proceeding under subsection (d) of this Code section, in  
23 which event the costs shall be paid by the state.

24 (c)(1) The commissioner may order the emergency prohibition of admissions to a health  
25 care related institution subject to licensure under this article when a health care related  
26 institution has failed to correct a violation of departmental permit rules or regulations  
27 within a reasonable period of time, as specified in the department's corrective order, and  
28 the violation:

29 (A) Could jeopardize the health and safety of the residents or patients in the health care  
30 related institution; or

31 (B) Is a repeat violation over a 12 month period, which is intentional or due to gross  
32 negligence.

33 (2) Admission to a health care related institution may be suspended until the violation  
34 has been corrected or until the department has determined that the health care related  
35 institution has undertaken the action necessary to effect correction of the violation.

36 (d) The commissioner may issue emergency orders pursuant to this Code section only if  
37 authorized by rules and regulations of the department. Unless otherwise provided in the

1 order, an emergency order shall become effective immediately. The department shall hold  
2 a preliminary hearing within ten days following a request therefor by any health care  
3 related institution affected by an emergency order. If at the preliminary hearing the order  
4 is determined by the department to be invalid, that order shall thereupon become void and  
5 of no effect. If at the preliminary hearing the order is determined by the department to be  
6 valid, that determination shall constitute a contested case under Chapter 13 of Title 50, the  
7 'Georgia Administrative Procedure Act,' and that order shall remain in effect until  
8 determined invalid in a proceeding regarding the contested case or until rescinded by the  
9 commissioner, whichever is earlier. For purposes of this subsection, an emergency order  
10 is valid only if the order is authorized to be issued under this Code section and rules and  
11 regulations relating thereto.

12 (e) The powers provided by this Code section are cumulative of all other powers of the  
13 department, board, and commissioner.

14 31-7-18.4.

15 (a) Any person or persons responsible for the operation of any health care related  
16 institution, or who may hereafter propose to establish and operate a health care related  
17 institution, shall submit an application to the department for a permit to operate the health  
18 care related institution, such application to be made on forms prescribed by the department.  
19 No health care related institution shall be operated in this state without such a permit,  
20 which shall be displayed in a conspicuous place on the premises. Failure or refusal to file  
21 an application for a permit shall constitute a violation of this article and shall be dealt with  
22 as provided for in Article 1 of Chapter 5 of this title. Following inspection and  
23 classification of the health care related institution for which a permit is applied for, the  
24 department may issue or refuse to issue a permit or a provisional permit. Permits issued  
25 shall remain in force and effect until revoked or suspended; provisional permits issued shall  
26 remain in force and effect for such limited period of time as may be specified by the  
27 department.

28 (b) The department shall require a health care related institution licensed under this article  
29 and rules and regulations adopted pursuant thereto to have a written and regularly rehearsed  
30 disaster preparedness plan, approved by the department, for staff and residents to follow  
31 in case of fire, explosion, or other emergency, including interruption of electrical power  
32 supply, gas-heating supply, and water supply. The plan shall include written procedures for  
33 personnel to follow in an emergency including care of the resident; notification of attending  
34 physician and other persons responsible for the resident; and arrangements for  
35 transportation, for hospitalization, for alternate living arrangements, for emergency energy  
36 sources, or for other appropriate services.

31-7-18.5.

The department may refuse to grant a permit as provided for in Code Section 31-7-18.4 for the operation of any health care related institution that does not fulfill the minimum requirements which the department may prescribe by rules and regulations and may revoke a permit which has been issued if a health care related institution violates any of such rules and regulations; provided, however, that before any order is entered refusing a permit applied for or revoking a permit previously granted, the applicant or permit holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Article 1 of Chapter 5 of this title. All appeals from such orders and all rights of enforcement by injunction shall be governed by Article 1 of Chapter 5 of this title.

31-7-18.6.

