

House Bill 994

By: Representatives Houston of the 170th, Sims of the 119th, Cooper of the 41st, and Meadows of the 5th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 revise the regulatory authority of the Department of Community Health with respect to
3 various facilities and entities; to authorize the department to establish a schedule of fees for
4 licensure activities for institutions and other health care related entities required to be
5 licensed, permitted, registered, or commissioned by the department; to repeal various
6 provisions relating to licensure of clinical laboratories; to revise various provisions of the
7 Official Code of Georgia Annotated for purposes of conformity; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
12 Section 31-2-4, relating to the powers, duties, functions, and responsibilities of the
13 Department of Community Health, by revising subsection (d) as follows:

14 "(d) In addition to its other powers, duties, and functions, the department:

15 (1) Shall be the lead agency in coordinating and purchasing health care benefit plans for
16 state and public employees, dependents, and retirees and may also coordinate with the
17 board of regents for the purchase and administration of such health care benefit plans for
18 its members, employees, dependents, and retirees;

19 (2) Is authorized to plan and coordinate medical education and physician work force
20 issues;

21 (3) Shall investigate the lack of availability of health insurance coverage and the issues
22 associated with the uninsured population of this state. In particular, the department is
23 authorized to investigate the feasibility of creating and administering insurance programs
24 for small businesses and political subdivisions of the state and to propose cost-effective
25 solutions to reducing the numbers of uninsured in this state;

- 26 (4) Is authorized to appoint a health care work force policy advisory committee to
27 oversee and coordinate work force planning activities;
- 28 (5) Is authorized to solicit and accept donations, contributions, and gifts and receive,
29 hold, and use grants, devises, and bequests of real, personal, and mixed property on
30 behalf of the state to enable the department to carry out its functions and purposes;
- 31 (6) Is authorized to award grants, as funds are available, to hospital authorities and
32 hospitals for public health purposes, pursuant to Code Sections 31-7-94 and 31-7-94.1;
- 33 (7) Shall make provision for meeting the cost of hospital care of persons eligible for
34 public assistance to the extent that federal matching funds are available for such
35 expenditures for hospital care. To accomplish this purpose, the department is authorized
36 to pay from funds appropriated for such purposes the amount required under this
37 paragraph into a trust fund account which shall be available for disbursement for the cost
38 of hospital care of public assistance recipients. The commissioner, subject to the
39 approval of the Office of Planning and Budget, on the basis of the funds appropriated in
40 any year, shall estimate the scope of hospital care available to public assistance recipients
41 and the approximate per capita cost of such care. Monthly payments into the trust fund
42 for hospital care shall be made on behalf of each public assistance recipient and such
43 payments shall be deemed encumbered for assistance payable. Ledger accounts
44 reflecting payments into and out of the hospital care fund shall be maintained for each of
45 the categories of public assistance established under Code Section 49-4-3. The balance
46 of state funds in such trust fund for the payment of hospital costs in an amount not to
47 exceed the amount of federal funds held in the trust fund by the department available for
48 expenditure under this paragraph shall be deemed encumbered and held in trust for the
49 payment of the costs of hospital care and shall be rebudgeted for this purpose on each
50 quarterly budget required under the laws governing the expenditure of state funds. The
51 state auditor shall audit the funds in the trust fund established under this paragraph in the
52 same manner that any other funds disbursed by the department are audited; ~~and~~
- 53 (8) Shall classify and license community living arrangements in accordance with the
54 rules and regulations promulgated by the department for the licensing and enforcement
55 of licensing requirements for persons whose services are financially supported, in whole
56 or in part, by funds authorized through the Department of Behavioral Health and
57 Developmental Disabilities. To be eligible for licensing as a community living
58 arrangement, the residence and services provided must be integrated within the local
59 community. All community living arrangements licensed by the department shall be
60 subject to the provisions of Code Sections 31-2-11 and 31-7-2.2. No person, business
61 entity, corporation, or association, whether operated for profit or not for profit, may
62 operate a community living arrangement without first obtaining a license or provisional

63 license from the department. A license issued pursuant to this paragraph is not assignable
 64 or transferable. As used in this paragraph, the term 'community living arrangement'
 65 means any residence, whether operated for profit or not, which undertakes through its
 66 ownership or management to provide or arrange for the provision of housing, food, one
 67 or more personal services, ~~supports~~ support, care, or treatment exclusively for two or
 68 more persons who are not related to the owner or administrator of the residence by blood
 69 or marriage; and

70 (9) Shall establish, by rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia
 71 Administrative Procedure Act,' a schedule of fees for licensure activities for institutions
 72 and other health care related entities required to be licensed, permitted, registered, or
 73 commissioned by the department pursuant to Chapter 7, 13, 23, or 44 of this title, Chapter
 74 5 of Title 26, paragraph (8) of this subsection, or Article 7 of Chapter 6 of Title 49. Such
 75 schedules shall be determined in a manner so as to help defray the costs incurred by the
 76 department, but in no event to exceed such costs, both direct and indirect, in providing
 77 such licensure activities. All fees paid thereunder shall be paid into the general funds of
 78 the State of Georgia. It is the intent of the General Assembly that the proceeds from all
 79 fees imposed pursuant to this paragraph be used to support and improve the quality of
 80 licensing services provided by the department."

