Senate Bill 433

By: Senators Williams of the 19th, Rogers of the 21st, Johnson of the 1st, Mullis of the 53rd, Moody of the 56th and others

AS PASSED

AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to provide for extensive revision of the certificate of need program; to revise and add definitions; to revise the declaration of policy for state health planning; to revise the composition and duties of the Health Strategies Council; to revise the duties of the Department of Community Health; to revise provisions relating to requirements for certificate of need; to provide for destination cancer hospitals; to allow for set times to accept applications for capital projects; to provide for the establishment of conditions for approval of a certificate of need; to change certain provisions relating to perinatal services; to provide for certain facilities to divide; to change certain provisions relating to considerations; to provide for a letter of intent for proposed new clinical health services; to provide for batching and comparative review of applications for clinical health services; to revise provisions relating to time frames for review of applications; to provide for the imposition of a temporary moratorium on the issuance of certificates of need for new and emerging health care services; to reassign the hearing functions from the Health Planning Review Board to a Certificate of Need Appeal Panel; to revise provisions relating to judicial review of a final agency decision; to add grounds for which a certificate of need may be revoked; to provide that a portion of a certificate of need may be revoked under certain circumstances; to increase the penalties for services conducted without a required certificate of need; to provide for investigating authority of the department; to provide that applicants for certificates of need may be required to participate as a provider of medical assistance for purposes of Medicaid; to change certain provisions relating to an annual report; to add, revise, and delete certain exemptions to the certificate of need requirements; to authorize the Department of Community Health to require notice and its certification that an activity is exempt from the certificate of need requirements; to provide for the transfer of certain functions relating to the state health plan to the Board of Community Health from the Health Strategies Council; to abolish the Health Planning Review Board; to transfer pending matters of the Health Planning Review Board to the Certificate of Need Appeal Panel; to revise a provision relating to application of review procedures to expenditures under a federal law; to require

health care facilities and other entities to submit annual reports to the Department of Community Health; to increase the penalties for untimely and incomplete reports; to transfer licensing of hospitals and other health care facilities from the Department of Human Resources to the Department of Community Health; to provide for transition; to provide for licensure standards on a clinical service level for hospitals and related institutions; to amend various other titles of the Official Code of Georgia Annotated so as to revise provisions for purposes of conformity; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

Revision of Certificate of Need Program.

SECTION 1-1.

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

"ARTICLE 1

31-6-1.

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

31-6-2.

As used in this chapter, the term:

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

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

(3) 'Basic perinatal services' means providing basic inpatient care for pregnant women and newborns without complications; managing perinatal emergencies; consulting with and referring to specialty and subspecialty hospitals; identifying high-risk pregnancies; providing follow-up care for new mothers and infants; and providing public/community education on perinatal health.

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

(5) 'Board' means the Board of Community Health.

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

(7) 'Certificate of Need Appeal Panel' or 'appeal panel' means the panel of independent hearing officers created pursuant to Code Section 31-6-44 to conduct appeal hearings.

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

(9) 'Commissioner' means the Commissioner of the Department of Community Health.

(10) 'Consumer' means a person who is not employed by any health care facility or provider and who has no financial or fiduciary interest in any health care facility or provider.

(11) 'Continuing care retirement community' means an organization, whether operated for profit or not, whose owner or operator undertakes to provide shelter, food, and either nursing care or personal services, whether such nursing care or personal services are provided in the facility or in another setting, and other services, as designated by agreement, to an individual not related by consanguinity or affinity to such owner or operator providing such care pursuant to an agreement for a fixed or variable fee, or for any other remuneration of any type, whether fixed or variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party.

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

(13) 'Destination cancer hospital' means an institution with a licensed bed capacity of 50 or less which provides diagnostic, therapeutic, treatment, and rehabilitative care services to cancer inpatients and outpatients, by or under the supervision of physicians, and whose proposed annual patient base is composed of a minimum of 65 percent of patients who reside outside of the State of Georgia.

(14) 'Develop,' with reference to a project, means:

(A) Constructing, remodeling, installing, or proceeding with a project, or any part of a project, or a capital expenditure project, the cost estimate for which exceeds $2,500,000.00; or

(B) The expenditure or commitment of funds exceeding $1,000,000.00 for orders, purchases, leases, or acquisitions through other comparable arrangements of major medical equipment; provided, however, that this shall not include build out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years.

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

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

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

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

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

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

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

(C) Provides physicians´ services primarily:

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

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

(19) 'Health Strategies Council' or 'council' means the body created by this chapter to advise the Department of Community Health.

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

(A) Physical therapy;

(B) Occupational therapy;

(C) Speech therapy;

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

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

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

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

(23) 'Joint venture ambulatory surgical center' means a freestanding ambulatory surgical center that is jointly owned by a hospital in the same county as the center or a hospital in an contiguous county if there is no hospital in the same county as the center and a single group of physicians practicing in the center and that provides surgery in a single specialty as defined by the department; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes plastic hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty. The ownership interest of the hospital shall be no less than 30 percent and the collective ownership of the physicians or group of physicians shall be no less than 30 percent.

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

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

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

(27) 'Operating room environment' means an environment which meets the minimum physical plant and operational standards specified in the rules of the department which shall consider and use the design and construction specifications as set forth in the *Guidelines for Design and Construction of Health Care Facilities* published by the American Institute of Architects.

(28) 'Pediatric cardiac catheterization' means the performance of angiographic, physiologic, and as appropriate, therapeutic cardiac catheterization on children 14 years of age or younger.

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

(30) 'Personal care home' means a residential facility that is certified as a provider of medical assistance for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49 having at least 25 beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents´ functioning and location, have the capability for crisis

intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include:

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

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

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

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

(33) 'Single specialty ambulatory surgical center' means an ambulatory surgical center where surgery is performed in the offices of an individual private physician or single group practice of private physicians if such surgery is performed in a facility that is owned, operated, and utilized by such physicians who also are of a single specialty; provided, however, that general surgery, a group practice which includes one or more physiatrists who perform services that are reasonably related to the surgical procedures performed in the center, and a group practice in orthopedics which includes plastic hand surgeons with a certificate of added qualifications in Surgery of the Hand from the American Board of Plastic and Reconstructive Surgery shall be considered a single specialty.

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

(35) 'Specialty hospital' means a hospital that is primarily or exclusively engaged in the care and treatment of one of the following: patients with a cardiac condition, patients with an orthopedic condition, patients receiving a surgical procedure, or patients receiving any other specialized category of services defined by the department. A 'specialty hospital' does not include a destination cancer hospital.

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

(37) 'Uncompensated indigent or charity care' means the dollar amount of 'net uncompensated indigent or charity care after direct and indirect (all) compensation' as defined by, and calculated in accordance with, the department´s Hospital Financial Survey and related instructions.

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

ARTICLE 2

31-6-20.

(a) There is created a newly reconstituted Health Strategies Council to be appointed by the Governor, subject to confirmation by the Senate. Any appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate. The newly reconstituted Health Strategies Council shall be the successor to the Health Strategies Council as it existed on June 30, 2008. Those members of the previously existing Health Strategies Council who are serving as such on June 30, 2008, shall have their terms expire on June 30, 2008, at which time that council shall be abolished. On and after that date the council shall be composed of 13 members, except as otherwise provided for in subsection (b) of this Code section. One member shall be appointed from each congressional district. The council shall be composed as follows:

(1) One member representing the private insurance industry;

(2) One member representing rural hospitals;

(3) One member representing urban hospitals;

(4) One member who is a primary care physician in the active practice of medicine;

(5) One member who is a physician in a board certified specialty in the active practice of medicine;

(6) One member representing nursing homes;

(7) One member representing home health agencies;

(8) One member representing freestanding ambulatory surgical centers;

(9) One member representing health care needs of women;

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

(11) One member representing mental health care needs;

(12) One member representing health care needs of indigent persons; and

(13) One member representing health care needs of business personnel

(b) If the state obtains one or more additional members of the United States House of Representatives as a result of reapportionment, the Governor shall appoint, subject to confirmation by the Senate, from each new congressional district thus created one member representing local or county governments.

(c) The initial members of the newly reconstituted council shall take office July 1, 2008, and six of them shall be designated in such appointment to serve initial terms of office of two years and seven of them shall be designated in such appointment to serve initial terms of office of four years. If additional members are appointed to the council to represent a new congressional district as provided in subsection (b) of this Code section, one half shall be designated to serve an initial term of office which expires when the above initial two-year terms of office expire and one half shall be designated to serve an initial term of office which expires when the above initial four-year terms of office expire. After the initial terms provided in this subsection, members of the council shall be appointed to serve for four-year terms of office. Members of the council shall serve out their terms of office and until their respective successors are appointed and qualified.