Code Section 31-7-18.4 shall not apply to the offices of physicians or others practicing the healing arts unless the facilities and services described in paragraph (4) of Code Section 31-7-18 are provided therein; nor shall this article apply to health care related institutions operated exclusively by the federal government or by any of its agencies.

31-7-18.7.

(a) The chief executive officer of each health care related institution subject to this chapter shall submit a written report to the appropriate licensing board when a person who is authorized to practice medicine, osteopathy, podiatry, or dentistry in this state under Chapter 34, Chapter 35, or Chapter 11, respectively, of Title 43 and who is a member of the medical staff at the health care related institution, has medical staff privileges at the health care related institution, or has applied for medical staff privileges at the health care related institution has his or her medical staff privileges denied, restricted, or revoked for any reason involving the medical care given his or her patient. Each such officer shall also report to the appropriate licensing board resignations from practice in that health care related institution by persons licensed under Chapter 34, Chapter 35, or Chapter 11 of Title 43. This Code section shall not require reports of temporary suspensions for failure to comply with medical record regulations.

(b) The written report required by subsection (a) of this Code section shall be made within 20 working days following final action by the health care related institution on the restriction, denial, or revocation of medical staff privileges. The results of any legal appeal of such action shall be reported within 20 working days following a final court decision on such appeal.

(c) The report required by this Code section shall contain a statement detailing the nature of the restriction, denial, or revocation of medical staff privileges, the date such action was



1 taken, and the reasons for such action. If the action is a voluntary resignation or restriction  
2 of medical staff privileges which was the result of action initiated by the health care related  
3 institution, the report shall contain the circumstances involved therein.

4 (d) There shall be no civil or criminal liability on the part of, and no cause of action for  
5 damages shall arise against any chief executive officer or other authorized person who in  
6 good faith complies with this Code section.

7 (e) Except as provided in this subsection and Chapter 34A of Title 43, information  
8 contained in any report made to the appropriate licensing board pursuant to this Code  
9 section shall be confidential and shall not be disclosed to the public. Access to such reports  
10 shall be limited to members of the appropriate licensing board or its staff for their use and  
11 to interested health care related institutions for their use in the review of medical staff  
12 privileges at the health care related institution.

13 (f) The failure of a health care related institution to comply with this Code section shall  
14 be grounds for the denial, refusal to renew, or revocation of the permit for the operation of  
15 the health care related institution issued pursuant to this article."

#### 16 **SECTION 4-2.**

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

19 "(1.1) 'Department' means the Department of Community Health."

#### 20 **SECTION 4-3.**

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

22 "31-7-159.

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

26 (b) The Department of Community Health shall succeed to all rules, regulations, policies,  
27 procedures, and administrative orders of the Department of Human Resources that are in  
28 effect on September 30, 2007, or scheduled to go into effect on or after October 1, 2007,  
29 and which relate to the functions transferred to the Department of Community Health  
30 pursuant to this Code section and shall further succeed to any rights, privileges,  
31 entitlements, obligations, and duties of the Department of Human Resources that are in  
32 effect on September 30, 2007, which relate to the functions transferred to the Department  
33 of Community Health pursuant to this Code section. Such rules, regulations, policies,  
34 procedures, and administrative orders shall remain in effect until amended, repealed,

1 superseded, or nullified by the Department of Community Health by proper authority or  
2 as otherwise provided by law.

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

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

#### 29 **SECTION 4-4.**

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

32 "31-7-155.

33 (a) No home health agency initiating service or extending the range of its service area shall  
34 be licensed unless the ~~Department of Community Health~~ department determines, in  
35 accordance with Article 3 of Chapter 6 of this title and regulations pursuant thereto, that  
36 there is a need for said services within the area to be served. All home health agencies

1 which were delivering services prior to July 1, 1979, and were certified for participation  
2 in either Title XVIII or Title XIX of the federal Social Security Act prior to such date shall  
3 be exempt from a certificate of need, except in those instances where expansion of services  
4 or service areas is requested by such home health agencies. Such exemption from a  
5 certificate of need shall extend to all areas in which a home health agency was licensed by  
6 the department to provide services on or before December 31, 1989, except as provided in  
7 subsection (b) of this Code section.

