

House Bill 299

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

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.