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

(1) By the Governor after notice and opportunity for hearing for:

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

(B) Incompetence; or

(C) Dishonest conduct; or

(2) For failure to attend at least 50 percent of the meetings of the council in any year; provided, however, that an absence caused by a medical condition or death of a family member shall constitute an excused absence and shall not provide grounds for removal.

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

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

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

(g) The function of the council shall be to serve as an advisory body to the department and to:

(1) Review, comment, and make recommendations to the board on components of the state health plan; and

(2) Review and comment on proposed rules for the administration of this chapter, except emergency rules, as requested by the department

(h) The council at the department´s request shall involve and coordinate functions with such state entities as necessary.

31-6-21.

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

(b) The functions of the department shall be:

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

(2) To prepare and revise a draft state health plan;

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

(4) To adopt, promulgate, and implement rules and regulations sufficient to administer the provisions of this chapter including the certificate of need program;

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

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

(7) To provide, by rule, for such fees as may be necessary to cover the costs of hearing officers, preparing the record for appeals before such hearing officers and the Certificate of Need Appeal Panel of the decisions of the department, and other related administrative costs, which costs may include reasonable sharing between the department and the parties to appeal hearings;

(8) To establish, by rule, need methodologies for new institutional health services and health facilities. In developing such need methodologies, the department shall, at a minimum, consider the demographic characteristics of the population, the health status

of the population, service use patterns, standards and trends, financial and geographic accessibility, and market economics. The department shall establish service-specific need methodologies and criteria for at least the following clinical health services: short stay hospital beds, adult therapeutic cardiac catheterization, adult open heart surgery, pediatric cardiac catheterization and open heart surgery, Level II and III perinatal services, freestanding birthing centers, psychiatric and substance abuse inpatient programs, skilled nursing and intermediate care facilities, home health agencies, and continuing care retirement community sheltered facilities;

(9) To provide, by rule, for a reasonable and equitable fee schedule for certificate of need applications;

(10) To grant, deny, or revoke a certificate of need as applied for or as amended; and

(11) To perform powers and functions delegated by the Governor, which delegation may include the powers to carry out the duties and powers which have been delegated to the department under Section 1122 of the federal Social Security Act of 1935, as amended.

31-6-21.1.

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

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

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

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

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

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

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

(c) Any rule or part thereof to which an objection is made by both committees within the 30 day objection period under subsection (b) of this Code section shall not be adopted by the department and shall be invalid if so adopted. A rule or part thereof thus prohibited from being adopted shall be deemed to have been withdrawn by the department unless the department, within the first 15 days of the next regular session of the General Assembly, transmits written notification to each member of the objecting committees that the department does not intend to withdraw that rule or part thereof but intends to adopt the specified rule or part effective the day following adjournment sine die of that regular session. A resolution objecting to such intended adoption may be introduced in either branch of the General Assembly after the fifteenth day but before the thirtieth day of the session in which occurs the notification of intent not to withdraw a rule or part thereof. In the event the resolution is adopted by the branch of the General Assembly in which the resolution was introduced, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch to have that branch, within five days after receipt of the resolution, consider the resolution for purposes of objecting to the intended adoption of the rule or part thereof. Upon such resolution being adopted by two-thirds of the vote of each branch of the General Assembly, the rule or part thereof objected to in that resolution shall be disapproved and not adopted by the department. If the resolution is adopted by a majority but by less than two-thirds of the vote of each such branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of a veto, or if no resolution is introduced objecting to the rule, or if the resolution introduced is not approved by at least a majority of the vote of each such branch, the rule shall automatically become adopted the day following

adjournment sine die of that regular session. In the event of the Governor′s approval of the resolution, the rule shall be disapproved and not adopted by the department.

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

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

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

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

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

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

ARTICLE 3

31-6-40.

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

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

(2) Any expenditure by or on behalf of a health care facility in excess of $2,500,000.00 which, under generally accepted accounting principles consistently applied, is a capital expenditure, except expenditures for acquisition of an existing health care facility not owned or operated by or on behalf of a political subdivision of this state, or any combination of such political subdivisions, or by or on behalf of a hospital authority, as defined in Article 4 of Chapter 7 of this title, or certificate of need owned by such facility in connection with its acquisition. The dollar amounts specified in this paragraph and in subparagraph (A) of paragraph (14) of Code Section 31-6-2 shall be adjusted annually by an amount calculated by multiplying such dollar amounts (as adjusted for the preceding year) by the annual percentage of change in the composite index of construction material prices, or its successor or appropriate replacement index, if any, published by the United States Department of Commerce for the preceding calendar year, commencing on July 1, 2009, and on each anniversary thereafter of publication of the index. The department shall immediately institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar amounts of a proposed project for purposes of this paragraph and subparagraph (A) of paragraph (14) of Code Section 31-6-2, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies,

reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

(3) The purchase or lease by or on behalf of a health care facility or a diagnostic, treatment, or rehabilitation center of diagnostic or therapeutic equipment with a value in excess of $1,000,000.00; provided, however, that diagnostic or other imaging services that are not offered in a hospital or in the offices of an individual private physician or single group practice of physicians exclusively for use on patients of that physician or group practice shall be deemed to be a new institutional health service regardless of the cost of equipment; and provided, further, that this shall not include build out costs, as defined by the department, but shall include all functionally related equipment, software, and any warranty and services contract costs for the first five years. The acquisition of one or more items of functionally related diagnostic or therapeutic equipment shall be considered as one project. The dollar amount specified in this paragraph, in subparagraph (B) of paragraph (14) of Code Section 31-6-2, and in paragraph (10) of subsection (a) of Code Section 31-6-47 shall be adjusted annually by an amount calculated by multiplying such dollar amounts (as adjusted for the preceding year) by the annual percentage of change in the consumer price index, or its successor or appropriate replacement index, if any, published by the United States Department of Labor for the preceding calendar year, commencing on July 1, 2010;

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

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

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

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

(A) Radiation therapy;

(B) Biliary lithotripsy;

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

(D) Cardiac catheterization.

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

(c)(1) Any person who had a valid exemption granted or approved by the former Health Planning Agency or the Department of Community Health prior to July 1, 2008, shall not be required to obtain a certificate of need in order to continue to offer those previously offered services.

(2) Any facility offering ambulatory surgery pursuant to the exclusion designated on June 30, 2008, as division (14)(G)(iii) of Code Section 31-6-2; any diagnostic, treatment, or rehabilitation center offering diagnostic imaging or other imaging services in operation and exempt prior to July 1, 2008; or any facility operating pursuant to a letter of nonreviewability and offering diagnostic imaging services prior to July 1, 2008, shall:

(A) Provide notice to the department of the name, ownership, location, single specialty, and services provided in the exempt facility;

(B) Beginning on January 1, 2009, provide annual reports in the same manner and in accordance with Code Section 31-6-70; and

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

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

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

(II) Builds a new operating room; or

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

Noncompliance with any condition of this paragraph shall result in a monetary penalty in the amount of the difference between the services which the center is required to

provide and the amount actually provided and may be subject to revocation of its exemption status by the department for repeated failure to pay any fees or monies due to the department or for repeated failure to produce data as required by Code Section 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount (as adjusted for the preceding year) by the annual percentage of change in the consumer price index, or its successor or appropriate replacement index, if any, published by the United States Department of Labor for the preceding calendar year, commencing on July 1, 2009. In calculating the dollar amounts of a proposed project for the purposes of this paragraph, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites. Subparagraph (C) of this paragraph shall not apply to facilities offering ophthalmic ambulatory surgery pursuant to the exclusion designated on June 30, 2008, as division (14)(G)(iii) of Code Section 31-6-2 that are owned by physicians in the practice of ophthalmology.

