

## House Bill 299

By: Representatives Willard of the 51<sup>st</sup>, Smith of the 70<sup>th</sup>, Hatchett of the 150<sup>th</sup>, Meadows of the 5<sup>th</sup>, and Cox of the 108<sup>th</sup>

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 revise definitions; to eliminate the requirement  
3 that certain expenditures by a health care facility are required to obtain a certificate of need;  
4 to eliminate the requirement for certificate of need for medical equipment; to exempt  
5 freestanding emergency departments from certificate of need requirements; to eliminate  
6 exemptions for certain capital expenditures and cost overruns; to amend Article 1 of Chapter  
7 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation of hospitals  
8 and related institutions, so as to provide for licensure of freestanding emergency  
9 departments; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 6 of Title 31 of the Official Code of Georgia Annotated, relating to state health  
13 planning and development, is amended by revising paragraphs (8), (14), (17), (19), (24), and  
14 (36) and by adding a new paragraph to Code Section 31-6-2, relating to definitions, as  
15 follows:

16 "(8) '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; and inpatient rehabilitation; ~~and alcohol, drug abuse,~~  
24 ~~and mental health services."~~

25 "(14) 'Develop,' with reference to a project, means: ~~(A) Constructing~~ constructing,  
26 remodeling, installing, or proceeding with a project, or any part of a project, or a capital

27 expenditure project, the cost estimate for which exceeds \$2.5 million. The dollar amount  
 28 specified in this subparagraph shall be adjusted annually by an amount calculated by the  
 29 department to reflect inflation, which may be calculated by multiplying such dollar  
 30 amount (as adjusted for the preceding year) by the annual percentage of change in the  
 31 composite index of construction material prices, or its successor or appropriate  
 32 replacement index, if any, published by the United States Department of Commerce for  
 33 the preceding calendar year, commencing on July 1, 2009, and on each anniversary  
 34 thereafter of publication of the index. The department shall immediately institute  
 35 rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar  
 36 amount of a proposed project for purposes of this subparagraph, the costs of all items  
 37 subject to review by this chapter and items not subject to review by this chapter  
 38 associated with and simultaneously developed or proposed with the project shall be  
 39 counted, except for the expenditure or commitment of or incurring an obligation for the  
 40 expenditure of funds to develop certificate of need applications, studies, reports,  
 41 schematics, preliminary plans and specifications or working drawings, or to acquire sites.;  
 42 or

43 ~~(B) The expenditure or commitment of funds exceeding \$1 million for orders,~~  
 44 ~~purchases, leases, or acquisitions through other comparable arrangements of major~~  
 45 ~~medical equipment; provided, however, that this shall not include build-out costs, as~~  
 46 ~~defined by the department, but shall include all functionally related equipment,~~  
 47 ~~software, and any warranty and services contract costs for the first five years.~~

48 Notwithstanding ~~subparagraphs (A) and (B)~~ the provisions of this paragraph, the  
 49 expenditure or commitment or incurring an obligation for the expenditure of funds to  
 50 develop certificate of need applications, studies, reports, schematics, preliminary plans  
 51 and specifications, or working drawings or to acquire, develop, or prepare sites shall not  
 52 be considered to be the developing of a project."

53 "(16.1) 'Freestanding emergency department' means a facility that:

54 (A) Is affiliated with but structurally separate and distinct from a hospital;

55 (B) Receives individuals for emergency care; and

56 (C) Does not treat patients for more than 24 continuous hours.

57 (17) 'Health care facility' means hospitals; destination cancer hospitals; other special care  
 58 units, including but not limited to podiatric facilities; skilled nursing facilities;  
 59 intermediate care facilities; personal care homes; ambulatory surgical centers or  
 60 obstetrical facilities; health maintenance organizations; home health agencies; and  
 61 diagnostic, treatment, or rehabilitation centers, but only to the extent paragraph (3) or (7),  
 62 or both paragraphs (3) and (7); (5) of subsection (a) of Code Section 31-6-40 are is  
 63 applicable thereto."