81 **SECTION 2.**

82 Said title is further amended by revising Chapter 22, relating to clinical laboratories, as
 83 follows:

84 "31-22-1.

85 ~~As used in this chapter, the term:~~

86 ~~(1) 'Board' means the Board of Community Health.~~

87 ~~(2) 'Clinical laboratory' means a facility for the biological, microbiological, serological,~~
 88 ~~chemical, immunohematological, hematological, biophysical, cytological, pathological,~~
 89 ~~or other examination of materials derived from the human body for the diagnosis of,~~
 90 ~~recommendation of treatment of, or for the purposes of providing information for the~~
 91 ~~diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of~~
 92 ~~the health of human beings; the term 'clinical laboratory' shall include specimen~~
 93 ~~collection stations and shall include blood banks which provide through their ownership~~
 94 ~~or operation a system for the collection, processing, or storage of human blood and its~~
 95 ~~component parts as well as tissue banks which procure, store, or process human or animal~~
 96 ~~tissues designed to be used for medical purposes in human beings.~~

97 ~~(3) 'Director' means a person who is responsible for the administration of the technical~~
 98 ~~and scientific operation of a clinical laboratory, including supervision of procedures for~~
 99 ~~testing and the reporting of results.~~

100 ~~(4) 'Person' means any individual, firm, partnership, association, corporation, the state~~
 101 ~~or any municipality or other subdivision thereof, or any other entity whether organized~~
 102 ~~for profit or not.~~

103 ~~(5) 'Specimen collection station' means a place having the primary purpose of either~~
 104 ~~collecting specimens directly from patients or bringing specimens together after~~
 105 ~~collection for the purpose of forwarding them either intrastate or interstate to a clinical~~
 106 ~~laboratory for examination.~~

107 ~~(6) 'Supervisor' means an assistant director and a person who, under the general~~
 108 ~~supervision of a clinical laboratory director, supervises technical personnel and performs~~
 109 ~~tests requiring special scientific skills.~~

110 ~~(7) 'Technician' means any person other than the clinical laboratory director, supervisor,~~
 111 ~~technologist, or trainee who functions under the supervision of a clinical laboratory~~
 112 ~~director, supervisor, or technologist and performs only those clinical laboratory~~
 113 ~~procedures which require limited skill and responsibility and a minimal exercise of~~
 114 ~~independent judgment. The degree of supervision by the clinical laboratory director,~~
 115 ~~supervisor, or technologist of a technician shall be determined by the director, supervisor,~~
 116 ~~or technologist based on:~~

117 ~~(A) The complexity of the procedure to be performed;~~

118 ~~(B) The training and capability of the technician; and~~

119 ~~(C) The demonstrated competence of the technician in the procedure being performed.~~

120 ~~(8) 'Technologist' means a person who performs tests which require the exercise of~~
 121 ~~independent judgment and responsibility, with minimal supervision by the director or~~
 122 ~~supervisor, in only those specialties or subspecialties in which he is qualified by~~
 123 ~~education, training, and experience. Reserved.~~

124 31-22-2.

125 ~~(a) No clinical laboratory shall be operated without a license issued and in force pursuant~~
 126 ~~to this chapter; provided, however, that the department may promulgate rules and~~
 127 ~~regulations by which a facility or a part of a facility in which laboratory testing is done may~~
 128 ~~qualify for exemption from licensure when only specific tests or techniques, designated by~~
 129 ~~the department and used for screening and monitoring purposes only, are performed.~~

130 ~~(b) Application for licenses shall be made to the Department of Community Health on~~
 131 ~~forms prescribed by it. The application shall indicate the categories of procedures to be~~
 132 ~~performed and shall contain such additional information as the department may require.~~

133 ~~Each application shall be accompanied by a nonrefundable fee prescribed by the~~
134 ~~department.~~

135 ~~(c) The license applied for shall be issued if the department finds that all requirements are~~
136 ~~met or, in the case of a new clinical laboratory not yet in operation, that the owner is in a~~
137 ~~position to meet them. A license shall authorize the performance of one or more~~
138 ~~procedures or categories of procedures and shall be valid for one year from the date of~~
139 ~~issue unless sooner canceled, suspended, or revoked.~~

140 ~~(d) A clinical laboratory license may be denied, revoked, suspended, limited, or renewal~~
141 ~~thereof denied on the following grounds:~~

142 ~~(1) Making false statements of material information on an application for clinical~~
143 ~~laboratory license or any other documents required by the department;~~

144 ~~(2) Permitting unauthorized persons to perform technical procedures or to issue or sign~~
145 ~~reports;~~