(d) A certificate of need issued to a destination cancer hospital shall authorize the beds and all new institutional health services of such destination cancer hospital. As used in this subsection, the term 'new institutional health service' shall have the same meaning provided for in subsection (a) of this Code section. A certificate of need shall only be issued to a destination cancer hospital that locates itself and all affiliated facilities within 25 miles of a commercial airport in this state with five or more runways. Such destination cancer hospital shall not be required to apply for or obtain additional certificates of need for new institutional health services related to the treatment of cancer patients, and such new institutional health services related to the treatment of cancer patients offered by the destination cancer hospital shall not be reviewed under any service specific need methodology or rules except for those promulgated by the department for destination cancer hospitals. After commencing operations, in order to add an additional new institutional health service, a destination cancer hospital shall apply for and obtain an additional certificate of need under the applicable statutory provisions and any rules promulgated by the department for destination cancer hospitals, and such applications shall only be granted if the patient base of such destination cancer hospital is composed of at

least 65 percent of out-of-state patients for two consecutive years. The department may apply rules for a destination cancer hospital only for those services that the department determines are to be used by the destination cancer hospital in connection with the treatment of cancer. In no case shall a destination cancer hospital specific rules be used in the case of an application for open heart surgery, perinatal services, cardiac catheterization, and other services deemed by the department to be not reasonably related to the diagnosis and treatment of cancer; provided, however, that the department shall apply the destination cancer hospital specific rules if a destination cancer hospital applies for services and equipment required for it to meet federal or state laws applicable to a hospital. If such destination cancer hospital cannot show a patient base of a minimum of 65 percent from outside of this state, then its application for any new institutional health service shall be evaluated under the specific statutes and rules applicable to that particular service. If such destination cancer hospital applies for a certificate of need to add an additional new institutional health service before commencing operations or completing two consecutive years of operation, such applicant may rely on historical data from its affiliated entities, as set forth in paragraph (2) of subsection (b.1) of Code Section 31-6-42. Because destination cancer hospitals provide services primarily to out-of-state residents, the number of beds, services, and equipment destination cancer hospitals use shall not be counted as part of the department′s inventory when determining the need for those items by other providers. No person shall be issued more than one certificate of need for a destination cancer hospital. Nothing in this Code section shall in any way require a destination cancer hospital to obtain a certificate of need for any purpose that is otherwise exempt from the certificate of need requirement. Beginning January 1, 2010, the department shall not accept any application for a certificate of need for a new destination cancer hospital; provided, however, all other provisions regarding the upgrading, replacing, or purchasing of diagnostic or therapeutic equipment shall be applicable to an existing destination cancer hospital.

(e) The commissioner shall be authorized, with the approval of the board, to place a temporary moratorium of up to six months on the issuance of certificates of need for new and emerging health care services. Any such moratorium placed shall be for the purpose of promulgating rules and regulations regarding such new and emerging health care services. A moratorium may be extended one time for an additional three months if circumstances warrant, as approved by the board. In the event that final rules and regulations are not promulgated within the time period allowed by the moratorium, any applications received by the department for a new and emerging health care service shall be reviewed under existing general statutes and regulations relating to certificates of need.

31-6-40.1.

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

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

(1) Skilled nursing facilities;

(2) Intermediate care facilities; and

(3) Home health agencies,

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

(b.1) The department may establish, by rule, set times during the year in which applications for capital projects exceeding the threshold amounts in:

(1) Paragraph (14) of Code Section 31-6-2; and

(2) Paragraph (2) or (3) of subsection (a) of Code Section 31-6-40

shall be accepted.

(c) The department may require that any applicant for a certificate of need agree to provide a specified amount of clinical health services to indigent patients as a condition for the grant of a certificate of need; provided, however, that each facility granted a certificate of need by the department as a destination cancer hospital shall be required to provide uncompensated indigent or charity care for residents of Georgia which meets or exceeds 3 percent of such destination cancer hospital's adjusted gross revenues and provide care to Medicaid beneficiaries. A grantee or successor in interest of a certificate of need or an authorization to operate under this chapter which violates such an agreement or violates any conditions imposed by the department relating to such services, whether made before or after July 1, 2008, shall be liable to the department for a monetary penalty in the amount of the difference between the amount of services so agreed to be provided and the amount actually provided and may be subject to revocation of its certificate of need, in whole or

in part, by the department pursuant to Code Section 31-6-45. Any penalty so recovered shall be paid into the state treasury.

(c.1)(1) A destination cancer hospital that does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state in a calendar year shall be fined $2,000,000.00 for the first year of noncompliance, $4,000,000.00 for the second consecutive year of noncompliance, and $6,000,000.00 for the third consecutive year of noncompliance. Such fine amount shall reset to $2,000,000.00 after any year of compliance. In the event that a destination cancer hospital does not meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period, such hospital shall be fined an additional amount of $8,000,000.00. It is the intent of the General Assembly that all revenues collected from any such fine shall be dedicated and deposited by the department into the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(2) In the event a certificate of need for a destination cancer hospital is revoked pursuant to this subsection, such hospital shall be subject to fines pursuant to subsection (c) of Code Section 31-6-45 for operating without a certificate of need.

(3) In addition to the annual report required pursuant to Code Section 31-6-70, a destination cancer hospital shall submit an annual statement, in accordance with timeframes and a format specified by the department, affirming that the hospital has met an annual patient base composed of a minimum of 65 percent of patients who reside outside this state. The chief executive officer of the destination cancer hospital shall certify under penalties of perjury that the statement as prepared accurately reflects the composition of the annual patient base. The department shall have the authority to inspect any books, records, papers, or other information pursuant to subsection (e) of Code Section 31-6-45 of the destination cancer hospital to confirm the information provided on such statement or any other information required of the destination cancer hospital. Nothing in this paragraph shall be construed to require the release of any information which would violate the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

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

31-6-40.2.

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

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

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

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

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

(5) 'Perinatal service' means obstetric and neonatal services relating to managing high-risk pregnancies, care for moderately ill newborns, care for all maternal and fetal complications either on site or by referral, and operation of neonatal intensive care units equipped to treat critically ill newborns; provided however, this shall not include basic perinatal services as defined in Code Section 31-6-2.

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

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

(2) The department shall revoke the certificate of need and authority to operate of a new perinatal service if after notice to the grantee of the certificate or such grantee´s successors, and after opportunity for a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the department determines that such new

perinatal service has failed to provide indigent or charity care in accordance with the requirements of paragraph (1) of this subsection and such failure is determined by the department to be for reasons substantially within the perinatal service provider´s control. The department shall provide the requisite notice, conduct the fair hearing, if requested, and render its determination within 90 days after the end of the first year, or, if applicable, the first time period described in paragraph (1) of this subsection during which the new perinatal service fails to provide indigent or charity care in accordance with the requirements of paragraph (1) of this subsection. Revocation shall be effective 30 days after the date of the determination by the department that the requirements of paragraph (1) of this subsection have not been met.

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

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

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

31-6-41.

(a) A certificate of need shall be valid only for the defined scope, location, cost, service area, and person named in an application, as it may be amended, and as such scope, location, area, cost, and person are approved by the department, unless such certificate of need owned by an existing health care facility is transferred to a person who acquires such existing facility. In such case, the certificate of need shall be valid for the person who

acquires such a facility and for the scope, location, cost, and service area approved by the department. However, in reviewing an application to relocate all or a portion of an existing skilled nursing facility, intermediate care facility, or intermingled nursing facility, the department may allow such facility to divide into two or more such facilities if the department determines that the proposed division is financially feasible and would be consistent with quality patient care.

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

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

31-6-42.

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

(1) The proposed new institutional health services are reasonably consistent with the relevant general goals and objectives of the state health plan;

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

(3) Existing alternatives for providing services in the service area the same as the new institutional health service proposed are neither currently available, implemented, similarly utilized, nor capable of providing a less costly alternative, or no certificate of need to provide such alternative services has been issued by the department and is currently valid;

(4) The project can be adequately financed and is, in the immediate and long term, financially feasible;

(5) The effects of new institutional health service on payors for health services, including governmental payors, are not unreasonable;

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

(7) The new institutional health service proposed is reasonably financially and physically accessible to the residents of the proposed service area;

(8) The proposed new institutional health service has a positive relationship to the existing health care delivery system in the service area;

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

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

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

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

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

(14) The proposed new institutional health service fosters the special needs and circumstances of health maintenance organizations;

(15) The proposed new institutional health service meets the department´s minimum quality standards, including, but not limited to, standards relating to accreditation, minimum volumes, quality improvements, assurance practices, and utilization review procedures;

(16) The proposed new institutional health service can obtain the necessary resources, including health care personnel and management personnel; and

(17) The proposed new institutional health service is an underrepresented health service, as determined annually by the department. The department shall, by rule, provide for an

advantage to equally qualified applicants that agree to provide an underrepresented service in addition to the services for which the application was originally submitted.