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

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

#### 18 **SECTION 4-5.**

19 Said chapter is further amended in Code Section 31-7-160, relating to definitions relative to  
20 health service provider psychologists, as follows:

21 "31-7-160.

22 As used in this article, the term:

23 (1) 'Health service provider psychologist' means a licensed psychologist who meets the  
24 criteria of training and experience as provided in Code Section 31-7-162 in the delivery  
25 of direct, preventive, assessment and therapeutic intervention services to individuals  
26 whose growth, adjustment, or functioning is actually impaired or is demonstrably at a  
27 high risk of impairment.

28 (2) 'Institution' means a health care facility as defined in Code Section 31-7-1 and a  
29 health care related institution as defined in Code Section 31-7-18.

30 (3) 'Medical facility' means any licensed general or specialized hospital, institutional  
31 infirmary, public health center, or diagnostic and treatment center.

32 ~~(2)~~(4) 'Psychologist's order' means an order issued by a health service provider  
33 psychologist practicing psychology in accordance with Chapter 39 of Title 43 for the care  
34 and treatment rendered to a person in a medical facility or institution, including admission  
35 and discharge. Such care and treatment does not include the ordering or prescribing of  
36 medications, nursing assessments or interventions, or medical procedures.

**SECTION 4-6.**

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

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

**SECTION 4-7.**

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

"31-7-265.

(a) Effective October 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 September 30, 2007, or scheduled to go into effect on or after October 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 September 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 October 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 September 30, 2007, shall, on October 1, 2007, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and

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

#### 13 **SECTION 4-8.**

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

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

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

18 ~~(1)~~(2) 'Health care provider' means any hospital or ambulatory surgical or obstetrical  
 19 facility having a license or permit issued by the department under Article 1 of this  
 20 chapter.

21 ~~(2)~~(3) 'Indigent person' means any person having as a maximum allowable income level  
 22 an amount corresponding to 125 percent of the federal poverty guideline.

23 ~~(3)~~(4) 'Third-party payor' means any entity which provides health care insurance or a  
 24 health care service plan, including but not limited to providers of major medical or  
 25 comprehensive accident or health insurance, whether or not through a self-insurance plan,  
 26 Medicaid, hospital service nonprofit corporation plans, health care plans, or nonprofit  
 27 medical service corporation plans, but does not mean a specified disease or supplemental  
 28 hospital indemnity payor."

#### 29 **SECTION 4-9.**

30 Said chapter is further amended by revising paragraph (6) of Code Section 31-7-300, relating  
 31 to private home care providers and related definitions, as follows:

32 "(6) 'Residence' means the place where an individual makes that person's permanent or  
 33 temporary home, whether that person's own apartment or house, a friend or relative's  
 34 home, or a personal care home, but shall not include a hospital, nursing home, hospice,  
 35 or other health care facility licensed under ~~Article 1~~ of this chapter."

**SECTION 4-10.**

Said chapter is further amended by revising Code Section 31-7-353, relating to penalties for hiring applicants with a criminal record in nursing as follows:

"31-7-353.

A nursing home that hires an applicant for employment with a criminal record shall be liable for a civil monetary penalty in the amount of the lesser of \$2,500.00 or \$500.00 for each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil monetary penalty shall be imposed only from the time the nursing home administrator knew or should have known that the nursing home has in its employ an individual with a criminal record and until the date such individual is terminated. The Department of Community Health shall be responsible for enforcing this Code section and is authorized to provide by rule for the administration of this article."

**PART V****SECTION 5-1.**

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising Code Section 31-8-59, relating to notice to residents from the state long-term care ombudsman, as follows:

"31-8-59.