146 ~~(3) Demonstrating incompetence in the performance or reporting of clinical laboratory~~
147 ~~examinations and procedures;~~

148 ~~(4) Performing a test for or rendering a report to a person not authorized by law to~~
149 ~~receive such services;~~

150 ~~(5) Referring a specimen for examination to a clinical laboratory in this state which has~~
151 ~~not been licensed pursuant to this chapter unless such referral laboratory is exempted~~
152 ~~from coverage of this chapter;~~

153 ~~(6) Making a report on clinical laboratory work actually performed in another clinical~~
154 ~~laboratory without designating the name of the director and the name and address of the~~
155 ~~clinical laboratory in which the test was performed;~~

156 ~~(7) Lending the use of the name of the licensed clinical laboratory or its personnel to an~~
157 ~~unlicensed clinical laboratory;~~

158 ~~(8) Violating or aiding in the violation of any provision of this chapter or the rules or~~
159 ~~regulations promulgated hereunder; or~~

160 ~~(9) Violating any other provisions of law applicable to the proper operation of a clinical~~
161 ~~laboratory.~~

162 ~~(e) Each clinical laboratory shall have a licensed director. An individual shall be permitted~~
163 ~~to direct no more than three clinical laboratories. No individual shall function as a director~~
164 ~~of a clinical laboratory unless he is a physician licensed to practice medicine and surgery~~
165 ~~pursuant to Chapter 34 of Title 43; provided, however, that the director of a clinical~~
166 ~~laboratory restricting its practice to dental pathology may be either a physician licensed to~~
167 ~~practice medicine and surgery or a dentist licensed to practice dentistry; provided, further,~~
168 ~~that the board may promulgate rules and regulations which authorize persons who possess~~

169 ~~doctorate degrees in biology, microbiology, and related fields to be directors of clinical~~
170 ~~laboratories when the proper circumstances and qualifications are present.~~

171 ~~(f) A clinical laboratory license shall specify on the face thereof the names of the owner~~
172 ~~and director, procedures or categories of procedures authorized, the location at which such~~
173 ~~procedures are to be performed, and the period for which the license is valid. The license~~
174 ~~shall be displayed at all times in a prominent place where it may be viewed by the public.~~

175 ~~(g) Licenses issued pursuant to this chapter shall be subject to renewal in accordance with~~
176 ~~rules and regulations of the department.~~

177 ~~(h) The board shall fix and publish and from time to time revise schedules of fees for~~
178 ~~applications and renewals. Such fees for clinical laboratory licenses shall be in amounts~~
179 ~~calculated to defray the costs of necessary inspections, evaluations, and investigations~~
180 ~~related thereto.~~

181 ~~(i) The board shall promulgate rules and regulations which specify minimum standards for~~
182 ~~laboratory supervisors; provided, however, that nothing in this chapter shall be construed~~
183 ~~to affect any director, supervisor, technologist, or technician who is holding any such~~
184 ~~position on July 1, 1970.~~

185 ~~(j) For the purposes of licensure, specimen collection stations which have a parent clinical~~
186 ~~laboratory licensed by the State of Georgia may be considered by the department to be part~~
187 ~~of that laboratory. Reserved.~~

188 31-22-3.

189 ~~(a) The department shall appoint a Clinical Laboratory, Blood Bank, and Tissue Bank~~
190 ~~Committee (hereinafter referred to as 'committee') which shall be composed of seven~~
191 ~~members whose respective terms of office shall be staggered so that the terms of members~~
192 ~~representing a particular specialty or profession shall not all expire at the same time. Each~~
193 ~~appointment made by the department shall be made from a list of three names submitted~~
194 ~~by each professional association representing the medical or medically oriented interest~~
195 ~~involved and shall comply with the following provisions:~~

196 ~~(1) One member of the committee shall be a medical laboratory technician or shall be a~~
197 ~~medical laboratory technologist who has at least two years' experience but who has not~~
198 ~~more than 134 hours of college or university level work;~~

199 ~~(2) Two members of the committee shall be physicians duly licensed to practice~~
200 ~~medicine and surgery pursuant to Chapter 34 of Title 43, one of whom limits his practice~~
201 ~~to pathology;~~

202 ~~(3) One member of the committee shall be a medical laboratory technologist;~~

203 ~~(4) One member of the committee shall be a chemist;~~

204 ~~(5) One member of the committee shall be an active hospital administrator;~~

205 ~~(6) One member of the committee shall be a clinical microbiologist, and~~
206 ~~(7) There shall be no more than two physician members of the committee serving at the~~
207 ~~same time. In addition to each appointment made by the department from the list of three~~
208 ~~names submitted by each professional association, one name from each list shall be~~
209 ~~selected to serve as an alternate in the event the regularly appointed member is absent.~~
210 ~~If the alternate must serve as a representative at more than three meetings within any year~~
211 ~~of appointment, the alternate shall become a member. The third nominee shall then~~
212 ~~become the alternate member. While such alternate is acting in his official capacity, he~~
213 ~~shall be governed by the same rules and regulations as other committee members and~~
214 ~~shall enjoy the same benefits and privileges.~~