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

(b.1) In the case of applications for the construction, development, or establishment of a destination cancer hospital, the applicable considerations as to the need for such service shall not include paragraphs (1), (2), (3), (7), (8), (10), (11), and (14) of subsection (a) of this Code section but shall include:

(1) Paragraphs (4), (5), (6), (9), (12), (13), (15), (16), and (17) of subsection (a) of this Code section;

(2) That the proposed new destination cancer hospital can demonstrate, based on historical data from the applicant or its affiliated entities, that its annual patient base shall be composed of a minimum of 65 percent of patients who reside outside of the State of Georgia;

(3) That the proposed new destination cancer hospital states its intent to provide uncompensated indigent or charity care which shall meet or exceed 3 percent of its adjusted gross revenues and provide care to Medicaid beneficiaries;

(4) That the proposed new destination cancer hospital shall conduct biomedical or behavioral research projects or service development which is designed to meet a national or regional need;

(5) That the proposed new destination cancer hospital shall be reasonably financially and physically accessible;

(6) That the proposed new destination cancer hospital shall have a positive relationship to the existing health care delivery system on a regional basis;

(6.1) That the proposed new destination cancer hospital shall enter into a hospital transfer agreement with one or more hospitals within a reasonable distance from the destination cancer hospital or the medical staff at the destination cancer hospital has admitting privileges or other acceptable documented arrangements with such hospital or hospitals to ensure the necessary backup for the destination cancer hospital for medical complications. The destination cancer hospital shall have the capability to transfer a patient immediately to a hospital within a reasonable distance from the destination cancer

hospital with adequate emergency room services. Hospitals shall not unreasonably deny a transfer agreement with the destination cancer hospital. In the event that a destination cancer hospital and another hospital cannot agree to the terms of a transfer agreement as required by this paragraph, the department shall mediate between such parties for a period of no more than 45 days. If an agreement is still not reached within such 45 day period, the parties shall enter into binding arbitration conducted by the department;

(7) That an applicant for a new destination cancer hospital shall document in its application that the new facility is not predicted to be detrimental to existing hospitals within the planning area. Such demonstration shall be made by providing an analysis in such application that compares current and projected changes in market share and payor mix for such applicant and such existing hospitals within the planning area. Impact on an existing hospital shall be determined to be adverse if, based on the utilization projected by the applicant, such existing hospital would have a total decrease of 10 percent or more in its average annual utilization, as measured by patient days for the two most recent and available preceding calendar years of data; and

(8) That the destination cancer hospital shall express its intent to participate in medical staffing work force development activities.

(b.2) In the case of applications for basic perinatal services in counties where:

(1) Only one civilian health care facility or health system is currently providing basic perinatal services; and

(2) There are not at least three different health care facilities in a contiguous county providing basic perinatal services,

the department shall not apply the consideration contained in paragraph (2) of subsection (a) of this Code section.

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

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

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

would adversely impact upon the facility and population served by said facility, the special needs of such hospital facility and the population served by said facility for the new institutional health service shall be given extraordinary consideration by the department in making its determination of need as required by this Code section. The department shall have the authority to vary or modify strict adherence to the provisions of this chapter and

the rules enacted pursuant hereto in considering the special needs of such facility and its population served and to avoid an adverse impact on the facility and the population served thereby. For purposes of this subsection, the term 'minority administered hospital facility' means a hospital controlled or operated by a governing body or administrative staff composed predominantly of members of a minority race.

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

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

31-6-43.

(a) At least 30 days prior to submitting an application for a certificate of need for clinical health services, a person shall submit a letter of intent to the department. The department shall provide by rule a process for submitting letters of intent and a mechanism by which applications may be filed to compete with and be reviewed comparatively with proposals described in submitted letters of intent.

(b) Each application for a certificate of need shall be reviewed by the department and within ten working days after the date of its receipt a determination shall be made as to whether the application complies with the rules governing the preparation and submission of applications. If the application complies with the rules governing the preparation and submission of applications, the department shall declare the application complete for review, shall accept and date the application, and shall notify the applicant of the timetable for its review. The department shall also notify a newspaper of general circulation in the county in which the project shall be developed that the application has been deemed complete. The department shall also notify the appropriate regional development center and the chief elected official of the county and municipal governments, if any, in whose boundaries the proposed project will be located that the application is complete for review. If the application does not comply with the rules governing the preparation and submission of applications, the department shall notify the applicant in writing and provide a list of all deficiencies. The applicant shall be afforded an opportunity to correct such deficiencies, and upon such correction, the application shall then be declared complete for review within

ten days of the correction of such deficiencies, and notice given to a newspaper of general circulation in the county in which the project shall be developed that the application has been so declared. The department shall also notify the appropriate regional development center and the chief elected official of the county and municipal governments, if any, in whose boundaries the proposed project will be located that the application is complete for review or when in the determination of the department a significant amendment is filed.

(c) The department shall specify by rule the time within which an applicant may amend its application. The department may request an applicant to make amendments. The department decision shall be made on an application as amended, if at all, by the applicant.

(d) There shall be a time limit of 120 days for review of a project, beginning on the day the department declares the application complete for review or in the case of applications joined for comparative review, beginning on the day the department declares the final application complete. The department may adopt rules for determining when it is not practicable to complete a review in 120 days and may extend the review period upon written notice to the applicant but only for an extended period of not longer than an additional 30 days. The department shall adopt rules governing the submission of additional information by the applicant and for opposing an application.

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

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

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

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

Following joinder of the first application with subsequent applications, none of the subsequent applications so joined may be considered as a first application for the purposes of future joinder. The department shall notify the applicant to whose application a joinder is ordered and all other applicants previously joined to such application of the fact of each joinder pursuant to this subsection. In the event one or more applications have been joined pursuant to this subsection, the time limits for department action for all of the applicants

shall run from the latest date that any one of the joined applications was declared complete for review. In the event of the consideration of one or more applications joined pursuant to this subsection, the department may award no certificate of need or one or more certificates of need to the application or applications, if any, which are consistent with the considerations contained in Code Section 31-6-42, the department´s applicable rules, and the award of which will best satisfy the purposes of this chapter.

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

(h) The department shall provide the applicant an opportunity to meet with the department to discuss the application and to provide an opportunity to submit additional information. Such additional information shall be submitted within the time limits adopted by the department. The department shall also provide an opportunity for any party that is opposed to an application to meet with the department and to provide additional information to the department. In order for an opposing party to have standing to appeal an adverse decision pursuant to Code Section 31-6-44, such party must attend and participate in an opposition meeting.

(i) Unless extended by the department for an additional period of up to 30 days pursuant to subsection (d) of this Code section, the department shall, no later than 120 days after an application is determined to be complete for review, or, in the event of joined applications, 120 days after the last application is declared complete for review, provide written notification to an applicant of the department´s decision to issue or to deny issuance of a certificate of need for the proposed project. Such notice shall contain the department´s written findings of fact and decision as to each applicable consideration or rule and a detailed statement of the reasons and evidentiary support for issuing or denying a certificate of need for the action proposed by each applicant. The department shall also mail such notification to the appropriate regional development center and the chief elected official

of the county and municipal governments, if any, in whose boundaries the proposed project will be located. In the event such decision is to issue a certificate of need, the certificate of need shall be effective on the day of the decision unless the decision is appealed to the Certificate of Need Appeal Panel in accordance with this chapter. Within seven days of the decision, the department shall publish notice of its decision to grant or deny an application in the same manner as it publishes notices of the filing of an application.

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

(g) Notwithstanding other provisions of this article, when the Governor has declared a state of emergency in a region of the state, existing health care facilities in the affected region may seek emergency approval from the department to make expenditures in excess of the capital expenditure threshold or to offer services that may otherwise require a certificate of need. The department shall give special expedited consideration to such requests and may authorize such requests for good cause. Once the state of emergency has been lifted, any services offered by an affected health care facility under this subsection shall cease to be offered until such time as the health care facility that received the emergency authorization has requested and received a certificate of need. For purposes of this subsection, 'good cause' means that authorization of the request shall directly resolve a situation posing an immediate threat to the health and safety of the public. The department shall establish, by rule, procedures whereby requirements for the process of review and issuance of a certificate of need may be modified and expedited as a result of emergency situations.

31-6-44.

(a) Effective July 1, 2008, there is created the Certificate of Need Appeal Panel, which shall be an agency separate and apart from the department and shall consist of a panel of independent hearing officers. The purpose of the appeal panel shall be to serve as a panel of independent hearing officers to review the department´s initial decision to grant or deny a certificate of need application. The Health Planning Review Board which existed on June 30, 2008, shall cease to exist after that date and the Certificate of Need Appeal Panel shall be constituted effective July 1, 2008, pursuant to this Code section. The terms of all

members of the Health Planning Review Board serving as such on June 30, 2008, shall automatically terminate on such date.

(b) On and after July 1, 2008, the appeal panel shall be composed of five members appointed by the Governor for a term of up to four years each. The Governor shall appoint to the appeal panel attorneys who practice law in this state and who are familiar with the health care industry but who do not have a financial interest in or represent or have any compensation arrangement with any health care facility. Each member of the appeal panel shall be an active member of the State Bar of Georgia in good standing, and each attorney shall have maintained such active status for the five years immediately preceding such person′s appointment. The Governor shall name from among such members a chairperson and a vice chairperson of the appeal panel. The vice chairperson shall have the same authority as the chairperson; provided, however, the vice chairperson shall not exercise such authority unless expressly delegated by the chairperson or in the event the chairperson becomes incapacitated, as determined by the Governor. Vacancies on the appeal panel caused by resignation, death, or any other cause shall be filled for the unexpired term in the same manner as the original appointment. No person required to register with the Secretary of State as a lobbyist or registered agent shall be eligible for appointment by the Governor to the appeal panel.