64 ~~"(19) 'Health Strategies Council' or 'council' means the body created by this chapter to~~  
 65 ~~advise the department. Reserved."~~

66 "(24) 'New and emerging health care service' means a health care service or ~~utilization~~  
 67 ~~of medical equipment~~ which has been developed and has become acceptable or available  
 68 for implementation or use but which has not yet been addressed under the rules and  
 69 regulations promulgated by the department pursuant to this chapter."

70 "(36) 'State health plan' means a comprehensive program based on recommendations by  
 71 ~~the Health Strategies Council~~ and the board, approved by the Governor, and implemented  
 72 by the State of Georgia for the purpose of providing adequate health care services and  
 73 facilities throughout the state."

74 **SECTION 2.**

75 Said chapter is further amended by revising paragraphs (3) and (8) of subsection (b) of Code  
 76 Section 31-6-21, relating to the Department of Community Health generally, as follows:

77 "(3) To seek advice, at its discretion, from ~~the Health Strategies Council~~ stakeholders in  
 78 the performance by the department of its functions pursuant to this chapter;"

79 "(8) To establish, by rule, need methodologies for new institutional health services and  
 80 health facilities. In developing such need methodologies, the department shall, at a  
 81 minimum, consider the demographic characteristics of the population, the health status  
 82 of the population, service use patterns, standards and trends, financial and geographic  
 83 accessibility, and market economics. The department shall establish service-specific need  
 84 methodologies and criteria for at least the following clinical health services: short stay  
 85 hospital beds, adult therapeutic cardiac catheterization, adult open heart surgery, pediatric  
 86 cardiac catheterization and open heart surgery, Level II and III perinatal services,  
 87 freestanding birthing centers, ~~psychiatric and substance abuse inpatient programs~~, skilled  
 88 nursing and intermediate care facilities, home health agencies, and continuing care  
 89 retirement community sheltered facilities;"

90 **SECTION 3.**

91 Said chapter is further amended by revising subsection (a), subparagraph (c)(2)(C), and  
 92 subsection (d) of Code Section 31-6-40, relating to the requirement of a certificate of need  
 93 for new institutional health services, as follows:

94 "(a) On and after July 1, 2008, any new institutional health service shall be required to  
 95 obtain a certificate of need pursuant to this chapter. New institutional health services  
 96 include:

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

98 ~~(2) Any expenditure by or on behalf of a health care facility in excess of \$2.5 million~~  
99 ~~which, under generally accepted accounting principles consistently applied, is a capital~~  
100 ~~expenditure, except expenditures for acquisition of an existing health care facility not~~  
101 ~~owned or operated by or on behalf of a political subdivision of this state, or any~~  
102 ~~combination of such political subdivisions, or by or on behalf of a hospital authority, as~~  
103 ~~defined in Article 4 of Chapter 7 of this title, or certificate of need owned by such facility~~  
104 ~~in connection with its acquisition. The dollar amounts specified in this paragraph and in~~  
105 ~~subparagraph (A) of paragraph (14) of Code Section 31-6-2 shall be adjusted annually~~  
106 ~~by an amount calculated by multiplying such dollar amounts (as adjusted for the~~  
107 ~~preceding year) by the annual percentage of change in the composite index of~~  
108 ~~construction material prices, or its successor or appropriate replacement index, if any,~~  
109 ~~published by the United States Department of Commerce for the preceding calendar year,~~  
110 ~~commencing on July 1, 2009, and on each anniversary thereafter of publication of the~~  
111 ~~index. The department shall immediately institute rule-making procedures to adopt such~~  
112 ~~adjusted dollar amounts. In calculating the dollar amounts of a proposed project for~~  
113 ~~purposes of this paragraph and subparagraph (A) of paragraph (14) of Code Section~~  
114 ~~31-6-2, the costs of all items subject to review by this chapter and items not subject to~~  
115 ~~review by this chapter associated with and simultaneously developed or proposed with~~  
116 ~~the project shall be counted, except for the expenditure or commitment of or incurring an~~  
117 ~~obligation for the expenditure of funds to develop certificate of need applications, studies,~~  
118 ~~reports, schematics, preliminary plans and specifications or working drawings, or to~~  
119 ~~acquire sites;~~