215 ~~(b) The committee shall elect such officers and shall be governed by such rules and~~
216 ~~regulations as it may adopt for its own governance, subject to final approval by the~~
217 ~~department. Members of the committee shall serve without pay but they shall receive~~
218 ~~reimbursement for actual and necessary expenses incurred in the performance of their~~
219 ~~duties. The committee shall be responsible to and report to the department and shall have~~
220 ~~the duty of advising the department on matters pertaining to standards for studying and~~
221 ~~evaluating the location, operation, supervision, and procedures of clinical laboratories,~~
222 ~~blood banks, and tissue banks required to be licensed pursuant to this chapter, staffing and~~
223 ~~personnel matters in the administration of this chapter; and rules and regulations to be~~
224 ~~adopted, modified, promulgated, or repealed pursuant to this chapter. No such standards~~
225 ~~shall be approved, nor staffing and personnel matters in the administration of this chapter~~
226 ~~decided, nor rules or regulations adopted, modified, promulgated, or repealed by the~~
227 ~~department except after consultation with the committee. The department shall notify the~~
228 ~~chairman of the committee of any request by an applicant or licensee for a hearing on any~~
229 ~~action, proposed action, or failure to act by the department with reference to the issuance,~~
230 ~~denial, suspension, or revocation of a license to a clinical laboratory, blood bank, or tissue~~
231 ~~bank pursuant to this chapter; and the chairman of the committee, or any member of the~~
232 ~~committee if the chairman does not choose to act, shall have the right to attend any such~~
233 ~~hearing and to request of the department and receive from the department at the~~
234 ~~department's expense the examiner's report and transcript of any such hearing, such report~~
235 ~~and transcript to be made available upon such request at least 15 days before final action~~
236 ~~with respect to any such matter. Reserved.~~

237 31-22-4.

238 ~~(a) A clinical laboratory shall examine human specimens only at the request of a licensed~~
239 ~~physician, dentist, or other person authorized by law to use the findings of laboratory~~
240 ~~examinations.~~

241 ~~(b) All specimens accepted by a clinical laboratory shall be tested on the premises or in~~
242 ~~another laboratory or location under the responsibility of the director unless forwarded to~~
243 ~~another properly licensed clinical laboratory.~~

244 ~~(c) The results of a test shall be reported only to or as directed by the licensed physician,~~
245 ~~dentist, or other authorized person requesting such test. Such reports shall include the name~~
246 ~~of the director and the name and address of the clinical laboratory in which the test was~~
247 ~~performed.~~

248 ~~(d) No person shall represent or maintain an office or specimen collection station or other~~
249 ~~facility for the representation of any clinical laboratory situated in this state or any other~~
250 ~~state which makes examinations in connection with the diagnosis and control of diseases~~
251 ~~unless the clinical laboratory so represented shall meet or exceed the minimum standards~~
252 ~~issued by the department pursuant to this chapter and the regulations issued under this~~
253 ~~chapter.~~

254 ~~(e) The department may require laboratories to show evidence that specimens shipped~~
255 ~~through the mails and accepted by them for analysis are sufficiently stable for the~~
256 ~~determinations requested.~~

257 ~~(f) Records involving clinical laboratory services and copies of reports of laboratory tests~~
258 ~~shall be kept for the period of time and in the manner prescribed by the department.~~

259 ~~(g) Each clinical laboratory shall establish its own quality assurance program designed to~~
260 ~~ensure testing accuracy and in accordance with the rules and regulations promulgated by~~
261 ~~the department. The quality assurance program shall also include the use of, where~~
262 ~~applicable, calibration and control practices designed to ensure accurate and reliable test~~
263 ~~processes.~~

264 ~~(h) Subsections (a) through (c) of this Code section shall not apply to the taking,~~
265 ~~examining, or testing of specimens by a clinical laboratory or its personnel solely in order~~
266 ~~to test the accuracy or sufficiency of its procedures or in order to make improvements in~~
267 ~~such procedures. Reserved.~~

268 31-22-5.

269 ~~(a) Those clinical laboratories which provide a system for the collection, processing, or~~
270 ~~storage of human blood and its component parts shall provide methods for the selection of~~
271 ~~blood donors as well as methods for the collection, storage, processing, and transfusion of~~
272 ~~blood, which shall ensure that the blood donation will not be detrimental to the donor and~~
273 ~~to protect the ultimate recipient of human blood or any of its component parts from~~
274 ~~infectious disease known to be transmissible by blood.~~

275 ~~(b) The methods described in subsection (a) of this Code section shall conform to the most~~
276 ~~recent 'Standards for Blood Banks and Transfusion Services' published by the American~~

277 ~~Association of Blood Banks; provided, however, that the board may modify the standards~~
 278 ~~published by the American Association of Blood Banks by adopting separate or~~
 279 ~~supplementary rules and regulations to ensure that the blood donation will not be~~
 280 ~~detrimental to the donor and will protect the ultimate recipient of human blood or any of~~
 281 ~~its component parts from diseases known to be transmissible by blood. Reserved.~~

282 31-22-6.