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

(d) Any applicant for a project, any competing applicant in the same batching cycle, any competing health care facility that has notified the department prior to its decision that such facility is opposed to the application before the department, or any county or municipal government in whose boundaries the proposed project will be located who is aggrieved by a decision of the department shall have the right to an initial administrative appeal hearing before an appeal panel hearing officer or to intervene in such hearing. Such request for hearing or intervention shall be filed with the chairperson of the appeal panel within 30 days of the date of the decision made pursuant to Code Section 31-6-43. In the event an appeal is filed by a competing applicant, or any competing health care facility, or any county or municipal government, the appeal shall be accompanied by payment of such fee as is established by the appeal panel. In the event an appeal is requested, the chairperson of the appeal panel shall appoint a hearing officer for each such hearing within 30 days after the date the appeal is received. Within 14 days after the appointment of the hearing officer, such hearing officer shall confer with the parties and set the date or dates for the hearing, provided that no hearing shall be scheduled less than 60 days nor more than 120 days after the filing of the request for a hearing, unless the applicant consents or, in the case of competing applicants, all applicants consent to an extension of this time period to a specified date. Unless the applicant consents or, in the case of competing applicants, all applicants consent to an extension of said 120 day period, any hearing officer who regularly fails to commence a hearing within the required time period shall not be eligible for continued service as a hearing officer for the purposes of this Code section. The hearing officer shall have the authority to dispose of all motions made by any party before the issuance of the hearing officer´s decision and shall make such rulings as may be required for the conduct of the hearing.

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

(f) In addition to evidence submitted to the department, a party may present any additional relevant evidence to the appeal panel hearing officer reviewing the decision of the

department if the evidence was not reasonably available to the party presenting the evidence at the time of the department's review. The burden of proof as to whether the evidence was reasonably available shall be on the party attempting to introduce the new evidence. The issue for the decision by the hearing officer shall be whether, and the hearing officer shall order the issuance of a certificate of need if, in the hearing officer's judgment, the application is consistent with the considerations as set forth in Code Section 31-6-42 and the department's rules, as the hearing officer deems such considerations and rules applicable to the review of the project. The appeal hearing conducted by the appeal panel hearing officer shall be a de novo review of the decision of the department. The hearing officer shall also consider:

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

(2) Whether the appeal lacks substantial justification; and

(3) Whether such appeal was undertaken primarily for the purpose of delay or harassment.

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

(g) All evidence shall be presented at the initial administrative appeal hearing conducted by the appointed hearing officer. A party or intervenor may present any relevant evidence on all issues raised by the hearing officer or any party to the hearing or revealed during discovery and shall not be limited to evidence or information presented to the department prior to its decision, except that an applicant may not present a new need study or analysis responsive to the general need consideration or service-specific need formula as provided in the applicable rules that is substantially different from any such study or analysis submitted to the department prior to its decision and that could have reasonably been available for submission. The hearing officer may consider the latest data available, including updates of studies previously submitted, in deciding whether an application is consistent with the applicable considerations or rules. The hearing officer shall consider the applicable considerations and rules in effect on the date the appeal is filed, even if the provisions of those considerations or rules were changed after the department's decision.

The hearing officer may remand a matter to the department if the hearing officer determines that it would be beneficial for the department to consider new data, studies, or analyses that were not available before the decision or changes to the provisions of the applicable considerations or rules made after the department's decision. The hearing officer shall establish the time deadlines for completion of the remand and shall retain jurisdiction of the matter throughout the completion of the remand.

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

(i) Within 30 days after the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law as to each consideration as set forth in Code Section 31-6-42 and the department's rules, including a detailed statement of the reasons for the decision of the hearing officer. If any party has alleged that an appeal lacks substantial justification or was undertaken primarily for the purpose of delay or harassment, the decision of the hearing officer shall make findings of fact addressing the merits of the allegation. The hearing officer shall file such decision with the chairperson of the appeal panel who shall serve such decision upon all parties, and shall transmit the administrative record to the commissioner. Any party, including the department, which disputes any finding of fact or conclusion of law rendered by the hearing officer in such hearing officer's decision and which wishes to appeal that decision may appeal to the commissioner and shall file its specific objections with the commissioner or his or her designee within 30 days of of the date of the hearing officer's decision pursuant to rules adopted by the department.

(j) The decision of the appeal panel hearing officer will become the final decision of the department upon the sixty-first day following the date of the decision unless an objection thereto is filed with the commissioner within the time limit established in subsection(i) of this Code section.

(k)(1) In the event an appeal of the hearing officer's decision is filed, the commissioner may adopt the hearing officer's order as the final order of the department or the commissioner may reject or modify the conclusions of law over which the department has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction. By rejecting or modifying such conclusion of law or interpretation of administrative rule, the department must state with particularity its

reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The commissioner may not reject or modify the findings of fact unless the commissioner first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon any competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

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

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

(m) Unless the hearing officer's decision becomes the department's final decision by operation of law as provided in subsection (j) of this Code section, the decision of the commissioner shall become the department's final decision by operation of law. Such final decision shall be the final department decision for purposes of Chapter 13 of Title 50, the

'Georgia Administrative Procedure Act.' The appeals process provided by this Code section shall be the administrative remedy only for decisions made by the department pursuant to Code Section 31-6-43 which involve the approval or denial of applications for certificates of need.

(n) A party responding to an appeal to the commissioner may be entitled to reasonable attorney´s fees and costs of such appeal if it is determined that the appeal lacked substantial justification and was undertaken primarily for the purpose of delay or harassment; provided, however, that the department shall not be required to pay attorney´s fees or costs. This subsection shall not apply to the portion of attorney´s fees accrued on behalf of a party responding to or bringing a challenge to the department´s authority to enact a rule or regulation or the department´s jurisdiction or another challenge that could not have been decided in the administrative proceeding, nor shall it apply to costs accrued when the only argument raised by the appealing party is one described in this subsection.

31-6-44.1

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

(1) In violation of constitutional or statutory provisions;

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

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

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

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

(b) In the event a party seeks judicial review, the department shall, within 30 days of the filing of the notice of appeal with the superior court, transmit certified copies of all

documents and papers in its file together with a transcript of the testimony taken and its findings of fact and decision to the clerk of the superior court to which the case has been appealed. The case so appealed may then be brought by either party upon ten days´ written notice to the other before the superior court for a hearing upon such record, subject to an assignment of the case for hearing by the court; provided, however, if the court does not hear the case within 120 days of the date of docketing in the superior court, the decision of the department shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 120 days has been continued to a date certain by order of the court. In the event a hearing is held later than 90 days after the date of docketing in the superior court because same has been continued to a date certain by order of the court, the decision of the department shall be considered affirmed by operation of law if no order of the court disposing of the issues on appeal has been entered within 30 days after the date of the continued hearing. If a case is heard within 120 days from the date of docketing in the superior court, the decision of the department shall be considered affirmed by operation of law if no order of the court dispositive of the issues on appeal has been entered within 30 days of the date of the hearing.

(c) A party responding to an appeal to the superior court shall be entitled to reasonable attorney´s fees and costs if such party is the prevailing party of such appeal as decided by final order; provided, however, the department shall not be required to pay attorney´s fees or costs. This subsection shall not apply to the portion of attorney´s fees accrued on behalf of a party responding to or bringing a challenge to the department´s authority to enact a rule or regulation or the department´s jurisdiction or another challenge that could not have been raised in the administrative proceeding.

31-6-45.

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

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

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

(3) Repeated failure to pay any fines or moneys due to the department;

(4) Failure to maintain minimum quality of care standards that may be established by the department;

(5) Failure to participate as a provider of medical assistance for Medicaid purposes pursuant to Code Section 31-6-45.2 or any other applicable Code section;

(6) The failure to submit a timely or complete report within 180 days following the date the report is due pursuant to Code Section 31-6-70; or

(7) Failure of a destination cancer hospital to meet an annual patient base composed of a minimum of 65 percent of patients who reside outside this state for three calendar years in any five-year period.

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

(a.1) The department may revoke a certificate of need, in whole or in part, after notice to the holder of the certificate and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' if the services or units of services for which the certificate of need was issued are not implemented in a timely manner, as established by the department in its rules. This subsection shall apply only to certificates of need issued on or after July 1, 2008.