120 ~~(3) The purchase or lease by or on behalf of a health care facility or a diagnostic,~~  
121 ~~treatment, or rehabilitation center of diagnostic or therapeutic equipment with a value in~~  
122 ~~excess of \$1 million; provided, however, that diagnostic or other imaging services that~~  
123 ~~are not offered in a hospital or in the offices of an individual private physician or single~~  
124 ~~group practice of physicians exclusively for use on patients of that physician or group~~  
125 ~~practice shall be deemed to be a new institutional health service regardless of the cost of~~  
126 ~~equipment; and provided, further, that this shall not include build out costs, as defined by~~  
127 ~~the department, but shall include all functionally related equipment, software, and any~~  
128 ~~warranty and services contract costs for the first five years. The acquisition of one or~~  
129 ~~more items of functionally related diagnostic or therapeutic equipment shall be~~  
130 ~~considered as one project. The dollar amount specified in this paragraph, in subparagraph~~  
131 ~~(B) of paragraph (14) of Code Section 31-6-2, and in paragraph (10) of subsection (a) of~~  
132 ~~Code Section 31-6-47 shall be adjusted annually by an amount calculated by multiplying~~  
133 ~~such dollar amounts (as adjusted for the preceding year) by the annual percentage of~~  
134 ~~change in the consumer price index, or its successor or appropriate replacement index,~~

135 ~~if any, published by the United States Department of Labor for the preceding calendar~~  
 136 ~~year, commencing on July 1, 2010;~~

137 ~~(4)(2)~~ Any increase in the bed capacity of a health care facility except as provided in  
 138 Code Section 31-6-47;

139 ~~(5)(3)~~ Clinical health services which are offered in or through a health care facility,  
 140 which were not offered on a regular basis in or through such health care facility within  
 141 the 12 month period prior to the time such services would be offered;

142 ~~(6)(4)~~ Any conversion or upgrading of any general acute care hospital to a specialty  
 143 hospital or of a facility such that it is converted from a type of facility not covered by this  
 144 chapter to any of the types of health care facilities which are covered by this chapter; and

145 ~~(7)(5)~~ Clinical health services which are offered in or through a diagnostic, treatment,  
 146 or rehabilitation center which were not offered on a regular basis in or through that center  
 147 within the 12 month period prior to the time such services would be offered, but only if  
 148 the clinical health services are any of the following:

149 (A) Radiation therapy;

150 (B) Biliary lithotripsy;

151 (C) Surgery in an operating room environment, including but not limited to ambulatory  
 152 surgery; and

153 (D) Cardiac catheterization."

154 "(C)(i) Provide care to Medicaid beneficiaries and, if the facility provides medical care  
 155 and treatment to children, to PeachCare for Kids beneficiaries and provide  
 156 uncompensated indigent and charity care in an amount equal to or greater than 2  
 157 percent of its adjusted gross revenue; or

158 (ii) If the facility is not a participant in Medicaid or the PeachCare for Kids Program,  
 159 provide uncompensated care for Medicaid beneficiaries and, if the facility provides  
 160 medical care and treatment to children, for PeachCare for Kids beneficiaries,  
 161 uncompensated indigent and charity care, or both in an amount equal to or greater than  
 162 4 percent of its adjusted gross revenue if it:

163 (I) Makes a capital expenditure associated with the construction, development,  
 164 expansion, or other establishment of a clinical health service ~~or the acquisition or~~  
 165 ~~replacement of diagnostic or therapeutic equipment~~ with a value in excess of  
 166 \$800,000.00 over a two-year period;

167 (II) Builds a new operating room; or

168 (III) Chooses to relocate in accordance with Code Section 31-6-47."