283 ~~In addition to powers conferred elsewhere in this chapter, the board shall:~~

284 ~~(1) Promulgate rules and regulations for the implementation of this chapter, after~~
 285 ~~recommendations from the advisory committee authorized in Code Section 31-22-3;~~

286 ~~(2) Establish and enforce standards governing the safety and sanitary requirements~~
 287 ~~pertaining to clinical laboratories to the extent that they are not otherwise subject to~~
 288 ~~requirements imposed by law or municipal ordinance; and~~

289 ~~(3) Promulgate rules and regulations relating to the qualifications and performance of all~~
 290 ~~personnel. Reserved.~~

291 31-22-7.

292 ~~(a) The department shall require reporting by clinical laboratories of evidence of such~~
 293 ~~infectious diseases as the department may specify and shall furnish forms for such~~
 294 ~~reporting. No clinical laboratory making reports shall be held liable for having violated a~~
 295 ~~trust or confidential relationship. The reports submitted shall be deemed confidential and~~
 296 ~~not subject to public inspection.~~

297 ~~(b) Every director of a clinical laboratory shall report to the department such information~~
 298 ~~regarding the operation of the clinical laboratory as the department by its rules and~~
 299 ~~regulations may require in order to aid in the proper administration of this chapter.~~
 300 ~~Reserved.~~

301 31-22-8.

302 ~~(a) The department shall make periodic inspections of every clinical laboratory, at its~~
 303 ~~discretion. In lieu of or to supplement its own inspection program, the department may use~~
 304 ~~results of inspections conducted by other accrediting agencies. For the purpose of this~~
 305 ~~subsection, the employees or agents of the department shall have the right of entry into the~~
 306 ~~premises of the laboratory during normal hours of operation.~~

307 ~~(b) The department shall operate a clinical laboratory evaluation program and shall~~
 308 ~~prescribe standards of performance in the examination of specimens. As part of the clinical~~
 309 ~~laboratory evaluation program, the department may require the clinical laboratory to~~

310 ~~analyze test samples submitted or authorized by the department and report on the results~~
 311 ~~of such analysis. Reserved.~~

312 31-22-9.

313 ~~(a) This chapter shall not apply to clinical laboratories which are:~~

314 ~~(1) Operated by the Medical College of Georgia, the Emory University School of~~
 315 ~~Medicine, any other medical schools in Georgia, or the United States government;~~

316 ~~(2) Operated and maintained exclusively for research and teaching purposes, involving~~
 317 ~~no patient or public health services;~~

318 ~~(3) Operated and maintained as part of a hospital regulated and licensed by the~~
 319 ~~department at any period of time during which the department, as part of its licensure and~~
 320 ~~regulation of such hospital, imposes upon the medical laboratory involved the same~~
 321 ~~standards of administration, performance, and operation as are imposed by this chapter~~
 322 ~~upon medical laboratories covered in this chapter. In such cases and under such~~
 323 ~~conditions, licensure of the hospital involved constitutes licensure of the hospital~~
 324 ~~laboratory; or~~

325 ~~(4) Operated by duly licensed physicians exclusively in connection with the diagnosis~~
 326 ~~and treatment of their own patients.~~

327 ~~(b) This chapter shall not apply to pharmacists licensed pursuant to Chapter 4 of Title 26~~
 328 ~~practicing in accordance with the provisions thereof who are performing capillary blood~~
 329 ~~tests and interpreting the results as a means to screen for or monitor disease risk factors and~~
 330 ~~facilitate patient education as authorized in Code Section 26-4-4, so long as such capillary~~
 331 ~~blood tests are available to and for use by the public without licensure of the user of the~~
 332 ~~test. Reserved.~~

333 31-22-9.1.

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

335 (1) 'AIDS' means Acquired Immunodeficiency Syndrome or AIDS Related Complex
 336 within the reporting criteria of the department.

337 (2) 'AIDS confidential information' means information which discloses that a person:

338 (A) Has been diagnosed as having AIDS;

339 (B) Has been or is being treated for AIDS;

340 (C) Has been determined to be infected with HIV;

341 (D) Has submitted to an HIV test;

342 (E) Has had a positive or negative result from an HIV test;