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

(c) In the event that a new institutional health service is knowingly offered or developed without having obtained a certificate of need as required by this chapter, or the certificate of need for such service is revoked according to the provisions of this Code section, a facility or applicant may be fined an amount of $5,000.00 per day up to 30 days, $10,000.00 per day from 31 days through 60 days, and $25,000.00 per day after 60 days for each day that the violation of this chapter has existed and knowingly and willingly continues; provided, however, that the expenditure or commitment of or incurring an obligation for the expenditure of funds to take or perform actions not subject to this chapter or to acquire, develop, or prepare a health care facility site for which a certificate of need application is denied shall not be a violation of this chapter and shall not be subject to such a fine. The commissioner of the department shall determine, after notice and a hearing, whether the fines provided in this Code section shall be levied.

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

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

31-6-45.1.

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

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

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

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

31-6-45.2.

(a) The department may require that any applicant for a certificate of need agree to participate as a provider of medical assistance for Medicaid purposes pursuant to Article 7 of Chapter 4 of Title 49.

(b) Any proposed or existing health care facility which obtains a certificate of need on or after April 6, 1992, based in part upon assurances that it will participate as a provider of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, and which terminates its participation as a provider of medical assistance or violates any conditions imposed by the department relating to such participation, shall be subject to a monetary penalty in the amount of the difference between the Medicaid covered services which the facility agreed to provide in its certificate of need application and the amount actually provided and may be subject to revocation of its certificate of need by the department pursuant to Code Section 31-6-45; provided, however, that this Code section shall not apply if:

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

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

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

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

adjustments, by the percentage of the facility´s utilization during the cost reporting period which was attributable to recipients of medical assistance;

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

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

(c) A facility seeking to terminate its enrollment as a provider of medical assistance shall submit a written request to the department documenting good cause for termination. The department shall grant or deny the facility´s request within 30 days. If the department denies the facility´s request, the facility shall be entitled to a hearing conducted in the same manner as an evidentiary hearing conducted by the department pursuant to the provisions of Code Section 49-4-153 within 30 days of the department´s decision.

(d) The imposition of the monetary penalty provided in this Code section shall commence upon the date that said facility has terminated its participation as a provider of medical assistance, as determined by the commissioner. The monetary penalty shall be levied and collected by the department on an annual basis for every year in which the facility fails to participate as a provider of medical assistance. Penalties authorized under this Code section shall be subject to the same notices and hearings as provided for levy of fines under Code Section 31-6-45.

31-6-46.

The department shall prepare and submit an annual report to the board and to the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House of Representatives about its operations and decisions for the preceding 12 month period, not later than 30 days prior to each convening of the General Assembly in regular session. Either committee may request any additional reports or information, including decisions, from the department at any time, including a period in which the General Assembly is not in regular session. The annual report shall include information and updates relating to the state health plan and the certificate of need program and an annual analysis of proactive and prospective approaches to need methodologies and access to health care services. The annual report shall include information for Georgia´s congressional delegation which highlights issues regarding federal laws and regulations

influencing Medicaid and medicare, insurance and related tax laws, and long-term health care.

31-6-47.

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

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

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

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

(4) Offices of private physicians or dentists whether for individual or group practice, except as otherwise provided in paragraph (3) or (7) of subsection (a) of Code Section 31-6-40;

(5) Religious, nonmedical health care institutions as defined in 42 U.S.C. § 1395x (ss)(1), listed and certified by a national accrediting organization;

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

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

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

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

(A) Political subdivision of this state;

(B) Combination of such political subdivisions; or

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

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

(10) Expenditures of less than $870,000.00 for any minor or major repair or replacement of equipment by a health care facility that is not owned by a group practice of physicians

or a hospital and that provides diagnostic imaging services if such facility received a letter of nonreviewability from the department prior to July 1, 2008. This paragraph shall not apply to such facilities in rural counties;

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

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

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

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

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

(15) Increases in the bed capacity of a hospital up to ten beds or 10 percent of capacity, whichever is greater, in any consecutive two-year period, in a hospital that has maintained an overall occupancy rate greater than 75 percent for the previous 12 month period;

(16) Expenditures for nonclinical projects, including parking lots, parking decks, and other parking facilities; computer systems, software, and other information technology; medical office buildings; and state mental health facilities;

(17) Continuing care retirement communities, provided that the skilled nursing component of the facility is for the exclusive use of residents of the continuing care

retirement community and that a written exemption is obtained from the department; provided, however, that new sheltered nursing home beds may be used on a limited basis by persons who are not residents of the continuing care retirement community for a period up to five years after the date of issuance of the initial nursing home license, but such beds shall not be eligible for Medicaid reimbursement. For the first year, the continuing care retirement community sheltered nursing facility may utilize not more than 50 percent of its licensed beds for patients who are not residents of the continuing care retirement community. In the second year of operation, the continuing care retirement community shall allow not more than 40 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the third year of operation, the continuing care retirement community shall allow not more than 30 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the fourth year of operation, the continuing care retirement community shall allow not more than 20 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. In the fifth year of operation, the continuing care retirement community shall allow not more than 10 percent of its licensed beds for new patients who are not residents of the continuing care retirement community. At no time during the first five years shall the continuing care retirement community sheltered nursing facility occupy more than 50 percent of its licensed beds with patients who are not residents under contract with the continuing care retirement community. At the end of the five-year period, the continuing care retirement community sheltered nursing facility shall be utilized exclusively by residents of the continuing care retirement community, and at no time shall a resident of a continuing care retirement community be denied access to the sheltered nursing facility. At no time shall any existing patient be forced to leave the continuing care retirement community to comply with this paragraph. The department is authorized to promulgate rules and regulations regarding the use and definition of 'sheltered nursing facility' in a manner consistent with this Code section. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party;

(18) Any single specialty ambulatory surgical center that:

(A)(i) Has capital expenditures associated with the construction, development, or other establishment of the clinical health service which do not exceed $2,500,000.00; or

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

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

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

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

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

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

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

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

(19) Any joint venture ambulatory surgical center that:

(A) Has capital expenditures associated with the construction, development, or other establishment of the clinical health service which do not exceed $5,000,000.00;

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

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

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

Noncompliance with any condition of this paragraph shall result in a monetary penalty in the amount of the difference between the services which the center is required to provide and the amount actually provided and may be subject to revocation of its exemption status by the department for repeated failure to pay any fines or moneys due to the department or for repeated failure to produce data as required by Code Section 31-6-70 after notice to the exemption holder and a fair hearing pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The dollar amount specified in this paragraph shall be adjusted annually by an amount calculated by multiplying such dollar amount (as adjusted for the preceding year) by the annual percentage of change in the composite index of construction material prices, or its successor or appropriate replacement index, if any, published by the United States Department of Commerce for

the preceding calendar year, commencing on July 1, 2009, and on each anniversary thereafter of publication of the index. The department shall immediately institute rule-making procedures to adopt such adjusted dollar amounts. In calculating the dollar amounts of a proposed project for purposes of this paragraph, the costs of all items subject to review by this chapter and items not subject to review by this chapter associated with and simultaneously developed or proposed with the project shall be counted, except for the expenditure or commitment of or incurring an obligation for the expenditure of funds to develop certificate of need applications, studies, reports, schematics, preliminary plans and specifications or working drawings, or to acquire sites;

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) That hospital:

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

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

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

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

(B) That project:

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

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

(II) Any increase in bed capacity;

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

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

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

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

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

31-6-47.1.

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

31-6-48.

The State Health Planning and Development Agency, the State-wide Health Coordinating Council, and the State Health Planning Review Board existing immediately prior to July 1, 1983, are abolished, and their respective successors on and after July 1, 1983, shall be the Health Planning Agency, the Health Policy Council, and the Health Planning Review Board, as established in this chapter, except that on and after July 1, 1991, the Health Strategies Council shall be the successor to the Health Policy Council, and except that on and after July 1, 1999, the Department of Community Health shall be the successor to the Health Planning Agency, and except that on and after July 1, 2008, the Board of Community Health shall be the successor to the duties of the Health Strategies Council with respect to adoption of the state health plan, and except that on June 30, 2008, the Health Planning Review Board is abolished and the terms of all members on such board on such date shall automatically terminate and the Certificate of Need Appeal Panel shall be the successor to the duties of the Health Planning Review Board on such date. For purposes of any existing contract with the federal government, or federal law referring to such abolished agency, council, or board, the successor department, council, or board established in this chapter or in Chapter 5A of this title shall be deemed to be the abolished

agency, council, or board and shall succeed to the abolished agency´s, council´s, or board´s functions. The State Health Planning and Development Commission is abolished.