169 "(d) A certificate of need issued to a destination cancer hospital shall authorize the beds  
 170 and all new institutional health services of such destination cancer hospital. As used in this  
 171 subsection, the term 'new institutional health service' shall have the same meaning provided

172 for in subsection (a) of this Code section. A certificate of need shall only be issued to a  
173 destination cancer hospital that locates itself and all affiliated facilities within 25 miles of  
174 a commercial airport in this state with five or more runways. Such destination cancer  
175 hospital shall not be required to apply for or obtain additional certificates of need for new  
176 institutional health services related to the treatment of cancer patients, and such new  
177 institutional health services related to the treatment of cancer patients offered by the  
178 destination cancer hospital shall not be reviewed under any service-specific need  
179 methodology or rules except for those promulgated by the department for destination  
180 cancer hospitals. After commencing operations, in order to add an additional new  
181 institutional health service, a destination cancer hospital shall apply for and obtain an  
182 additional certificate of need under the applicable statutory provisions and any rules  
183 promulgated by the department for destination cancer hospitals, and such applications shall  
184 only be granted if the patient base of such destination cancer hospital is composed of at  
185 least 65 percent of out-of-state patients for two consecutive years. The department may  
186 apply rules for a destination cancer hospital only for those services that the department  
187 determines are to be used by the destination cancer hospital in connection with the  
188 treatment of cancer. In no case shall destination cancer hospital specific rules be used in  
189 the case of an application for open heart surgery, perinatal services, cardiac catheterization,  
190 and other services deemed by the department to be not reasonably related to the diagnosis  
191 and treatment of cancer; provided, however, that the department shall apply the destination  
192 cancer hospital specific rules if a destination cancer hospital applies for services ~~and~~  
193 ~~equipment~~ required for it to meet federal or state laws applicable to a hospital. If such  
194 destination cancer hospital cannot show a patient base of a minimum of 65 percent from  
195 outside of this state, then its application for any new institutional health service shall be  
196 evaluated under the specific statutes and rules applicable to that particular service. If such  
197 destination cancer hospital applies for a certificate of need to add an additional new  
198 institutional health service before commencing operations or completing two consecutive  
199 years of operation, such applicant may rely on historical data from its affiliated entities, as  
200 set forth in paragraph (2) of subsection (b.1) of Code Section 31-6-42. Because destination  
201 cancer hospitals provide services primarily to out-of-state residents, the number of beds,  
202 services, and equipment destination cancer hospitals use shall not be counted as part of the  
203 department's inventory when determining the need for those items by other providers. No  
204 person shall be issued more than one certificate of need for a destination cancer hospital.  
205 Nothing in this Code section shall in any way require a destination cancer hospital to obtain  
206 a certificate of need for any purpose that is otherwise exempt from the certificate of need  
207 requirement. Beginning January 1, 2010, the department shall not accept any application  
208 for a certificate of need for a new destination cancer hospital; ~~provided, however, all other~~

209 ~~provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic~~  
 210 ~~equipment shall be applicable to an existing destination cancer hospital."~~

211 **SECTION 4.**

212 Said chapter is further amended in Code Section 31-6-40.1, relating to acquisition of health  
 213 care facilities; penalty for failure to notify the department; limitation on applications;  
 214 agreement to care for indigent patients; requirements for destination cancer hospitals; and  
 215 notice and hearing provisions for penalties, by repealing subsection (b.1).

216 **SECTION 5.**

217 Said chapter is further amended by revising Code Section 31-6-47, relating to exemptions  
 218 from certificate of need requirements, as follows:

219 "31-6-47.

- 220 (a) Notwithstanding the other provisions of this chapter, this chapter shall not apply to:
- 221 (1) Infirmaries operated by educational institutions for the sole and exclusive benefit of
  - 222 students, faculty members, officers, or employees thereof;
  - 223 (2) Infirmaries or facilities operated by businesses for the sole and exclusive benefit of
  - 224 officers or employees thereof, provided that such infirmaries or facilities make no
  - 225 provision for overnight stay by persons receiving their services;
  - 226 (3) Institutions operated exclusively by the federal government or by any of its agencies;
  - 227 (4) Offices of private physicians or dentists whether for individual or group practice,
  - 228 except as otherwise provided in paragraph ~~(3)~~ ~~or (7)~~ (5) of subsection (a) of Code Section
  - 229 31-6-40;
  - 230 (5) Religious, nonmedical health care institutions as defined in 42 U.S.C. § 1395x(ss)(1),
  - 231 listed and certified by a national accrediting organization;
  - 232 (6) Site acquisitions for health care facilities or preparation or development costs for
  - 233 such sites prior to the decision to file a certificate of need application;
  - 234 (7) Expenditures related to adequate preparation and development of an application for
  - 235 a certificate of need;
  - 236 (8) The commitment of funds conditioned upon the obtaining of a certificate of need;
  - 237 (9) Expenditures for the acquisition of existing health care facilities by stock or asset
  - 238 purchase, merger, consolidation, or other lawful means unless the facilities are owned or
  - 239 operated by or on behalf of a:
    - 240 (A) Political subdivision of this state;
    - 241 (B) Combination of such political subdivisions; or
    - 242 (C) Hospital authority, as defined in Article 4 of Chapter 7 of this title;