343 (F) Has sought and received counseling regarding AIDS; or

344 (G) Has been determined to be a person at risk of being infected with AIDS,

- 345 and which permits the identification of that person.
- 346 (3) 'AIDS transmitting crime' means any of the following offenses specified in Title 16:
- 347 (A) Rape;
- 348 (B) Sodomy;
- 349 (C) Aggravated sodomy;
- 350 (D) Child molestation;
- 351 (E) Aggravated child molestation;
- 352 (F) Prostitution;
- 353 (G) Solicitation of sodomy;
- 354 (H) Incest;
- 355 (I) Statutory rape; or
- 356 (J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding
- 357 controlled substances, if that offense involves heroin, cocaine, derivatives of either, or
- 358 any other controlled substance in Schedule I, II, III, IV, or V and that other substance
- 359 is commonly intravenously injected, as determined by the regulations of the
- 360 department.
- 361 (4) 'Body fluids' means blood, semen, or vaginal secretions.
- 362 (5) 'Confirmed positive HIV test' means the results of at least two separate types of HIV
- 363 tests, both of which indicate the presence of HIV in the substance tested thereby.
- 364 (6) 'Counseling' means providing the person with information and explanations
- 365 medically appropriate for that person which may include all or part of the following:
- 366 accurate information regarding AIDS and HIV; an explanation of behaviors that reduce
- 367 the risk of transmitting AIDS and HIV; an explanation of the confidentiality of
- 368 information relating to AIDS diagnoses and HIV tests; an explanation of information
- 369 regarding both social and medical implications of HIV tests; and disclosure of commonly
- 370 recognized treatment or treatments for AIDS and HIV. The Department of Community
- 371 Health shall develop brochures or other documents which meet the requirements of this
- 372 paragraph and, upon delivery of such a brochure or document or of another brochure or
- 373 document approved by the Department of Community Health to the person and referral
- 374 of that person to the Department of Community Health for further information and
- 375 explanations, counseling shall be deemed to have been provided within the meaning of
- 376 this paragraph.
- 377 (7) 'Determined to be infected with HIV' means having a confirmed positive HIV test or
- 378 having been clinically diagnosed as having AIDS.
- 379 (8) 'Health care facility' means any:
- 380 (A) Institution or medical facility, as defined in Code Section 31-7-1;

- 381 (B) Facility for the mentally ill, developmentally disabled, or alcoholic or drug
 382 dependent persons, as defined in Code Sections 37-3-1, 37-4-2, and 37-7-1,
 383 respectively;
- 384 (C) Medical, dental, osteopathic, or podiatric clinic;
- 385 (D) Hospice, as defined in Code Section 31-7-172;
- 386 (E) Clinical laboratory, ~~as defined in Code Section 31-22-1~~; or
- 387 (F) Administrative, clerical, or support personnel of any legal entity specified in
 388 subparagraphs (A) through (E) of this paragraph.
- 389 (9) 'Health care provider' means any of the following persons ~~licensed or regulated by~~
 390 ~~the state~~:
- 391 (A) Physician or physician assistant;
- 392 (B) Osteopath;
- 393 (C) Podiatrist;
- 394 (D) Midwife;
- 395 (E) Dentist, dental technician, or dental hygienist;
- 396 (F) Respiratory care professional, certified respiratory therapy technician, or registered
 397 respiratory therapist;
- 398 (G) Registered nurse;
- 399 (H) Licensed practical nurse;
- 400 (I) Emergency medical technician, paramedic, or cardiac technician;
- 401 (J) Clinical laboratory director, supervisor, technician, or technologist;
- 402 (K) Funeral director or embalmer;
- 403 (L) Member of a hospice team, as defined in Code Section 31-7-172;
- 404 (M) Nursing home administrator;
- 405 (N) Professional counselor, social worker, or marriage and family therapist;
- 406 (O) Psychologist;
- 407 (P) Administrative, clerical, or support personnel, ~~whether or not they are licensed or~~
 408 ~~regulated by the state~~, of any person specified in subparagraphs (A) through (O) of this
 409 paragraph;
- 410 (Q) Trainee, student, or intern, ~~whether or not they are licensed or regulated by the~~
 411 ~~state~~, of any persons listed in subparagraphs (A) through (O) of this paragraph; or
- 412 (R) First responder, as defined in Chapter 11 of this title, ~~although such person is not~~
 413 ~~licensed or regulated by the state~~.
- 414 (10) 'HIV' means any type of Human Immunodeficiency Virus, Human T-Cell
 415 Lymphotropic Virus Types III or IV, Lymphadenopathy Associated Virus Types I or II,
 416 AIDS Related Virus, or any other identified causative agent of AIDS.