The state ombudsman shall prepare and distribute to each long-term care facility in the state a written notice describing the long-term care ombudsman program and the procedure to follow in making a complaint, including the address and telephone number of the state ombudsman and community ombudsman, if any. The administrator shall give the written notice required by this Code section to each resident and his or her legally appointed guardian, if any, upon admission. The administrator shall also post such written notice in conspicuous public places in the facility in accordance with procedures provided by the state ombudsman and shall give such notice to any resident and his or her legally appointed guardian, if any, who did not receive it upon admission. The failure to provide the notices required by this Code section shall be a ground upon which the ~~department~~ Department of Community Health may revoke any permit issued to a long-term care facility ~~under Code Section 31-7-1~~ pursuant to Chapter 7 of this title."

**SECTION 5-2.**

Said title is further amended by adding a new paragraph to Code Section 31-8-81, relating to definitions regarding reporting abuse or exploitation of residents in long-term care facilities, as follows:

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

**SECTION 5-3.**

Said title is further amended by adding a new paragraph to Code Section 31-8-102, relating to definitions regarding the bill of rights for residents of long-term care facilities, as follows:

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

**SECTION 5-4.**

Said title is further amended by adding a new paragraph to Code Section 31-8-132, relating to definitions regarding remedies for residents of personal care homes, to read as follows:

"(2.1) 'Department' means the Department of Community Health."

**SECTION 5-5.**

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by revising paragraph (4) of subsection (h) of Code Section 50-13-9.1, relating to the prohibition against waiving and varying the rules of certain agencies, as follows:

"(4) Any rule or regulation is promulgated or adopted by the Department of Community Health; provided, however, that the requirements of this Code section shall apply and variances or waivers shall be authorized for rules or regulations relating to the licensure and permitting of health care facilities by the Department of Community Health under Chapter 7 of Title 31;"

**PART VI****SECTION 6-1.**

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

"19-10A-2.

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

**SECTION 6-2.**

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

"(h)(1) An administrator of an institution licensed as a hospital by the Department of ~~Human Resources~~ Community Health or a physician having a patient who has been

1 determined to be infected with HIV may disclose to the Department of Human  
2 Resources:  
3 (A) The name and address of that patient;  
4 (B) That such patient has been determined to be infected with HIV; and  
5 (C) The name and address of any other person whom the disclosing physician or  
6 administrator reasonably believes to be a person at risk of being infected with HIV by  
7 that patient."

### 8 SECTION 6-3.

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

11 "(1) 'Institution' shall have the same meaning as 'health care facility' as defined set forth  
12 in paragraph (4) of Code Section 31-7-1 and shall also include a 'health care related  
13 institution' as defined in paragraph (4) of Code Section 31-7-18 and a psychiatric hospital  
14 as defined in paragraph (7) of Code Section 37-3-1."

### 15 SECTION 6-4.

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

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

### 26 SECTION 6-5.

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

29 "31-1-1.

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

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



**SECTION 6-6.**

Said title is further amended by revising subsection (b) of Code Section 31-7-133, relating to confidentiality of review organization's records, as follows:

"(b) This Code section shall not apply to prevent:

(1) The disclosure under Article 4 of Chapter 18 of Title 50 of those documents in the department's custody which are records, reports, or recommendations of the Joint Commission on Accreditation of Healthcare Organizations or other national accreditation body and which are provided by ~~an institution~~ a health care facility to the department for licensure purposes under subsection (b) of Code Section 31-7-3 or by a health care related institution as defined by Code Section 31-7-18 to the Department of Human Resources for licensure purposes under Code Section 31-7-18.5;

(2) The use of peer review documents in any proceeding involving the permitting or licensing of ~~an institution~~ a health care facility pursuant to this ~~chapter~~ article or of a health care related institution as defined by Code Section 31-7-18 pursuant to Article 1A of this chapter to the extent necessary to challenge the effectiveness of the facility's or institution's peer review system; provided, however, such use shall not waive or abrogate the confidentiality of such documents as set forth in this Code section and in Code Section 31-7-15; or

(3) A health care provider from obtaining the specific reasons and the records and proceedings related to such provider's exclusion or termination as a participating provider in a health maintenance organization, provider network, or other organization which engages in managed care if such provider has brought a civil action against such health maintenance organization, provider network, or other organization for wrongful exclusion or termination."