243 (9.1) Expenditures for the restructuring of or for the acquisition by stock or asset  
 244 purchase, merger, consolidation, or other lawful means of an existing health care facility  
 245 which is owned or operated by or on behalf of any entity described in subparagraph (A),  
 246 (B), or (C) of paragraph (9) of this subsection only if such restructuring or acquisition is  
 247 made by any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this  
 248 subsection;

249 ~~(10) Expenditures of less than \$870,000.00 for any minor or major repair or replacement~~  
 250 ~~of equipment by a health care facility that is not owned by a group practice of physicians~~  
 251 ~~or a hospital and that provides diagnostic imaging services if such facility received a~~  
 252 ~~letter of nonreviewability from the department prior to July 1, 2008. This paragraph shall~~  
 253 ~~not apply to such facilities in rural counties for the purchase, lease, replacement, upgrade,~~  
 254 ~~or repair of diagnostic imaging equipment, diagnostic or therapeutic equipment, or~~  
 255 ~~medical equipment;~~

256 ~~(10.1) Except as provided in paragraph (10) of this subsection, expenditures~~  
 257 Expenditures for the minor or major repair of a health care facility or a facility that is  
 258 exempt from the requirements of this chapter, parts thereof or services provided or  
 259 equipment used therein; or the replacement of equipment, including but not limited to CT  
 260 scanners previously approved for a certificate of need;

261 ~~(11) Capital expenditures otherwise covered by this chapter required solely to eliminate~~  
 262 ~~or prevent safety hazards as defined by federal, state, or local fire, building,~~  
 263 ~~environmental, occupational health, or life safety codes or regulations, to comply with~~  
 264 ~~licensing requirements of the department, or to comply with accreditation standards of~~  
 265 ~~a nationally recognized health care accreditation body;~~

266 (11) Freestanding emergency departments;

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

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

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

280 (15) Increases in the bed capacity of a hospital up to ten beds or ~~40~~ 20 percent of  
 281 capacity, whichever is greater, in any consecutive two-year period, in a hospital that has  
 282 maintained an overall occupancy rate greater than ~~75~~ 60 percent for the previous 12  
 283 month period;

284 ~~Expenditures for nonclinical projects, including parking lots, parking decks, and~~  
 285 ~~other parking facilities; computer systems, software, and other information technology;~~  
 286 ~~medical office buildings; and state mental health facilities~~ Reserved;