- 417 (11) 'HIV infected person' means a person who has been determined to be infected with
 418 HIV, whether or not that person has AIDS, or who has been clinically diagnosed as
 419 having AIDS.
- 420 (12) 'HIV test' means any antibody, antigen, viral particle, viral culture, or other test to
 421 indicate the presence of HIV in the human body, which test has been approved for such
 422 purposes by the regulations of the department.
- 423 (13) 'Institutional care facility' means any:
- 424 (A) Health care facility;
 - 425 (B) Child welfare agency, as defined in Code Section 49-5-12;
 - 426 (C) Group care facility, as defined in Code Section 49-5-3;
 - 427 (D) Penal institution; or
 - 428 (E) Military unit.
- 429 (14) 'Knowledge of being infected with HIV' means actual knowledge of:
- 430 (A) A confirmed positive HIV test; or
 - 431 (B) A clinical diagnosis of AIDS.
- 432 (15) 'Law' means federal or state law.
- 433 (16) 'Legal entity' means a partnership, association, joint venture, trust, governmental
 434 entity, public or private corporation, health care facility, institutional care facility, or any
 435 other similar entity.
- 436 (17) 'Military unit' means the smallest organizational unit of the organized militia of the
 437 state, as defined in Code Section 38-2-2, or of any branch of the armed forces of the
 438 United States, which unit is commanded by a commissioned officer.
- 439 (18) 'Penal institution' means any jail, correctional institution, or similar facility for the
 440 detention of violators of state laws or local ordinances.
- 441 (19) 'Person' means a natural person.
- 442 (20) 'Person at risk of being infected with HIV' means any person who may have already
 443 come in contact with or who may in the future reasonably be expected to come in contact
 444 with the body fluids of an HIV infected person.
- 445 (21) 'Physician' means any person licensed to practice medicine under Chapter 34 of
 446 Title 43.
- 447 (22) 'Public safety agency' means that governmental unit which directly employs a public
 448 safety employee.
- 449 (23) 'Public safety employee' means an emergency medical technician, firefighter, law
 450 enforcement officer, or prison guard, as such terms are defined in Code Section 45-9-81,
 451 relating to indemnification of such personnel for death or disability.
- 452 (b) Notwithstanding the provisions of Code Section 31-21-10 and ~~Code Section 31-22-11,~~
 453 no person or legal entity, other than an insurer authorized to transact business in this state,

454 shall submit for an HIV test any human body fluid or tissue to any person or legal entity
455 except to:

- 456 ~~(1) A clinical laboratory licensed under this chapter;~~
457 ~~(2) A clinical laboratory exempt from licensure under Code Section 31-22-9; or~~
458 ~~(3) A clinical laboratory licensed as such pursuant to the laws of any other state~~ a clinical
459 laboratory federally certified pursuant to 42 C.F.R. Part 493 or a clinical laboratory
460 licensed as such pursuant to the laws of any other state.

461 (c) No person or legal entity may sell or offer for sale any HIV test that permits any person
462 or legal entity, including the person whose body fluids are to be tested, to perform that test
463 other than a person or legal entity specified in ~~paragraphs (1) through (3)~~ of subsection (b)
464 of this Code section.

465 31-22-9.2.

466 (a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have
467 the meaning provided for that term in Code Section 31-22-9.1.

468 (b) Reserved.

469 (c) Unless exempted under this Code section, each health care provider who orders an HIV
470 test for any person shall do so only after counseling the person to be tested. Unless
471 exempted under this subsection, the person to be tested shall have the opportunity to refuse
472 the test. The provisions of this subsection shall not be required if the person is required to
473 submit to an HIV test pursuant to Code Section 15-11-66.1, 17-10-15, 31-17-4.2,
474 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required
475 if the person is a minor or incompetent and the parent or guardian thereof permits the test
476 after compliance with this subsection. The provisions of this subsection shall not be
477 required if the person is unconscious, temporarily incompetent, or comatose and the next
478 of kin permits the test after compliance with this subsection. The provisions of this
479 subsection shall not apply to emergency or life-threatening situations. The provisions of
480 this subsection shall not apply if the physician ordering the test is of the opinion that the
481 person to be tested is in such a medical or emotional state that disclosure of the test would
482 be injurious to the person's health. The provisions of this subsection shall only be required
483 prior to drawing the body fluids required for the HIV test and shall not be required for each
484 test performed upon that fluid sample.

485 (d) The health care provider ordering an HIV test shall provide medically appropriate
486 counseling to the person tested with regard to the test results. Such medically appropriate
487 counseling shall only be required when the last confirmatory test has been completed.

488 (e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation
489 of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action

490 alleging a violation of this Code section shall be two years from the date of the alleged
491 violation.

492 (f) The provisions of this Code section shall not apply to situations in which an HIV test
493 is ordered or required in connection with insurance coverage, provided that the person to
494 be tested or the appropriate representative of that person has agreed to have the test
495 administered under such procedures as may be established by the Commissioner of
496 Insurance after consultation with the Department of Community Health.

497 (g) Notwithstanding the other provisions of this Code section, when exposure of a health
498 care provider to any body fluids of a patient occurs in such a manner as to create any risk
499 that such provider might become an HIV infected person if the patient were an HIV
500 infected person, according to current infectious disease guidelines of the Centers for
501 Disease Control and Prevention or according to infectious disease standards of the health
502 care facility where the exposure occurred, a health care provider otherwise authorized to
503 order an HIV test shall be authorized to order any HIV test on such patient and obtain the
504 results thereof:

505 (1) If the patient or the patient's representative, if the patient is a minor, otherwise
506 incompetent, or unconscious, does not refuse the test after being notified that the test is
507 to be ordered and after having been provided counseling and an opportunity to refuse the
508 test; or

509 (2) If the patient or representative refuses the test, following compliance with paragraph
510 (1) of this subsection, when at least one other health care provider who is otherwise
511 authorized to order an HIV test concurs in writing to the testing, the patient is informed
512 of the results of the test and is provided counseling with regard to those results, and the
513 occurrence of that test is not made a part of the patient's medical records, where the test
514 results are negative, without the patient's consent.