31-6-49.

All matters transferred to the Health Planning Agency by the previously existing provisions of this Code section and that are in effect on June 30, 1999, shall automatically be transferred to the Department of Community Health on July 1, 1999. All matters of the Health Planning Review Board that are pending on June 30, 2008, shall automatically be transferred to the Certificate of Need Appeal Panel established pursuant to Code Section 31-6-44.

31-6-50.

The review and appeal considerations and procedures set forth in Code Sections 31-6-42 through 31-6-44, respectively, shall apply to and govern the review of capital expenditures under the Section 1122 program of the federal Social Security Act of 1935, as amended, including, but not limited to, any application for approval under Section 1122 which is under consideration by the Health Planning Agency or on appeal before the Certificate of Need Appeal Panel, successor to the former Health Planning Review Board as of June 30, 2008.

ARTICLE 4

31-6-70.

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

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

(1) Total gross revenues;

(2) Bad debts;

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

(4) Contractual adjustments;

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

(6) Amounts of charity care provided to indigent persons;

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

(8) For cases involving indigent persons:

(A) The number of persons treated;

(B) The number of inpatients and outpatients;

(C) Total patient days;

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

(E) The indigent care costs incurred by the health care facility by county of residence.

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

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

(e)(1) In the event the department does not receive information responsive to subparagraph (c)(2)(A) of Code Section 31-6-40 by December 30, 2008, or an annual report from a health care facility requiring a certificate of need or an ambulatory surgical center or imaging center, whether or not exempt from obtaining a certificate of need under this chapter, on or before the date such report was due or receives a timely but incomplete report, the department shall notify the health care facility or center regarding the deficiencies and shall be authorized to fine such health care facility or center an amount not to exceed $500.00 per day for every day up to 30 days and $1,000.00 per day for every day over 30 days for every day of such untimely or deficient report.

(2) In the event the department does not receive an annual report from a health care facility within 180 days following the date such report was due or receives a timely but incomplete report which is not completed with such 180 days, the department shall be authorized to revoke such health care facility′s certificate of need in accordance with Code Section 31-6-45.

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

PART II

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

SECTION 2-1.

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

″19-10A-2.

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

SECTION 2-2.

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

″(e) Loans made pursuant to this subpart shall be conditioned upon the recipients′ agreements in writing to repay the loans in services to the public through the practice of primary care medicine in an area of the state that is approved by the authority for purposes of this subpart as being a medically underserved area or in a hospital or facility operated by or under the jurisdiction of the Department of Community Health or the Department of Corrections. Loans shall bear interest at the rate of 12 percent per annum from each date of disbursement of loan proceeds by the authority. For each year of practice by a loan recipient of primary care medicine in an authority approved area, hospital, or facility, the loan recipient shall be given credit for repayment of loan amounts received by the recipient under this subpart for one academic year of study or its equivalent as a full-time student. To the extent that loans made under this subpart are repaid in approved services rendered, all interest due the authority on such loans shall likewise be canceled. Loans made under this subpart that are not repaid in approved services rendered shall, together with interest thereon, be repaid to the authority in cash at times prescribed by the authority. Each applicant shall, before receiving the proceeds of a loan, enter into a written agreement with the authority, execute a promissory note, or sign such other documents as may be required

by the authority, the terms and conditions of which shall be in accordance with and designed to accomplish the purposes of this subpart.″

SECTION 2-3.

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

″20-3-513.

Students whose applications are approved shall receive a loan or scholarship in an amount to be determined by the State Medical Education Board to defray the tuition and other expenses of the applicant in an accredited four-year medical school in the United States which has received accreditation or provisional accreditation by the Liaison Committee on Medical Education of the American Medical Association or the Bureau of Professional Education of the American Osteopathic Association for a program in medical education designed to qualify the graduate for licensure by the Composite State Board of Medical Examiners of Georgia. The loans and scholarships shall be paid in such manner as the State Medical Education Board shall determine and may be prorated so as to pay to the medical college or school to which any applicant is admitted such funds as are required by that college or school with the balance being paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the State Medical Education Board. The loans or scholarships to be granted to each applicant shall be based upon the condition that the full amount of the loans or scholarships shall be repaid to the State of Georgia in services to be rendered by the applicant by practicing his or her profession in a State Medical Education Board approved rural county in Georgia of 35,000 population or less according to the United States decennial census of 1990 or any future such census or at any hospital or facility operated by or under the jurisdiction of the Department of Community Health or at any facility operated by or under the jurisdiction of the Department of Corrections or at any facility operated by or under the jurisdiction of the Department of Juvenile Justice. For each year of practicing his or her profession in such State Medical Education Board approved location, the applicant shall receive credit for the amount of the scholarship received during any one year in medical school, with the interest due on such amount.″

SECTION 2-4.

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

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

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and

(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.″

SECTION 2-5.

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

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

SECTION 2-6.

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

″(J) Personal care homes required to be licensed as such by the Department of Community Health and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for those homes, and any structure constructed as or converted to a personal care home on or after April 15, 1986, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the standards established by the Commissioner if he deems this necessary for proper fire safety.″

SECTION 2-7.

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

″31-1-1.

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

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

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

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

SECTION 2-8.

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

″31-7-1.

As used in this chapter, the term:

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

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

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

(4) 'Institution' means:

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

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

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

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

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

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

(G) Any freestanding imaging center where magnetic resonance imaging, computed tomography (CT) scanning, positron emission tomography (PET) scanning, positron emission tomography/computed tomography, and other advanced imaging services as

defined by the department by rule, but not including X-rays, fluoroscopy, or ultrasound services, are conducted in a location or setting not affiliated or attached to a hospital or in the offices of an individual private physician or single group practice of physicians and conducted exclusively for patients of that physician or group practice.

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

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

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

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

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

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

SECTION 2-9.

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

″(a) The department shall adopt and promulgate such reasonable rules and regulations which in its judgment are necessary to protect the health and lives of patients and shall prescribe and set out the kind and quality of building, equipment, facilities, and institutional services which institutions shall have and use in order to properly care for their patients. Such rules and regulations shall include detailed quality standards for specific clinical services which shall be required to be met by an institution prior to offering the particular service. Such rules and regulations shall require that all nursing homes annually offer unless contraindicated, contingent on availability, an influenza virus vaccine to all medicare and Medicaid-eligible patients and private-pay patients in their facilities, in accordance with the rules and regulations established pursuant to this subsection. Such rules and regulations shall also require that all nursing homes annually offer unless

contraindicated, contingent on availability, a pneumococcal bacteria vaccine to all medicare-eligible patients and all private-pay patients, 65 years of age or older, in their facilities, in accordance with the rules and regulations established pursuant to this subsection.

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

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

SECTION 2-10.

Said title is further amended by revising subsection (a) of Code Section 31-7-3, relating to requirements for permits to operate a health care institution, as follows:

″(a) Any person or persons responsible for the operation of any institution, or who may hereafter propose to establish and operate an institution and to provide specified clinical services, shall submit an application to the department for a permit to operate the institution and provide such services, such application to be made on forms prescribed by the department. No institution shall be operated in this state without such a permit, which shall be displayed in a conspicuous place on the premises. No clinical services shall be provided by an institution except as approved by the department in accordance with the rules and regulations established pursuant to Code Section 31-7-2.1. Failure or refusal to file an application for a permit shall constitute a violation of this chapter and shall be dealt with as provided for in Article 1 of Chapter 5 of this title. Following inspection and classification of the institution for which a permit is applied for, the department may issue or refuse to issue a permit or a provisional permit. Permits issued shall remain in force and

effect until revoked or suspended; provisional permits issued shall remain in force and effect for such limited period of time as may be specified by the department. Upon conclusion of the Atlantic Cardiovascular Patient Outcomes Research Team (C-PORT) Study, the department shall consider and analyze the data and conclusions of the study and promulgate rules pursuant to Code Section 31-7-2.1 to regulate the quality of care for therapeutic cardiac catheterization. All hospitals that participated in the study and are exempt from obtaining a certificate of need based on paragraph (22) of subsection (a) of Code Section 31-6-47 shall apply for a permit to continue providing therapeutic cardiac catheterization services once the department promulgates the rules required by this Code section.″

SECTION 2-11.

Said title is further amended by revising Code Section 31-7-4, relating to denial or revocation of permits, as follows:

″31-7-4.