287 (17) Continuing care retirement communities, provided that the skilled nursing  
 288 component of the facility is for the exclusive use of residents of the continuing care  
 289 retirement community and that a written exemption is obtained from the department;  
 290 provided, however, that new sheltered nursing home beds may be used on a limited basis  
 291 by persons who are not residents of the continuing care retirement community for a  
 292 period up to five years after the date of issuance of the initial nursing home license, but  
 293 such beds shall not be eligible for Medicaid reimbursement. For the first year, the  
 294 continuing care retirement community sheltered nursing facility may utilize not more  
 295 than 50 percent of its licensed beds for patients who are not residents of the continuing  
 296 care retirement community. In the second year of operation, the continuing care  
 297 retirement community shall allow not more than 40 percent of its licensed beds for new  
 298 patients who are not residents of the continuing care retirement community. In the third  
 299 year of operation, the continuing care retirement community shall allow not more than  
 300 30 percent of its licensed beds for new patients who are not residents of the continuing  
 301 care retirement community. In the fourth year of operation, the continuing care  
 302 retirement community shall allow not more than 20 percent of its licensed beds for new  
 303 patients who are not residents of the continuing care retirement community. In the fifth  
 304 year of operation, the continuing care retirement community shall allow not more than  
 305 10 percent of its licensed beds for new patients who are not residents of the continuing  
 306 care retirement community. At no time during the first five years shall the continuing  
 307 care retirement community sheltered nursing facility occupy more than 50 percent of its  
 308 licensed beds with patients who are not residents under contract with the continuing care  
 309 retirement community. At the end of the five-year period, the continuing care retirement  
 310 community sheltered nursing facility shall be utilized exclusively by residents of the  
 311 continuing care retirement community, and at no time shall a resident of a continuing care  
 312 retirement community be denied access to the sheltered nursing facility. At no time shall  
 313 any existing patient be forced to leave the continuing care retirement community to  
 314 comply with this paragraph. The department is authorized to promulgate rules and  
 315 regulations regarding the use and definition of 'sheltered nursing facility' in a manner  
 316 consistent with this Code section. Agreements to provide continuing care include

317 agreements to provide care for any duration, including agreements that are terminable by  
318 either party;

319 (18) Any single specialty ambulatory surgical center that:

320 (A)(i) Has capital expenditures associated with the construction, development, or  
321 other establishment of the clinical health service which do not exceed \$2.5 million;  
322 or

323 (ii) Is the only single specialty ambulatory surgical center in the county owned by the  
324 group practice and has two or fewer operating rooms; provided, however, that a center  
325 exempt pursuant to this division shall be required to obtain a certificate of need in  
326 order to add any additional operating rooms;

327 (B) Has a hospital affiliation agreement with a hospital within a reasonable distance  
328 from the facility or the medical staff at the center has admitting privileges or other  
329 acceptable documented arrangements with such hospital to ensure the necessary backup  
330 for the center for medical complications. The center shall have the capability to transfer  
331 a patient immediately to a hospital within a reasonable distance from the facility with  
332 adequate emergency room services. Hospitals shall not unreasonably deny a transfer  
333 agreement or affiliation agreement to the center;

334 (C)(i) Provides care to Medicaid beneficiaries and, if the facility provides medical  
335 care and treatment to children, to PeachCare for Kids beneficiaries and provides  
336 uncompensated indigent and charity care in an amount equal to or greater than 2  
337 percent of its adjusted gross revenue; or

338 (ii) If the center is not a participant in Medicaid or the PeachCare for Kids Program,  
339 provides uncompensated care to Medicaid beneficiaries and, if the facility provides  
340 medical care and treatment to children, to PeachCare for Kids beneficiaries,  
341 uncompensated indigent and charity care, or both in an amount equal to or greater  
342 than 4 percent of its adjusted gross revenue;

343 provided, however, that single specialty ambulatory surgical centers owned by  
344 physicians in the practice of ophthalmology shall not be required to comply with this  
345 subparagraph; and

346 (D) Provides annual reports in the same manner and in accordance with Code Section  
347 31-6-70.

348 Noncompliance with any condition of this paragraph shall result in a monetary penalty  
349 in the amount of the difference between the services which the center is required to  
350 provide and the amount actually provided and may be subject to revocation of its  
351 exemption status by the department for repeated failure to pay any fines or moneys due  
352 to the department or for repeated failure to produce data as required by Code Section  
353 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of

354 Title 50, the 'Georgia Administrative Procedure Act.' The dollar amount specified in this  
 355 paragraph shall be adjusted annually by an amount calculated by multiplying such dollar  
 356 amount (as adjusted for the preceding year) by the annual percentage of change in the  
 357 composite index of construction material prices, or its successor or appropriate  
 358 replacement index, if any, published by the United States Department of Commerce for  
 359 the preceding calendar year, commencing on July 1, 2009, and on each anniversary  
 360 thereafter of publication of the index. The department shall immediately institute  
 361 rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar  
 362 amounts of a proposed project for purposes of this paragraph, the costs of all items  
 363 subject to review by this chapter and items not subject to review by this chapter  
 364 associated with and simultaneously developed or proposed with the project shall be  
 365 counted, except for the expenditure or commitment of or incurring an obligation for the  
 366 expenditure of funds to develop certificate of need applications, studies, reports,  
 367 schematics, preliminary plans and specifications or working drawings, or to acquire sites;