**SECTION 6-7.**

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

"31-7-282.

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

- (1) Health care providers;
- (2) The Department of ~~Community Health~~ Human Resources;
- (3) The Commissioner of Insurance;
- (4) Reserved;
- (5) Third-party payors;
- (6) The Joint Commission on the Accreditation of Healthcare Organizations; and

(7) Other appropriate sources as determined by the department.

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

#### **SECTION 6-8.**

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

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

#### **SECTION 6-9.**

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

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

#### **SECTION 6-10.**

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

"31-18-3.

Every public and private health and social agency, every hospital or facility that has a valid permit or provisional permit issued by the Department of Human Resources or the Department of Community Health under Chapter 7 of this title, and every physician licensed to practice medicine in this state, if such physician has not otherwise reported such information to another agency, hospital, and facility, shall report to the Brain and Spinal Injury Trust Fund Commission such information concerning the identity of the person such agency, hospital, facility, or physician has identified as having a traumatic brain or spinal cord injury as defined in this chapter. The report shall be made within 45 days after

1 identification of the person with the traumatic brain or spinal cord injury. The report shall  
2 contain the name, age, address, type and extent of ~~disability~~ injury, and such other  
3 information concerning the person with the ~~disability~~ injury as the Brain and Spinal Injury  
4 Trust Fund Commission, which is administratively assigned to the department, may  
5 require."

#### 6 SECTION 6-11.

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

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

#### 12 SECTION 6-12.

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

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

#### 21 SECTION 6-13.

22 Said title is further amended by revising subparagraph (a)(8)(A) of Code Section 31-22-9.1,  
23 relating to who may perform HIV tests, as follows:

24 "(A) ~~Institution~~ Health care facility or medical facility, as defined in Code Section  
25 31-7-1, and health care related institution, as defined in Code Section 31-7-18;"

#### 26 SECTION 6-14.

27 Said title is further amended by revising division (a)(1)(B)(ii) of Code Section 31-33-2,  
28 relating to the requirement to furnish copies of medical health records, as follows:

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

**SECTION 6-15.**

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

"33-19-10.

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

**SECTION 6-16.**

(a) Code Section 33-44-2, relating to definitions relative to the "Georgia High Risk Health Insurance Plan," is amended by revising paragraph (7) as follows:

"(7) 'Hospital' means any ~~institution~~ health care facility or medical facility as defined in Code Section 31-7-1."

(b) This section shall become effective upon the appropriation of funds by the General Assembly necessary to carry out the purposes of the "Georgia High Risk Health Insurance Plan," as enacted pursuant to Ga. L. 1989, p. 1701.

**SECTION 6-17.**

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

"(6) 'Project' means the acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements located or to be located within the downtown development area, and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, any undertaking authorized by Chapter 43 of this title as part of a city business improvement district, any undertaking authorized in Chapter 44 of this title, the 'Redevelopment Powers Law,' when the downtown development authority has been designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of this title, the 'Urban Redevelopment Law,' when the downtown development authority has been designated as an urban redevelopment agency, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities in its authorized area of operation. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determine, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. Such term shall include any one

1 or more buildings or structures used or to be used as a not for profit hospital, not for  
2 profit skilled nursing home, or not for profit intermediate care home subject to regulation  
3 and licensure by the Department of ~~Human Resources~~ Community Health and all  
4 necessary, convenient, or related interests in land, machinery, apparatus, appliances,  
5 equipment, furnishings, appurtenances, site preparation, landscaping, and physical  
6 amenities."