515 31-22-10.

516 ~~Nothing contained in this chapter shall be deemed or construed as affecting or repealing~~
517 ~~Chapter 23 of this title or Article 6 of Chapter 5 of Title 44. Reserved.~~

518 31-22-11.

519 ~~Nothing contained in this chapter shall be deemed or construed as affecting or repealing~~
520 ~~Chapter 34 of Title 43. Reserved.~~

521 31-22-12.

522 ~~The operation or maintenance of an unlicensed clinical laboratory in violation of this~~
523 ~~chapter is declared a nuisance, inimical to the public health, welfare, and safety. The~~

524 commissioner in the name of the people of the state through the Attorney General may, in
 525 addition to other remedies provided in this chapter, bring an action for an injunction to
 526 restrain such violation or to enjoin the future operation or maintenance of any such clinical
 527 laboratory until compliance with this chapter or the rules or regulations promulgated under
 528 this chapter has been demonstrated to the satisfaction of the department. Reserved.

529 31-22-13.

530 Any person who violates any provision of this chapter or any of the rules and regulations
 531 promulgated pursuant thereto shall be guilty of a misdemeanor."

532 **SECTION 3.**

533 Code Section 26-4-172 of the Official Code of Georgia Annotated, relating to nuclear
 534 pharmacy license requirements, is amended by revising subsection (c) as follows:

535 "(c) Nothing in this article shall be construed so as to require a ~~licensed~~ clinical laboratory,
 536 which is ~~licensed by the Department of Community Health to handle radioactive materials~~
 537 federally certified pursuant to 42 C.F.R. Part 493, to obtain the services of a nuclear
 538 pharmacist, or to have a nuclear pharmacy license, unless the laboratory is engaged in the
 539 commercial sale or resale of radiopharmaceuticals."

540 **SECTION 4.**

541 Code Section 31-7-1 of the Official Code of Georgia Annotated, relating to definitions
 542 relative to regulation of hospitals and related institutions, is amended by revising paragraph
 543 (4) as follows:

544 "(4) 'Institution' means:

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

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

552 (C) Any building or facility, not under the operation or control of a hospital, which is
 553 primarily devoted to the provision of surgical treatment to patients not requiring
 554 hospitalization and which is classified by the department as an ambulatory surgical
 555 treatment center;

556 (D) ~~Any fixed or mobile specimen collection center or health testing facility where~~
 557 ~~specimens are taken from the human body for delivery to and examination in a licensed~~

558 ~~clinical laboratory or where certain measurements such as height and weight~~
 559 ~~determination, limited audio and visual tests, and electrocardiograms are made,~~
 560 ~~excluding public health services operated by the state, its counties, or municipalities~~
 561 Reserved;

562 (E) Any building or facility where human births occur on a regular and ongoing basis
 563 and which is classified by the department as a birthing center;

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

567 (G) Any freestanding imaging center where magnetic resonance imaging, computed
 568 tomography (CT) scanning, positron emission tomography (PET) scanning, positron
 569 emission tomography/computed tomography, and other advanced imaging services as
 570 defined by the department by rule, but not including X-rays, fluoroscopy, or ultrasound
 571 services, are conducted in a location or setting not affiliated or attached to a hospital or
 572 in the offices of an individual private physician or single group practice of physicians
 573 and conducted exclusively for patients of that physician or group practice.

574 The term 'institution' shall exclude all physicians' and dentists' private offices and
 575 treatment rooms in which such physicians or dentists primarily see, consult with, and
 576 treat patients."

577 **SECTION 5.**

578 Code Section 42-1-10 of the Official Code of Georgia Annotated, relating to preliminary
 579 urine screen drug tests, is amended by revising subsection (b) as follows:

580 "(b) The Department of Corrections and the State Board of Pardons and Paroles shall
 581 develop a procedure for the performance of preliminary urine screen drug tests in
 582 accordance with the manufacturer's standards for certification. Probation officers, parole
 583 officers, or other officials or employees of the Department of Corrections who are
 584 supervisors of any person covered under paragraphs (1) through (7) of subsection (a) of this
 585 Code section shall be authorized to perform preliminary urine screen drug tests in
 586 accordance with such procedure. Such procedure shall include instructions as to a
 587 confirmatory test, where necessary, by a licensed clinical laboratory where necessary which
 588 is federally certified pursuant to 42 C.F.R. Part 493."

589 **SECTION 6.**

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