368 (19) Any joint venture ambulatory surgical center that:

369 (A) Has capital expenditures associated with the construction, development, or other  
 370 establishment of the clinical health service which do not exceed \$5 million;

371 (B)(i) Provides care to Medicaid beneficiaries and, if the facility provides medical  
 372 care and treatment to children, to PeachCare for Kids beneficiaries and provides  
 373 uncompensated indigent and charity care in an amount equal to or greater than 2  
 374 percent of its adjusted gross revenue; or

375 (ii) If the center is not a participant in Medicaid or the PeachCare for Kids Program,  
 376 provides uncompensated care to Medicaid beneficiaries and, if the facility provides  
 377 medical care and treatment to children, to PeachCare for Kids beneficiaries,  
 378 uncompensated indigent and charity care, or both in an amount equal to or greater  
 379 than 4 percent of its adjusted gross revenue; and

380 (C) Provides annual reports in the same manner and in accordance with Code Section  
 381 31-6-70.

382 Noncompliance with any condition of this paragraph shall result in a monetary penalty  
 383 in the amount of the difference between the services which the center is required to  
 384 provide and the amount actually provided and may be subject to revocation of its  
 385 exemption status by the department for repeated failure to pay any fines or moneys due  
 386 to the department or for repeated failure to produce data as required by Code Section  
 387 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of  
 388 Title 50, the 'Georgia Administrative Procedure Act.' The dollar amount specified in this  
 389 paragraph shall be adjusted annually by an amount calculated by multiplying such dollar  
 390 amount (as adjusted for the preceding year) by the annual percentage of change in the

391 composite index of construction material prices, or its successor or appropriate  
392 replacement index, if any, published by the United States Department of Commerce for  
393 the preceding calendar year, commencing on July 1, 2009, and on each anniversary  
394 thereafter of publication of the index. The department shall immediately institute  
395 rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar  
396 amounts of a proposed project for purposes of this paragraph, the costs of all items  
397 subject to review by this chapter and items not subject to review by this chapter  
398 associated with and simultaneously developed or proposed with the project shall be  
399 counted, except for the expenditure or commitment of or incurring an obligation for the  
400 expenditure of funds to develop certificate of need applications, studies, reports,  
401 schematics, preliminary plans and specifications or working drawings, or to acquire sites;

402 (20) Expansion of services by an imaging center based on a population needs  
403 methodology taking into consideration whether the population residing in the area served  
404 by the imaging center has a need for expanded services, as determined by the department  
405 in accordance with its rules and regulations, if such imaging center:

406 (A) Was in existence and operational in this state on January 1, 2008;

407 (B) Is owned by a hospital or by a physician or a group of physicians comprising at  
408 least 80 percent ownership who are currently board certified in radiology;

409 (C) Provides three or more diagnostic and other imaging services;

410 (D) Accepts all patients regardless of ability to pay; and

411 (E) Provides uncompensated indigent and charity care in an amount equal to or greater  
412 than the amount of such care provided by the geographically closest general acute care  
413 hospital; provided, however, that this paragraph shall not apply to an imaging center in  
414 a rural county;

415 (21) Diagnostic cardiac catheterization in a hospital setting on patients 15 years of age  
416 and older;

417 (22) Therapeutic cardiac catheterization in hospitals selected by the department prior to  
418 July 1, 2008, to participate in the Atlantic Cardiovascular Patient Outcomes Research  
419 Team (C-PORT) Study and therapeutic cardiac catheterization in hospitals that, as  
420 determined by the department on an annual basis, meet the criteria to participate in the  
421 C-PORT Study but have not been selected for participation; provided, however, that if  
422 the criteria requires a transfer agreement to another hospital, no hospital shall  
423 unreasonably deny a transfer agreement to another hospital;