#### 7 **SECTION 6-18.**

8 Code Section 37-1-20, relating to the Division of Mental Health, Developmental Disabilities,  
9 and Addictive Diseases, is amended by revising paragraph (4) of subsection (c), as follows:

10 "(4) Classify and license community living arrangements, as defined in paragraph (16)  
11 of subsection (b) of this Code section, in accordance with the rules and regulations  
12 promulgated by the department for the licensing of community living arrangements and  
13 the enforcement of licensing requirements. To be eligible for licensing as a community  
14 living arrangement, the residence and services provided must be integrated within the  
15 local community. All community living arrangements licensed by the department shall  
16 be subject to the provisions of Code Sections 31-2-6 and ~~31-7-2.2~~ 31-7-18.3 No person,  
17 business entity, corporation, or association, whether operated for profit or not for profit,  
18 may operate a community living arrangement without first obtaining a license or  
19 provisional license from the department. A license issued under this article is not  
20 assignable or transferable."

#### 21 **SECTION 6-19.**

22 Code Section 43-11-21, relating to conscious sedation, is amended by revising paragraph (1)  
23 of subsection (h) as follows:

24 "(h)(1) This Code section shall not prohibit a person who is duly licensed to practice  
25 medicine in this state and who is a member of the anesthesiology staff of ~~an institution~~  
26 a health care facility classified as a hospital and issued a permit as ~~an institution~~ a health  
27 care facility under Code Section 31-7-1 from administering conscious sedation in a dental  
28 facility, except that such anesthesiologist shall remain on the premises of the dental  
29 facility until any patient given conscious sedation by such anesthesiologist is stabilized  
30 and has regained consciousness."

#### 31 **SECTION 6-20.**

32 Code Section 43-11-21.1, relating to general anesthesia, is amended by revising paragraph  
33 (1) of subsection (d) as follows:

"(d)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of ~~an institution~~ a health care facility classified as a hospital and issued a permit as ~~an institution~~ a health care facility under Code Section 31-7-1 from administering general anesthesia in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given a general anesthetic by such anesthesiologist is stabilized and has regained consciousness."

#### SECTION 6-21.

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

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

#### SECTION 6-22.

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

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

#### SECTION 6-23.

Code Section 50-26-4, relating to definitions associated with the housing and finance authority, is amended by revising paragraphs (6.1), (6.2), and (11) as follows:

"(6.1) 'Health care services' means any medical, health care, or health care related services provided by a health care provider licensed as a hospital by the Department of ~~Human Resources~~ Community Health under Article 1 of Chapter 7 of Title 31, including, without limitation, health care services for indigent patients whether or not such services are supported directly or indirectly, and in whole or in part, through any payment or reimbursement program of any federal, state, or local governmental entity, agency, instrumentality, or authority.

(6.2) 'Health facility' means any nonprofit health care facility which is licensed as a hospital by the Department of ~~Human Resources~~ Community Health under Article 1 of Chapter 7 of Title 31, owned or operated by a participating provider, and utilized, directly or indirectly, in health care, medical research, or the training or teaching of health care personnel."

(11) 'Participating provider' means a nonprofit person, corporation, municipal corporation, public corporation, or political subdivision or other nonprofit entity, public or private, which:

(A) Is a hospital authority or is affiliated with a hospital authority organized and existing under the provisions of Article 4 of Chapter 7 of Title 31; or

(B) Owns or operates, directly or indirectly, or is affiliated with, at least one nonprofit health facility which is licensed as a hospital by the Department of ~~Human Resources~~ Community Health under Article 1 of Chapter 7 of Title 31

and which contracts under this chapter with the authority for the financing, refinancing, lease, or other acquisition of a project."

**SECTION 6-24.**

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

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

**SECTION 6-25.**

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

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

## PART VII

## SECTION 7-1.

Except as otherwise provided in Section 6-16 of this Act, this Act shall become effective on October 1, 2007.

## SECTION 7-2.

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