The department may refuse to grant a permit as provided for in Code Section 31-7-3 for the operation of any institution that does not fulfill the minimum requirements which the department may prescribe by rules and regulations, may revoke a permit which has been issued if an institution violates any of such rules and regulations, and may revoke a portion of a permit which has been issued as it relates to a specific clinical service if the quality standards established by the department pursuant to Code Section 31-7-2.1 for such clinical service are not met; provided, however, that before any order is entered refusing a permit applied for or revoking a permit previously granted, the applicant or permit holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Article 1 of Chapter 5 of this title. All appeals from such orders and all rights of enforcement by injunction shall be governed by Article 1 of Chapter 5 of this title.″

SECTION 2-12.

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

″31-7-5.

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

SECTION 2-13.

Said title is further amended by revising subsection (a) of Code Section 31-7-9, relating to reports by physicians and other personnel of nonaccidental injuries to patients, as follows:

"(a) As used in this Code section, the term 'medical facility' includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph(C) of paragraph (4) of Code Section 31-7-1 and a freestanding imaging center defined in subparagraph (G) of paragraph (4) of Code Section 31-7-1."

SECTION 2-14.

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

"31-7-17.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of hospitals and related institutions pursuant to this article shall be transferred from the Department of Human Resources to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this

Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Merit System of Personnel Administration and who are transferred to the department shall retain all existing rights under the State Merit System of Personnel Administration. Retirement rights of such transferred employees existing under the Employees′ Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health.″

SECTION 2-15.

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

″(1.1) 'Department' means the Department of Community Health.″

SECTION 2-16.

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

″31-7-155.

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

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

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

SECTION 2-17.

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

″31-7-159.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of home health agencies pursuant to this article shall be transferred from the Department of Human Resources to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Merit System of Personnel Administration and who are transferred to the department shall retain all existing rights under the State Merit System of Personnel Administration. Retirement rights of such transferred employees existing under the Employees′ Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health.″

SECTION 2-18.

Said title is further amended by revising Code Section 31-7-175, relating to the administration of the "Georgia Hospice Law," as follows:

″31-7-175.

(a) The administration of this article is vested in the Department of Human Resources which shall:

(1) Prepare and furnish all forms necessary under the provisions of this article in relation to the application for licensure or renewals thereof;

(2) After consultation with appropriate public interest groups, adopt rules within the standards of this article necessary to effect the purposes of this article; and

(3) Establish comprehensive rules and regulations for the licensure of hospices.

(b) Rules promulgated by the department shall include but not be limited to the following:

(1) The qualifications of professional and ancillary personnel in order to furnish adequate hospice care;

(2) Comprehensive standards for the organization and quality of patient care;

(3) Procedures for maintaining records;

(4) Comprehensive standards for inpatient facilities, to include specifications that the hospice retain primary responsibility for the coordination of inpatient hospice care;

(5) Provision for contractual arrangements for professional and ancillary hospice services; and

(6) Provisions for the imposition of administrative fines for any violations of any provisions of this article or of department rules or regulations.″

SECTION 2-19.

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

″(3.1) 'Department' means the Department of Community Health.″

SECTION 2-20.

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

″31-7-265.

(a) Effective July 1, 2009, all matters relating to facility licensing and employee records checks for personal care homes pursuant to this article shall be transferred from the Department of Human Resources to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the

Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Merit System of Personnel Administration and who are transferred to the department shall retain all existing rights under the State Merit System of Personnel Administration. Retirement rights of such transferred employees existing under the Employees′ Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health.″

SECTION 2-21.

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

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

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

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

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

(4) 'Third-party payor' means any entity which provides health care insurance or a health care service plan, including but not limited to providers of major medical or comprehensive accident or health insurance, whether or not through a self-insurance plan, Medicaid, hospital service nonprofit corporation plans, health care plans, or nonprofit

medical service corporation plans, but does not mean a specified disease or supplemental hospital indemnity payor.″

SECTION 2-22.

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

″31-7-282.

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

(1) Health care providers;

(2) The Department of Human Resources;

(3) The Commissioner of Insurance;

(4) Reserved;

(5) Third-party payors;

(6) The Joint Commission on the Accreditation of Healthcare Organizations; and

(7) Other appropriate sources as determined by the department.

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

SECTION 2-23.

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

″(2) 'Department' means the Department of Community Health.″

SECTION 2-24.

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

″31-7-308.

(a) Effective July 1, 2009, all matters relating to the licensure and regulation of private home care providers pursuant to this article shall be transferred from the Department of Human Resources to the Department of Community Health.

(b) The Department of Community Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Community Health pursuant to this Code section and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Community Health pursuant to this Code section. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Community Health by proper authority or as otherwise provided by law.

(c) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Community Health pursuant to this Code section shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Community Health. In all such instances, the Department of Community Health shall be substituted for the Department of Human Resources, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Community Health pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Community Health in similar capacities, as determined by the commissioner of community health. Such employees shall be subject to the employment practices and policies of the Department of Community Health on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Merit System of Personnel Administration and who are transferred to the department shall retain all existing rights under the State Merit System of Personnel Administration. Retirement rights of such transferred employees existing under the Employees´ Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual and sick leave possessed by

said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Community Health.″

SECTION 2-25.

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

″31-7-354.

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

SECTION 2-26.

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

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

SECTION 2-27.

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

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

SECTION 2-28.

Said title is further amended in Code Section 31-11-81, relating to definitions relative to emergency services, is amended by revising paragraph (2) as follows:

″(2) 'Emergency medical provider' means any provider of emergency medical transportation licensed or permitted by the Department of Human Resources, any hospital licensed or permitted by the Department of Community Health, any hospital based service, or any physician licensed by the Composite State Board of Medical Examiners who provides emergency services.″

SECTION 2-29.

Said title is further amended in Code Section 31-18-3, relating to reporting procedures for the registry for traumatic brain and spinal cord injuries, is amended as follows:

"31-18-3.

Every public and private health and social agency, every hospital or facility that has a valid permit or provisional permit issued by the Department of Community Health under Chapter 7 of this title, and every physician licensed to practice medicine in this state, if such physician has not otherwise reported such information to another agency, hospital, and facility, shall report to the Brain and Spinal Injury Trust Fund Commission such information concerning the identity of the person such agency, hospital, facility, or physician has identified as having a traumatic brain or spinal cord injury as defined in this chapter. The report shall be made within 45 days after identification of the person with the traumatic brain or spinal cord injury. The report shall contain the name, age, address, type and extent of injury, and such other information concerning the person with the injury as the Brain and Spinal Injury Trust Fund Commission, which is administratively assigned to the department, may require."

SECTION 2-30.

Said title is further amended in Code Section 31-20-1, relating to definitions relative to performance of sterilization procedures, is amended by revising paragraph (1) as follows:

"(1) 'Accredited hospital' means a hospital licensed by the Department of Community Health and accredited by the Joint Commission on the Accreditation of Hospitals."

SECTION 2-31.

Said title is further amended in Code Section 31-21-5, relating to incineration or cremation of dead body or parts thereof, is amended by revising subsection (a) as follows:

"(a) It shall be unlawful for any person to incinerate or cremate a dead body or parts thereof; provided, however, that the provisions of this subsection shall not apply to a crematory licensed by the State Board of Funeral Service pursuant to Chapter 18 of Title 43 or to a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health and in a manner approved by the commissioner of community health."

SECTION 2-32.

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

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

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

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

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

SECTION 2-33.

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

"33-19-10.

The corporations shall have authority to contract only with hospitals licensed by the Department of Community Health."

SECTION 2-34.

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

"(6) 'Project' means the acquisition, construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements located or to be located within the downtown development area, and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, any undertaking authorized by Chapter 43 of this title as part of a city business improvement district, any undertaking authorized in Chapter 44 of this title, the

'Redevelopment Powers Law,' when the downtown development authority has been designated as a redevelopment agency, or any undertaking authorized in Chapter 61 of this title, the 'Urban Redevelopment Law,' when the downtown development authority has been designated as an urban redevelopment agency, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities in its authorized area of operation. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determine, by a duly adopted resolution, that the project and such use thereof would further the public purpose of this chapter. Such term shall include any one or more buildings or structures used or to be used as a not for profit hospital, not for profit skilled nursing home, or not for profit intermediate care home subject to regulation and licensure by the Department of Community Health and all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities."

SECTION 2-35.

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

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

SECTION 2-36.

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

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

SECTION 2-37.

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

"(3) Any physician or other medical professional who authorizes, directs, or supervises the installation or provision of automated external defibrillator equipment in or on any

premises or conveyance other than any medical facility as defined in paragraph(5) of Code Section 31-7-1; and"

SECTION 2-38.

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

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

SECTION 2-39.

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

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

PART III

Effective Date and Repealer.

SECTION 3-1.

(a) Except as provided in subsection (b) of this section, this Act shall become effective on July 1, 2008, and shall only apply to applications submitted on or after July 1, 2008.

(b) Part II of this Act shall become effective on July 1, 2009.

SECTION 3-2.

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