424 (23) Infirmaries or facilities operated by, on behalf of, or under contract with the  
425 Department of Corrections or the Department of Juvenile Justice for the sole and  
426 exclusive purpose of providing health care services in a secure environment to prisoners  
427 within a penal institution, penitentiary, prison, detention center, or other secure

428 correctional institution, including correctional institutions operated by private entities in  
 429 this state which house inmates under the Department of Corrections or the Department  
 430 of Juvenile Justice;

431 (24) The relocation of any skilled nursing facility or intermediate care facility within the  
 432 same county, any other health care facility in a rural county within the same county, and  
 433 any other health care facility in an urban county within a three-mile radius of the existing  
 434 facility so long as the facility does not propose to offer any new or expanded clinical  
 435 health services at the new location; and

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

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

442 (A) ~~That hospital:~~

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

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

445 ~~(iii) Has at any time been designated as a disproportionate share hospital by the~~  
 446 ~~department; and~~

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

449 (B) ~~That project:~~

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

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

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

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

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

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

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

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

463

**SECTION 6.**

464 Said chapter is further amended by revising Code Section 31-6-47.1, relating to prior notice  
465 and approval of certain activities, as follows:

466 "31-6-47.1.

467 The department shall require prior notice from a new health care facility for approval of  
468 any activity which is believed to be exempt pursuant to Code Section 31-6-47 or excluded  
469 from the requirements of this chapter under other provisions of this chapter. The  
470 department may require prior notice and approval of any activity which is believed to be  
471 exempt pursuant to paragraphs ~~(10)~~, (15), ~~(16)~~, (17), (20), (21), (23), and (25), ~~and (26)~~ of  
472 subsection (a) of Code Section 31-6-47. The department shall be authorized to establish  
473 timeframes, forms, and criteria relating to its certification that an activity is properly  
474 exempt or excluded under this chapter prior to its implementation. The department shall  
475 publish notice of all requests for approval of an exempt activity and opposition to such  
476 request. Persons opposing a request for approval of an exempt activity shall be entitled to  
477 file an objection with the department and the department shall consider any filed objection  
478 when determining whether an activity is exempt. After the department's decision, an  
479 opposing party shall have the right to a fair hearing pursuant to Chapter 13 of Title 50, the  
480 'Georgia Administrative Procedure Act,' on an adverse decision of the department and  
481 judicial review of a final decision in the same manner and under the same provisions as in  
482 Code Section 31-6-44.1."

483

**SECTION 7.**

484 Article 1 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to  
485 regulation of hospitals and related institutions, is amended by revising Code Section 31-7-1,  
486 relating to definitions, as follows:

487 "31-7-1.

488 As used in this chapter, the term:

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

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

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

492 (3.1) 'Freestanding emergency department' means a facility that:

493 (A) Is affiliated with but structurally separate and distinct from a hospital;

494 (B) Receives individuals for emergency care; and

495 (C) Does not treat patients for more than 24 continuous hours.

496 (4) 'Institution' means:

497 (A) Any building, facility, or place in which are provided two or more beds and other  
498 facilities and services that are used for persons received for examination, diagnosis,

499 treatment, surgery, maternity care, nursing care, assisted living care, or personal care  
 500 for periods continuing for 24 hours or longer and which is classified by the department,  
 501 as provided for in this chapter, as either a hospital, nursing home, assisted living  
 502 community, or personal care home;

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

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

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

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

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

519 (G) Any freestanding imaging center where magnetic resonance imaging, computed  
 520 tomography (CT) scanning, positron emission tomography (PET) scanning, positron  
 521 emission tomography/computed tomography, and other advanced imaging services as  
 522 defined by the department by rule, but not including X-rays, fluoroscopy, or ultrasound  
 523 services, are conducted in a location or setting not affiliated or attached to a hospital or  
 524 in the offices of an individual private physician or single group practice of physicians  
 525 and conducted exclusively for patients of that physician or group practice; or

526 (H) Any freestanding emergency department.

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

530 (5) 'Medical facility' means any licensed general hospital, destination cancer hospital, or  
 531 specialty hospital, institutional infirmary, public health center, or diagnostic and  
 532 treatment center.

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

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

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

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

543 **SECTION 8.**

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